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C.M.A.No.27 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI**

**C.M.A.No.27 of 2024
and
C.M.P.No.246 of 2024**

Rajesh Kumar

..Appellant

Vs.

Yogalakshmi,
W/o Rajeshkumar

..Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 19 of Family
Courts Act against the judgment and decree dated 28.12.2022 passed in
F.C.O.P.No.81 2021 passed by the Family Court, Ariyalur.

For Appellant : Mr.K.Balu

For Respondent : Mr.C.S.Rajalakshmi
(Legal Aid Counsel)



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JUDGMENT
WEB COPY (The order of the Court was made by Mrs.J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed as against the judgment and decree dated 28.12.2022 passed in F.C.O.P.No.81 2021 passed by the Family Court, Ariyalur, by which, the petition filed by the appellant/husband for dissolution of marriage was dismissed.

2. The brief facts of the case of the appellant are as follows:

The marriage between the appellant and the respondent was solemnized on 29.03.2020 as per Hindu rites and customs. The appellant and the respondent lived as husband and wife in the appellant's parents house for three months. During that time, the respondent started harassing the appellant. She did not allow him to talk with his sister and his maternal aunt. She threw the Thali and threatened to commit suicide. Therefore, the appellant and the respondent shifted to Hyderabad and resided in a rented house. The appellant would state that whenever the appellant came home late, she did not open the door and caused harassment. Whenever, they went to their native place, the respondent unnecessarily harassed the appellant. Due to the aforesaid acts of the respondent, the appellant sustained mental agony and faced self



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disrespect. Thus, the appellant filed a petition for divorce on the ground of cruelty. However, the Family Court dismissed the divorce petition. Hence, the present Appeal.

3. Learned counsel for the appellant would state that the Family Court failed to appreciate the fact several efforts had been made for an amicable settlement, but on the basis of the allegations which have been levelled by both the spouses against each other, there is no cordiality left between the spouses and there is no possibility to reconstruct the marital life between them. The parties are living separately for more than three years. The findings of the lower Court is totally unsustainable and against the settled principles of law contemplated under section 13(1)(ia) of the Hindu Marriage Act. He would state that continuous wilful and deliberate ill-treatment, intentional continuous neglect and indifference are all factors amounting to mental cruelty. He would further state that long separation is a relevant factor to dissolve the marriage. Hence, the learned counsel would state that the judgment and decree passed by the Family Court is not sustainable in law or on facts and the same is liable to be set aside.



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4. Per contra, the learned counsel appearing for the respondent/wife would state that after the marriage, the appellant and the respondent were living happily for five months and they shifted to Hyderabad. On 31.03.2021, the petitioner and the respondent came to the respondent's brother's wife bangle ceremony and left the respondent in her parent's house and went to Hyderabad. The appellant suspected the character of the respondent, abused and assaulted her. The allegations made against the respondent are all false. Actually, there is no dispute between the petitioner and the respondent in the matrimonial life. The respondent is always ready and willing to live with the appellant. Hence, the learned counsel would pray to dismiss the appeal.

5. Heard the learned counsel for the appellant, the learned counsel for the respondent and perused the materials available on record.

6. The undisputed facts are that the marriage between the appellant and the respondent had taken place on 29.03.2020 and they lived together only for a period of three months. There is no child born through the



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wedlock. A legal notice was sent by the appellant on 17.06.2021 and thereafter, for more than three years, the appellant and the respondent are living separately.

7. As regards cruelty, the main allegations against the respondent/wife are that the respondent suspected the appellant talking with his sister and maternal aunt. The respondent had harm sense behaviour. She made self punishment and caused harassment to the appellant. She threw the Thali and threatened to commit suicide. When the appellant comes home late after work, she did not permit the appellant to enter the house. The appellant stayed at the entrance for several hours in the apartment at Hyderabad. The respondent insisted the appellant to return home daily before 6.00 p.m., though she very well knew the nature of work of the appellant. Whenever they come to the native place from Hyderabad, the respondent unnecessarily harassed the petitioner. There was continuous torture and abnormal behaviour of the respondent, due to which, the appellant sustained mental agony and lost his self respect.



