



C.M.A.Nos.1176 & 1177 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	24.06.2024
PRONOUNCED ON :	10.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.M.A.Nos.1176 and 1177 of 2024

and

C.M.P.Nos.10607 and 10614 of 2024

B.Sridevi

... Appellant in both appeals

-Vs-

A.Aadityan

... Respondent in both appeals

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 19 of the Family Court Act r/w Section 28 of the Hindu Marriage Act, against the Fair and Final Common Order, dated 16.07.2022 in O.P.No.1750 of 2018 and O.P.No.4638 of 2017, respectively, on the file of the III Additional Principal Judge Family Court, Chennai.



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In both C.M.A's:

For Appellant : Mr.K.Siva Subramanian

For Respondent : Mr.S.V.Vijay Prashanth

COMMON JUDGMENT

(Judgment of the Court was made by **J.NISHA BANU.,**)

Since the issue involved in both the appeals are one and the same, they are disposed of by this common judgment. The appellant/wife has preferred the Civil Miscellaneous Appeals as against the common order, dated 16.07.2022 made in O.P.No.1750 of 2018 and O.P.No.4638 of 2017, respectively, on the file of the III Additional Principal Judge Family Court, Chennai.

2. Before the trial Court, both the petitions were tried together and O.P.No.4638 of 2017 was taken up as main petition and evidence was recorded. On the side of the appellant, she was examined as R.W.1 and 5 documents were marked as Exhibits R1 to R5. On the side of the



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respondent, he was examined as P.W.1 and 8 documents were marked as Exhibits P1 to P8. After hearing both sides, the Trial Court has allowed the petition filed by the husband in O.P.No.4638 of 2017 and the petition filed by the wife in O.P.No.1530 of 2017 was dismissed. Against which, the present Civil Miscellaneous Appeals have been filed by the wife.

3. The marriage between the appellant and the respondent took place on 12.02.2016. Out of the wedlock, no issues were born to them. From the inception of marriage, both the appellant as well as the respondent did not lead a peaceful marital life. Due to the difference of opinion that arose between them, the respondent /husband filed a petition in O.P.No.4638 of 2017 seeking for grant of divorce, whereas the appellant/wife filed a petition for restitution of conjugal rights.

4. The case of the appellant is that subsequent to the marriage, the appellant got conceived and thereafter, miscarriage happened during the month of April 2017. As a result of her health conditions, she was advised to take rest by her doctor. Adhering to the advice of the doctor, she went to



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her parent's home and returned to her matrimonial home during the month of July 2017. After miscarriage, the appellant's health condition was very weak and because of her ill health conditions, she was unable to perform the household work diligently at her matrimonial home. This developed misunderstanding between the appellant and the respondent and later it has traversed to the elders of the respondent's family. During August 2017, a small wordy quarrell erupted between the appellant and the respondent, as a result of which the appellant/wife left the matrimonial home and continued to stay with her parents till date. When this being the fact, the respondent/husband has filed a petition for divorce. Even though the appellant/wife participated in the pre-litigation conciliation before the Family Court and expressed her desire to lead a matrimonial life with the respondent, the respondent/husband failed to accept her.

5. According to the learned counsel for the appellant, the trial Court failed to appreciate the case of the appellant and appreciated the case only in favour of the respondent/husband and has arrived at a conclusion depending upon its own assumptions and presumptions. Therefore, the learned counsel



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prayed for setting aside the common order, dated 16.07.2022 made in O.P.No.1750 of 2018 and O.P.No.4638 of 2017, respectively, on the file of the III Additional Principal Judge Family Court, Chennai, thereby allowing the civil miscellaneous appeals.

6. Per contra, Mr.S.V.Vijay Prashanth, learned counsel for the respondent/husband submitted that the relationship between the appellant and the respondent has already been severed. The appellant has always compelled the respondent to set up a separate house by leaving his age old parents, which is an act of cruelty. Even though the appellant has filed a petition for restitution of conjugal rights, she never took any steps for living together with the respondent/husband. Moreover, the appellant has not given any acceptable reason as to why she has stayed with her parents for a long time. The trial Court, after considering the above facts and circumstances, has passed a well-reasoned order and the same does not need the interference of this Court. Accordingly, the learned counsel prayed for dismissing the appeals.



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7. We have heard the learned counsel appearing for the appellant as well as the respondent and perused all the materials available on record.

8. Cruelty may be physical or corporeal or may be mental. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes. At this juncture, it is appropriate to refer the Judgment of the Hon'ble Supreme Court in **Rakesh Raman vs. Kavitha** reported in **AIR 2023 SC 2144** wherein, the Hon'ble Supreme Court in Para No.18 are held as follows:

"18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds



and the existing bitterness between the two, has to be read as cruelty Under Section 13(1) (ia) of the 1955 Act. We therefore, hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock."

15. On a careful perusal of the above said judgment, it is clear that the long separation and absence of cohabitation and the complete break down of all meaningful bonds and the existing bitterness between the two person has to be read as cruelty under Section 3(1) (ia) of the Act, 1955. In the case on hand also, both the parties are separated from August 2017 and there is no conjugal relationship between the parties and thereby, the above said case law is



squarely applicable to the present facts of the case. On the ground also the respondent/husband is entitled to decree of divorce. The Trial Court also in this context elaborately discussed about the evidences adduced on both sides and fairly came to the conclusion that the respondent/husband is entitled to get the decree of divorce on the ground of cruelty and the appellant/wife is not entitled to get the decree for restitution of conjugal rights. Therefore, there is no infirmity or perversity in the order passed by the Trial Court.

9. The term 'cruelty' is well explained by the Hon'ble Apex Court in the judgment reported in ***A. Jayachandra Vs. Aneel Kaur*** reported in (2005) 2 SCC page 22, and the relevant paragraphs are extracted as follows:-

10. The expression “cruelty” has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable



apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there



can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression “cruelty” has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be



a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

10. In the light of the above decisions and taking note of the facts of the present case that the appellant and the respondent are separated for the past seven years and that there is no possibility of reconciliation between the parties and the nature of allegations complained of, which otherwise could be regarded as cruelty, we are of the opinion that the dismissal of the divorce petition by the Court below, considering that the bond is irretrievably broken, is a reasoned one. Therefore, we feel that the dismissal order passed by the court below does not seek the interference of this Court.

11. In view of the above said discussion, this Court is of the opinion that these Civil Miscellaneous Appeals have no merits and the same are liable to be dismissed. However, the Trial Court has not awarded any maintenance towards permanent alimony. Considering the nature of the case



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and status of the parties, this Court is inclined to direct the respondent/husband to pay a sum of Rs.5,00,000/- (Rupees Five lakhs only) to the appellant/wife towards permanent alimony, within a period of 3 months from the date of receipt of a copy of this judgment.

12. In the result,

(i) C.M.A.No.1176 of 2024 is dismissed;

(ii) C.M.A.No.1177 of 2024 is dismissed; and

(iii) However, the respondent/husband is directed to pay a sum of Rs.5,00,000/- (Rupees Five lakhs only) to the appellant/wife towards permanent alimony, within a period of 3 months from the date of receipt of a copy of this judgment. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(J.N.B.J) (P.D.B.J)

10.09.2024

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Index: Yes/No Internet: Yes/No

Neutral Citation Case: Yes/No



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To:

The III Additional Principal Family Court, Chennai.

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J.NISHA BANU, J.,
and
P. DHANABAL, J.,

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Common Judgment made in
C.M.A.Nos.1176 and 1177 of 2024

Dated:
10.09.2024