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CMA NOS.1020, 1021 & 1022 OF 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM:

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

CMA NOS.1020, 1021 AND 1022 OF 2017

S.Manivannan ... Appellant / Petitioner
in all CMAs'

Vs.

R.Rajalakshmi ... Respondent / Respondent
in all CMAs'

PRAYER: Civil Miscellaneous Appeals filed under Section 19 of Family Courts Act, against the common order dated 24.11.2015 made in H.M.O.P.No.444 of 2013, H.M.O.P.No.551 of 2013 and G.W.O.P.No.452 of 2013 respectively, passed by the Principal Family Court at Coimbatore.

For Appellant : Mr.T.Saikrishnan
(in all CMAs') for M/s.S.Siva Sangarane

For Respondent : Mr.A.Mohan
(in all CMAs')



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COMMON JUDGMENT

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(Judgment of the Court was made by R.SUBRAMANIAN, J.)

These three appeals have been lodged by the husband aggrieved by the dismissal of his petitions for Divorce and Guardianship of his minor daughter in H.M.O.P.No.444 of 2013 and G.W.O.P.No.452 of 2013 on the file of the Family Court, Coimbatore and the order allowing the petition filed by the wife in H.M.O.P.No.551 of 2013 for restitution of conjugal rights. All these three Original Petitions were disposed of by a common order dated 24.11.2015.

2.The background facts are as follows:

2.1.The parties got married on 24.11.2004 at Thiruvanaikaval, Trichy and they set up a matrimonial home at Chennai. They were living peacefully for about 1 ½ years. According to the husband, the matrimonial life was not encouraging and he discovered that the wife was suffering from



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various ailments like Leukoderma, Diabetes, Asthma and Kidney problem.

According to the husband, all these ailments were suppressed and the parents of the wife got her married to him. He would also complain that the wife was not following the Doctor's advise on the diet. It was also contended that the wife suffered from Piles and she had to undergo a surgery immediately. During the year 2006, the respondent / wife had called her husband over phone and informed him that she was suffering from acute stomach pain and he immediately rush to the hospital and the Doctor advised to undergo surgery immediately. When a request was made to the mother of the wife to come and stay with her for surgery, she not only refused to come but also stated that it was the husband's responsibility to take care of the wife and he should not expect her help. It is also the complaint of the husband that the wife's mother sought to give preference of a retirement function of a colleague of her husband than her daughter's health. He would claim that his mother only looked after her during the entire period of treatment.

2.2.Despite all these issues which led to a not very conducive matrimonial life, a female child was born on 27.05.2007 at Trichy. It is also



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pertinent to point out at this juncture that according to the husband, the wife conceived earlier which got aborted. According to him, the abortion was because of her frequent travel to Trichy by bus. After the birth of the female child, his wife stayed with her parents for six months and came back to Coimbatore only after six months which led to the husband suffering from loneliness. It is also claimed that the wife's mother died in the year 2008 and the wife insisted that she would attend the funeral along with one year old daughter which according to the husband was not very conducive for the child.

2.3.It is also claimed that his wife's father got remarried in 2009 and was living with his second wife at Trichy. The petitioner's family lived in Kavundampalayam, Coimbatore. While so, the husband was transferred to Mysore, Karnataka as per his routine office procedure. His wife refused to join him at Mysore since she had got a job as a B.T. Assistant in Government School in Talavai, Ariyalur District and she had to join duty on 08.09.2010. While the wife was working as B.T. Assistant in Ariyalur District, the child was taken care of by the mother of the husband at Coimbatore and the



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husband was working in various places like Khammam, Andhra Pradesh and at Hyderabad during that period. During the said period, the wife took away the child from the custody of the mother of the husband and retained the child with her. She had left the child in the custody of the second wife of her father, who did not treat the child well.

2.4.The husband would also complain that the wife did not visit his father when he was admitted in the hospital and when he eventually died, she did not attend the funeral also. Finally, in January 2012, the wife got transferred to Coimbatore and they were living in a rented house. It is claimed that the wife developed inferiority complex because of the skin condition and she did not attend any function. It is also claimed that the wife was operated upon for removal of the Kidney stones in the year 2012. Citing all these issues and their culmination in a police complaint on 28.02.2013, the husband would seek divorce on the ground of cruelty.

2.5.The husband also filed an application under Sections 7 to 10 of Guardian and Wards Act, 1890 read with Section 6 of Hindu Minority and Guardianship Act, 1956 in G.W.O.P.No.452 of 2013 seeking custody of the



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minor child.

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2.6.As a retort, the wife filed an application under Section 9 of the Hindu Marriage Act, 1955 in H.M.O.P.No.551 of 2013 seeking restitution of conjugal rights.