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8. The respondent/wife denied all the allegations made by the appellant against her. Her contention is that the appellant left her in her parent's house while they came from Hyderabad to attend her brother's wife bangle wearing ceremony. There is no dispute between them. The appellant wanted to avoid her for his own reason. The respondent is always ready and willing to live with the appellant.

9. The Family Court held that though the appellant had made so many allegations against the respondent, the same has not been proved through proper witness or documents. The Family Court further held that appellant has not produced the relevant dates or particular dates of harassment before the Court or in his petition and thus, the said allegations are unsustainable and holding so, dismissed the petition for divorce filed by the appellant.

10. It is seen from the records that the matter was referred to mediation attached to this Court by order dated 09.01.2024 and the report of the mediation dated 04.03.2024 would reveal that both the parties appeared before mediation on 22.01.2024, 05.02.2024, 28.02.2024 and



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04.03.2024 and the parties sought further time for arriving at a settlement.

Therefore, again the matter was referred to mediation attached to this Court by order dated 26.03.2024 and the report of the mediation dated 04.03.2024 would reveal that mediation was not successful as no settlement could be reached between the parties.

11. The acts like throwing the thali, not allowing the husband to enter the house on return from office after 6.00 p.m. and making him to stay at the entrance for several hours in the apartment and not allowing to talk with his sister and his maternal aunt are all acts which tend to destroy the legitimate ends and objects of matrimony. The threat that she would commit suicide is so grave which would certainly affect the appellant's sense of personal safety and mental happiness. However, the trial Court has given a finding that the appellant has not produced any documents to prove the charges of cruelty of causing mental injury by the respondent. In physical cruelty, there can be tangible and direct evidence, but in case of mental cruelty, there may not be direct evidence. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct on the complaining spouse. The alleged mental harassment is



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alleged to be made by the respondent within the four walls of their house.

Under such circumstances, the court cannot expect direct evidence or any other independent witness. However, the mother of the appellant was examined as P.W.2 and during her cross examination, she had deposed that she came to know about the dispute between the petitioner and the respondent through her son.

12. It is to be noted that though the respondent/wife, in her deposition, has denied all the allegations made by the appellant against her and also stated that there is no dispute between them and she is always ready and willing to live with the appellant, however, in her counter, she had made contradictory statement that the appellant suspected her character, abused her and assaulted her. She had baldly denied all the allegations made against her. Moreover, the respondent has not filed any petition seeking restitution of conjugal rights to prove her intention to join her husband . Thus, adverse inference could be drawn as against the respondent that she could have caused mental cruelty to the appellant. Therefore, we are of the view that the trial Court erred in coming to the conclusion that the appellant has not proved the



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charges of cruelty of causing mental injury by the respondent.

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13. Furthermore, it is pertinent to note that the parties lived together barely for a period of three months and they are living separately for more than three years. There is hardly any chance of their living together even if they are reunited by a court's order.

14. Considering the circumstances of the case and that the respondent/wife has also not filed any petition for restitution of conjugal right, we are of the opinion that it will not be possible for the parties to live together and therefore, there is no purpose in compelling both the parties to live together and the best course is only to dissolve the marriage by passing a decree of divorce. However, we are of the opinion that the appellant-husband should be directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the respondent-wife by way of permanent alimony.

15. In the result, the impugned judgment and decree dated 28.12.2022 are set aside. The marriage between the appellant/husband, Rajesh Kumar and the respondent/wife, Yogalakshmi, is dissolved by a



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decree of divorce, according to the provisions of the Hindu Marriage Act, 1955. The appellant/ husband is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the respondent/wife by way of permanent alimony within a period of three months from the date of receipt of a copy of this order. The belongings to the respondent/wife, if any lying with the appellant, shall be returned to her forthwith. No costs.

Connected CMP is closed.

(J.N.B,J.) (R.K.M., J.)

20.08.2024

Index : Yes / No
Internet : Yes
vsi

To

The Family Court,
Ariyalur.

J. NISHA BANU, J.
and
R.KALAIMATHI,J.



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