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C.M.A. Nos.2161 & 2162 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	11.07.2024
PRONOUNCED ON	:	21.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.M.A.Nos.2162 & 2164 of 2022
and C.M.P.No.16814 of 2022

K.Purushothaman

.... Appellant in both
CMA's

Vs

G.Bapitha

.... Respondent in both
CMA's

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 19 of the Family Court Act praying to set aside the common judgment and decree in O.P.Nos.1417 of 2020 & 3780 of 2019, dated 21.07.2022 passed by the learned VII Additional Family Court at Chennai.

In both C.M.A.'s:

For Appellant : Mr.Gudson Swaminathan
For Mr.P.Rajendrakumar

For Respondent : Mr.R.C.Srinivasan



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COMMON JUDGMENT

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

Since the issue involved in both the cases are one and the same, they are disposed of by this common judgment. These Civil Miscellaneous Appeals have been preferred as against the common order passed in O.P.Nos.1417 of 2020 and 3780 of 2019 on the file of the learned VII Additional Family Judge at Chennai dated 21.07.2022.

2. The appellant/husband herein has filed a petition in O.P.No.1417 of 2020 seeking divorce on the ground of mental disorder and cruelty and the respondent/wife herein has filed a petition in O.P.No.3780 of 2019 under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights.

3. The trial Court dismissed the petition filed by the appellant/husband seeking divorce and allowed the petition filed by the respondent/wife seeking restitution of conjugal rights. Aggrieved by the above said orders, the aggrieved husband has preferred the present Civil Miscellaneous Appeals, thereby challenging the dismissal of the petition seeking divorce and allowing the petition granting decree of



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restitution of conjugal rights granted in favour of the respondent/wife before this Court.

4. The case of the appellant/husband is that the marriage between him and the respondent was solemnized on 17.04.2017 at H.P.M. Thirumana Mandapam, Ambattur at Chennai as per the Hindu rites and customs. After the marriage, they lived as the husband and wife, and no child was born out of the wedlock. According to the appellant, from the beginning of the marriage, the respondent acted indifferently, and claiming herself to be a Doctor, she never performed her duty as dutiful wife.

4.1. In the late night, she used to sleep under the bed and kept away from the company of the appellant. When the said activities were questioned by the appellant, the respondent/wife used filthy language and threatened him of committing suicide by leaving a suicidal note, implicating the names of the appellant and his family members. As the behavior, character and activities were all different from normal human being, one day, on an occasion due to wordy quarrel, she removed her Thali and threw



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on the face of the appellant. According to the appellant, the respondent was suffering from mental disorder and the respondent refused to take medicine and thereafter, the appellant lodged a complaint before the Inspector of Police, All Women Police Station, Thirumangalam on 09.09.2018 and they enquired the matter and gave counselling to her but that also ended in vain. Therefore, the appellant/husband came forward with a petition seeking divorce.

5. The case of the respondent is that the marriage between the parties is admitted but she denied the allegations that were made against her in respect of her mental capacity. She is a Medical Practitioner in Dental Science. The incidents narrated in the divorce petition, have been purposely created with a view to find a cause of action for filing the divorce petition. She never quarrelled with the appellant and his parents at any point of time. But the appellant and his parents only tortured and humiliated her.

5.1. The appellant, without understanding the psychological report with proper perspective, called her parents and insisted them to take her daughter back by wrongly assuming that she has mental illness. According



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to the respondent, she completed her Medical Science in dental and always willing to live with the appellant and thereby, she filed a petition for restitution of conjugal rights.

6. Before the trial Court, both the petitions were tried jointly. On the side of the appellant, the appellant himself examined as P.W.1 and one Balaji as P.W.2 and they marked 11 exhibits Ex.P1 to Ex.P11. On the side of the respondent, the respondent himself was examined as R.W.1 and the mother of the respondent was examined as R.W.2 and they marked Ex.R1 to Ex.R13. The exhibits include Dr.Hema Tharoor's prescription, report of Dr.Keerthi Pai, copy of police complaint before the Inspector of Police, AWPS, Thirumangalam, true copy of C.S.R.No.285 of 2018 of AWPS, Thirumangalam, true copy of statement of respondent before AWPS, Thirumangalam, , true copy of the enquiry report of Inspector of Police, AWPS, Thirumangalam, ...etc.

7. Heard the learned counsel for the appellant and the respondent and perused the materials placed before this court.

8. On reading of the judgment passed by the trial Court, particularly



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paragraph no.23, it can be seen from the evidence of R.W.1, that the respondent has very specifically denied the fact that she has mental illness before or after her marriage as alleged by the appellant. But in her chief examination she has deposed that she suffered with mental illness and underwent treatment from Dr.Hema Tharoor on 04.04.2018 and Dr.Sabith, Psychiatrist at Anna Nagar and she was taken to the doctor by her parents, which would prove that the respondent was affected with mental illness. Though the trial Court has found the same, it has dismissed the application of the appellant seeking divorce.