2.7.While the wife resisted the application for divorce contending that all the allegations contained in the petition are false and it was her husband who treated her with cruelty because of the skin condition she suffered. She would further claim that various illnesses attributed to her by her husband are all false and she had never taken such treatments. The police complaint, according to the wife was given because of the fact that her husband went missing and later it was found that her husband who has constructed an own house and living there, leaving the wife and the minor daughter in the rented house in Coimbatore. While admitting the fact that her father went husband's office in search of him, the wife claimed that it was only out of concern that since her husband had not returned home for few days, the father-in-law went to the office of the son-in-law, for mere looking



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for him. This normal conduct was magnified and taken advantage by the husband as if she has committed cruelty.

2.8.The husband resisted the petition for restitution of conjugal rights projecting his allegations made in his petition for divorce as a ground for justification for living away.

2.9.The learned Family Court Judge took up all the three petitions together for disposal and on the basis of the pleadings above, framed the following points for consideration:

“1.Whether the petitioner / husband in HMOP No.444/2013 is entitled for divorce as prayed for by him?

2.Whether the petitioner / wife in HMOP No.551/2013 is entitled for Restitution of Conjugal rights as prayed for by her?

3.Whether the petitioner / husband in GWOP No.452/2013 is entitled for custody of minor Shakthydhaarani as prayed for by him?”

2.10.At trial before the Family Court, the husband was examined



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as P.W.1, his mother Kalavathi was examined as P.W.2 and Ex-P.1 to Ex-P.9 were marked on the side of the petitioner / husband. On the side of the respondent / wife, while she was examined as R.W.1, her father Rajamani was examined as R.W.2 and Ex-R.1 to Ex-R.10 were marked.

2.11.The learned Family Court Judge, Coimbatore, considering the evidence on record, concluded that the husband has not made out a case for grant of divorce on the ground of cruelty. In coming to the said conclusion, the learned Judge pointed out that there is total absence of evidence to support the claim of the husband that the wife was suffering from various disorders. The learned Family Court Judge also found that the acts complained by the husband against the wife like an attempt to suicide and irresponsible behaviour have not been established through reliable evidence. The learned Family Court also found that the wife has in fact, made out a case for restitution of conjugal rights. Upon those findings, the learned Judge concluded that the wife is entitled to have custody of the female child. Since the learned Family Court Judge found that the child being a daughter, her custody should be with the mother. Therefore, the learned Family Court



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Judge, Coimbatore dismissed the application filed under Sections 7 to 10 of the Guardian and Wards Act, 1890 read with Section 6 of Hindu Minority and Guardianship Act, 1956. Aggrieved, the husband has come up with these appeals.

3.As far as the case of custody is concerned, i.e., C.M.A.No.1022 of 2017, it is conceded by both the counsel that the minor daughter, who is now aged about 17 years, is now in the custody of the father and she is pursuing her education at Trivandrum. We, therefore, do not think that we should disturb the said position. Being a child aged about 17 years, we firmly believe that she would be in a position to know what is best for her. It is also stated that she has been living with the father from March 2017 for almost seven years now.

3.1.Considering the fact that the female child is about to complete 17 years in another two months, we do not propose to pass any orders in the appeal against G.W.O.P.No.452 of 2013 excepting to observe that the child will be at liberty to choose her place of above either with the



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father or with the mother and neither the father nor the mother will disturb her and the choice will be left to her absolutely. The Appeal in

C.M.A.No.1022 of 2017 is disposed of with the above direction.

4.On the other two appeals i.e. C.M.A.Nos.1020 and 1021 of 2017, we have heard Mr.T.Saikrishnan, learned counsel appearing for the appellant and Mr.A.Mohan, learned counsel appearing for the respondent. While Mr.T.Saikrishnan, learned counsel appearing for the appellant would vehemently contend that the Family Court was not right in dismissing the Original Petition for divorce, by dissecting the grounds for divorce and looking into each one of the allegations separately, the learned counsel would submit that the Family Court should have taken the allegations cumulatively and looked at the consequences of such allegations in order to decide whether there was cruelty or not. On the restitution of conjugal rights, learned counsel would submit that once the cumulative effect of the allegations made the divorce petition would entitle the husband for divorce, restitution will be out of question. Learned counsel would also take us through the evidence that was made available before the Family Court.

5.Contending contra, Mr.A.Mohan, learned counsel appearing



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for the respondent would submit that the evidence in cross examination of the husband would show that he had given up the entire case that was pleaded by him in the petition. He would also point out that there is a total absence of evidence on the claim that the wife suffered various health issues and the husband was put to severe mental agony because of the diseases suffered by the wife including diabetes.

