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CMA NO.284 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

**CMA NO.284 OF 2021
AND
CMP NO.1886 OF 2021**

B.Suganya ... Appellant

Vs.

R.Jayaprakash ... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955, praying to set aside the order and decree dated 18.03.2020 in F.C.O.P.No.23 of 2016 on the file of the Family Court, Salem.

For Appellant : Mr.D.Shivakumaran

For Respondent : Mr.S.Subbiah
Senior Counsel
Assisted by Mr.D.Venkateswara Rao



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J U D G M E N T

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

The wife is on appeal aggrieved by a decree for divorce granted in F.C.O.P.No.23 of 2016, filed by the husband seeking Divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, on the file of Family Court, Salem.

2.The parties were married on 09.09.2013 and of the wed-lock a male child was born on 11.09.2014. Claiming that the wife has deserted him and has not come back after the birth of the male child and complaining that her mother has been advising her against resumption of matrimony, the husband lodged a complaint with the Salem City Police Commissioner on 29.12.2014. The said complaint was forwarded to the All Women Police Station, Salem and the wife signed a statement that she was unwilling to resume matrimonial life and declared that she would work out her remedy through Court of Law. Upon such declaration having been made by the wife, the complaint was closed. Thereafter, the husband filed F.C.O.P.No.4 of 2015 seeking restitution of conjugal rights and in that petition, the wife filed a counter maligning the husband and his



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family. But she did not choose to prosecute the same and it was allowed to be decided *ex parte*. Even after the *ex parte* decree, the wife failed to comply with the decree and resume co-habitation. When she was required to comply with the decree over phone, she categorically refused. It is also claimed that she demanded a huge sum of money for the maintenance of the minor child. It was also contended that the respondent / wife and her mother threatened the petitioner / husband and made false allegations against the family members of the husband with a view to tarnish their image. On the above contentions, the husband sought for divorce.

3.This petition was resisted by the wife contending that the averments in the petition are false. While admitting the fact that the husband had lodged a complaint and that she had said that she would seek recourse to legal remedy through Court, the wife would complain that it is the family members of the petitioner who made life difficult for her at the matrimonial home. She would also deny the allegations of cruelty and the claim that she always wanted to demean the family of the husband by making false imputations against them. She also contended that the husband called her over phone and indulged in character assassination



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using filthy language. On the above pleadings, the wife sought for dismissal of the petition.

4.An additional counter was filed on 25.11.2019 when evidence was being let in stating that the wife was willing to live with the husband.

5.A reply to the said additional counter was also filed by the petitioner / husband.

6.On the above pleadings, the learned Family Judge framed the following point for determination:

“Whether the Petitioner is entitled for Dissolution of Marriage under Section 13(1)(i-a) of the Hindu Marriage Act?”

7.At trial before the learned Family Judge, the husband was examined as P.W.1 and one Madhavan was examined as P.W.2 and Ex-P.1 to Ex-P.8 were marked. The wife was examined as R.W.1.

8.Upon consideration of the evidence, the learned Family



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Judge concluded that it was the wife who had refused conjugal relationship and she had declared unequivocally she would not go and live with her husband on 29.12.2014 itself. This fact coupled with her evidence impelled the Family Judge to conclude that the manner in which the wife has treated her husband, which would offer a ground for divorce under Sections 13(1)(i-a) of the Hindu Marriage Act, 1955. On the said conclusion, the learned Family Judge granted a decree for divorce. Aggrieved, the wife is on appeal.

9.We have heard Mr.D.Shivakumaran, learned counsel appearing for the appellant and Mr.S.Subbiah, learned Senior Counsel assisted by Mr.D.Venkateshwara Rao, learned counsel appearing for the respondent.

10.Mr.D.Shivakumaran, learned counsel appearing for the appellant would vehemently contend that the only ground on which the Family Court had granted divorce that the fact that the wife had stated before the Police that she would resume co-habitation and that she had admitted the same even in her evidence as D.W.1. According to the learned counsel, the one instance where the wife refused to live with the husband



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cannot be construed as cruelty so as to offer a ground for divorce under

Section 13(1)(i-a) of the Hindu Marriage Act. The learned counsel also pointed out that there was no other allegation of cruelty against the wife except the fact she refused to resume matrimonial ties after the birth of the child.

11. Contending contra, Mr.S.Subbiah, learned Senior Counsel appearing for the respondent / husband would submit that it is not that solitary instance which has been taken into account by the learned Family Judge. Taking us through the evidence of the wife, the learned Senior Counsel would submit that the entire evidence, if read as a whole, would go to show that the wife was never willing to live with the husband. Learned counsel would point out that she had in fact refused to live with her husband. The learned counsel would also point out various other instances that have been spoken to by both the husband as well as the wife which would go to show that the matrimony was not a happy matrimony and it was always in deep trouble because of the attitude of the wife. The response of the wife on 29.12.2014 was out of her desire to live with her mother than with her husband. Therefore, the Family Court was right in



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granting divorce.

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12. We have considered the rival submissions.

13. The only question that arises for determination in this appeal is as to whether the conduct of the appellant in refusing resumption of conjugal rights would amount to cruelty. We must, at the outset, point out that it was the husband who went to the police seeking restitution and the wife made her intentions very clear and said that she is not willing to live with the husband and she would work out her remedy through Court of Law. This statement was recorded. As D.W.1 in her evidence, has not chosen to deny the fact that she had told the police that she was not willing to live with her husband. She had, in fact, gone a step further and admitted that she had refused to live with her husband. The refusal of conjugal bliss itself would amount to cruelty entailing the other spouse for divorce.

14. Apart from the above, several instances have been cited by the Family Court Judge to buttress her conclusion that the wife has treated the husband with such cruelty that he would be entitled for decree for divorce. The fact that the husband was denied permission even to see the



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child and also the fact that various malicious allegations were thrown at the family members of the husband in the counter to F.C.O.P.No.4 of 2015 as well as in the counter filed in the present proceedings would show the mental make up of the wife not to continue the matrimony. Once it is demonstrated that the wife had not only refused conjugal bliss without any just cause but she has also indulged in maligning the husband and his family members at every opportunity that she would have, demonstrate her attitude and the fact that she is not really interested in the matrimony.

15.We therefore find that the conclusion of the Family Court is just and reasonable not warranting interference at our hands. Once we uphold the conclusions of the Family Court on the basis of the evidence that was available before it, the appeal will have to necessarily fail and it is accordingly, dismissed. We have however make no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

(R.SUBRAMANIAN, J .) (R.SAKTHIVEL, J.)

18.04.2024

Index : No
Internet : Yes



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Neutral Citation : No
Speaking Order
TK

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To

The Family Judge
Family Court,
Salem.



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AND

R.SAKTHIVEL, J.

TK

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