9. It is an admitted fact that the respondent has completed her Medical Science studies only after her marriage. The learned Judge has also observed in paragraph no.24 of the judgment that the evidence of the appellant/ P.W.1 and the respondent/R.W.1 categorically and clearly coincide with the fact that the respondent/wife has been suffering from some mental illness and has allowed the petition filed by the respondent/wife for restitution of conjugal rights and dismissed the divorce petition filed by the appellant by holding that the allegation of mental illness is not sufficient enough to entertain the application filed by the



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appellant and has dismissed the petition seeking divorce.

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10. Though the trial Court allowed the application filed by the respondent for restitution of conjugal rights, till date, the respondent has not joined the appellant nor she has issued any notice for restitution of conjugal rights but had been telling that she is ready and willing to live with the appellant. The respondent/wife herself in her petition, while filing the counter proof affidavit and cross examination, has stated that she has 'affective psychosis'.

11. All the more, it can be seen that the appellant has been separated from the year 2018 itself and the said divorce petition filed by the appellant was initially numbered as 740 of 2018 before the learned Subordinate Judge, Ponnamalee and subsequently, the same was transferred to the learned VII Additional Family Court, Chennai and renumbered as O.P.No.1417 of 2020. The respondent/wife has filed H.M.O.P.No.3780 of 2019 against the appellant / husband seeking for restitution of conjugal rights and both the cases were tried together.



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12. Presently, both the appellant and the respondent are living separately for more than 6 years and though the respondent has obtained the decree of restitution of conjugal rights, she has not taken any steps to implement the decreetal order and though the trial Court found that the respondent suffered from some sought of mental illness, it came to a finding that such suffering cannot be taken as a serious form of disease that would attract the requirement as provided under Section 13(1)(iii) of the Hindu marriage Act. In the facts and circumstances of the case, it would be appropriate to refer to the judgment of Hon'ble Supreme Court in **Rakesh Raman vs. Kavita [AIR 2023 SC 2144]**, wherein, the Hon'ble Supreme Court in Paragraph No.18 has 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



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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. ”

13. On careful perusal of the above said judgment, it is clear that the long separation and absence of cohabitation and complete break down of all meaningful bonds and existing bitterness between the parties has to be read as cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. In the case on hand also, the parties are separated for a long period of time and there is no cohabitation between them and there is a complete break down of all meaningful bonds. Therefore, the above said acts would cause cruelty.

14. This Court would come to a conclusion that the appellant has proved cruelty against him by the respondent by contravening and cogent evidence and there is no scope for reunion. Therefore, the learned Judge ought to have granted divorce taking into consideration the entire scenario of the case and this Court is of the opinion that it would be appropriate to



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grant divorce to both the appellant and the respondent by setting aside the order of restitution of conjugal rights.

15. At this juncture, this Court suggested for permanent alimony for which, the learned counsel for the appellant/husband agreed to pay a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) to the respondent/wife towards permanent alimony and the learned counsel for the respondent/wife also acceded to the same. In view of the submissions made by both sides, this Court, upon taking into consideration that the respondent being a BDS graduate, and also considering the status of the both the parties, directs the appellant / husband to pay a sum of Rs.30,00,000/- (Rupees Thirty lakhs only) towards permanent alimony to the respondent /wife.

16. In the result,

(i) C.M.A.No.2162 of 2022 stands allowed and the fair and decreetal order passed by the learned VII Additional Family Judge at Chennai in O.P.No.1417 of 2020, dated 21.07.2022, dismissing the petition for divorce is set aside and the Original Petition in O.P.No.1417 of 2020 is allowed;

(ii) C.M.A.No.2164 of 2022 stands allowed and the fair and decreetal order passed by the learned VII



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Additional Family Judge at Chennai in O.P.No.3780 of 2019, dated 21.07.2022, ordering the restitution of conjugal rights is set aside and the Original Petition in O.P.No.3780 of 2019 is dismissed.

(iii) the marriage between the appellant and the respondent, dated 17.04.2017, at Ambathur, Chennai, is hereby dissolved by granting a decree of divorce;

(iv) The appellant/husband is directed to pay a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) towards permanent alimony to the respondent/wife within a period of three months from the date of copy of receipt of this judgment.

(v) No costs. Consequently, connected miscellaneous petition stands closed.

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

21.08.2024

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

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To

The learned VII Additional Family Court,
Chennai

Common Judgment made in
C.M.A.Nos.2162 & 2164 of 2022

Dated:
21.08.2024