5.1.Mr.A.Mohan, learned counsel appearing for the respondent would also point out that the very sequence of events narrated by the husband in his petition for divorce was not correct and the separation happened only because of the fact that the wife got an employment as B.T. Assistant in Government School in Ariyalur District and that separation was also only for a limited period and she got transferred back to Coimbatore and joined the husband in Coimbatore. May be, the failure on the part of the wife to attend the funeral of her father-in-law could be cited as an incident, so as to project that she did not take care for the welfare of the family of the husband, but according to the learned counsel for the respondent / wife the evidence of the wife is very clear to the effect that she was asked not to come there and



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therefore, that cannot be put against her. The sole police complaint that was given on 28.02.2013 also will not constitute cruelty because it was given at the time when the husband went missing from the matrimonial home and he had suppressed the factum of constructing a new house and made the wife and minor daughter to continue to stay in the rental house while he stayed in his own house. Therefore, according to the respondent / wife, the ground of cruelty has not been made out and therefore, the husband was not entitled to divorce and the decree for restitution has to be confirmed.

6. We have considered the rival submissions.

7. The points arise for determination in the appeals in C.M.A.Nos.1020 and 1021 of 2017 are as follows:

(i) Whether the allegations made in the petition for divorce regarding the health status and the conduct of the wife have been established to lead the Court to the conclusion that the wife has treated the husband



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with cruelty within the meaning of Section 13(1)(i)(a)
of the Hindu Marriage Act, 1955.

(ii) Whether the wife is entitled to a decree for
restitution of conjugal rights.

8. We have been taken through the averments in the petition as well as the evidence. According to the averments in the petition, the spouses got married in 2004 and they were living together at Chennai. Within a short time of the marriage, the husband discovered that the wife suffered from a skin disease called Leukoderma and that she was diabetic, she had Asthma and Kidney problem. It is claimed that the wife also did not follow medical advise regarding diet as well as medications. However, soon after the marriage, she had an unfortunate miscarriage. This miscarriage was attributed to the fact that the wife travelled often to his in-laws house at Trichy. However, subsequently, when the spouses shifted to Coimbatore, the wife conceived again and a female child was born on 27.05.2007. The wife stayed with her family for about six months and returned back with the child to



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Coimbatore. The wife's mother died at Trichy in 2008 and the wife insisted that she would attend the funeral along with her minor daughter. It is also claimed that the wife's mother died in 2008 and her father got remarried to another lady in 2009.

9.While things stood thus, the wife got an employment as B.T.Assistant in a Government School in Ariyalur District and she joined duty on 08.09.2010. Since the place of work was nearby Trichy, where her father was living, the wife started living with her father for sometime and the female child was left in the custody of the mother of the husband and the husband was working at Mysore at the relevant point of time. It is thereafter, the wife had taken the child with herself to Trichy which is also made a ground for cruelty to claim that the wife had taken the child without informing the mother of the husband. It is claimed that the wife had left the child in the custody of the second wife of her father and the child was ill-treated by the second wife of her father.



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9.1.The above is the sequence of events as set out in the petition.

But the evidence in support of this claim is completely lacking. Not even a shred of paper has been produced that the wife had various health issues as claimed in the petition. The husband has come out with the very convenient answer that all the medical records are with the wife. Except his oral evidence and the supporting evidence of his mother, there is nothing on record to establish that the wife had suffered these medical conditions as claimed by the husband in his petition for divorce. The fact that the wife had taken the child with her from the custody of his mother and the fact that she lodged a police complaint because of the husband went missing cannot be termed as an act of cruelty, that would satisfy the requirement of Section 13(1)(i)(a) of the Hindu Marriage Act, 1955. In fact, we find that in the cross examination, the husband had completely given up his cruelty and had admitted that the wife was transferred to Coimbatore and they were living in Coimbatore after the birth of the child and it is only when he was transferred to Mysore and the wife had got an employment in Government School in Ariyalur District, they started living separately. The evidence of the mother of the husband is also not too convincing to conclude that the wife had treated



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the husband with cruelty.

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10. May be, at the best, the two incidents namely the wife not attending the funeral of the father of the husband and the police complaint that was given on 28.02.2013 can be termed as unpalatable. They can, at no stretch of imagination, be taken as cruel term meted out to the husband by the wife. If the husband does not return home for a few days, any wife would be persuaded to lodge a police complaint. No doubt, certain things that were added in the police complaint that the husband demanded money etc., may be out of context. Those allegations as we commonly know are made at the instance of certain other individuals who persuade the parties to add things which did not actually happen, just to add spice to the complaint and we do not think that we should give undue importance to such things. On the whole, we find that the Family Court Judge has considered the evidence in the right perspective and had come to the conclusion that the husband is not entitled to divorce and the wife is entitled to restitution. We do not see any reason to interfere with the findings of the Family Court. The appeals in C.M.A.Nos.1020 and 1021 of 2017 therefore fail.

11. In fine,

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(i) CMA Nos.1020 and 1021 of 2017 are dismissed.

(ii) CMA No.1022 of 2017 is disposed of with the directions as stated *supra*.

However, in the circumstances, we made no order as to costs.

[R.S.M., J.]

[R.S.V., J.]

15.04.2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
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To

The Principal Judge
Family Court
Coimbatore.



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R.SUBRAMANIAN, J.
AND

R.SAKTHIVEL, J.

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