



C.M.A.No.3505 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM

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

C.M.A.No.3505 of 2019

B.Madhu
S/o Bothuraja

..Appellant

Vs.

K.Lakshmi praba
W/o B.Madhu

..Respondent

Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act against the fair and decreetal order dated 02.08.2019 passed in O.P.No.3125 of 2014 passed by the IV Additional Principal Judge, Family Court, Chennai.

For Appellant : Mr.B.Madhu(Party in person)

For Respondent : No appearance



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JUDGMENT

(The Judgment of the Court was delivered by Mrs.J.Nisha Banu,J.)

Today, the matter is listed under the caption 'for clarification'. The appellant appeared as party-in-person. Though the respondent appeared through counsel, there was no representation for the respondent on several occasions. Hence, the Court heard the appeal on 06.09.2024 and was inclined to allow the appeal, but before signing the order, to give one more chance to the respondent, the matter was posted under the caption 'for clarification'. Thereafter, it was posted twice under the same caption, but there was no representation for the respondent. Even today, there is no representation for the respondent. Hence, the Court heard the appellant/Party-in-person and passed the following judgment.

2. This Civil Miscellaneous Appeal has been filed by the appellant/husband challenging the order passed in O.P.No.3125/20145, dismissing the petition filed by him seeking divorce.

3. The case of the appellant is that the marriage between the appellant and the respondent took place on 24.06.2010 at Vadivelu Valagam Thirumana Mandapam Pallikonda, Vellore District as per



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Hindu rites and customs. The respondent stayed at the residence of the appellant for about 13 days. The marriage was not consummated. She disclosed to the appellant that she had pre-marital relationship with one Suresh, son of her maternal uncle and since he being younger to her in age, their parents did not solemnize their marriage. She left the matrimonial home on 07.07.2010. She gave birth to a child on 24.03.2011. Though the said child was born after marriage, the said child was born out of premarital relationship with the said Suresh. The appellant filed O.P.No.3099 of 2010 for nullity of marriage and the same was subsequently, withdrawn. He also filed I.A.717/2012 for DNA test and the same was ordered and the report of Forensic Department states that there is probability of the appellant being the father of the child and does not conclusively say that the child is the child of the appellant. Ever since the marriage, the appellant has been suffering from strains and stress besides mental agony on account of the act of the respondent. Hence, he filed a petition for divorce on the ground of cruelty.

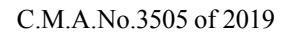
4. The respondent filed a counter before the Family Court denying all the allegations levelled against her. She admitted the marriage with



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appellant and the female child born to her on 24.03.2011 named Nandhini. She had stated that the marriage was consummated. It was the regular habit of the appellant to suspect her character, abuse her, voluntarily involved in quarrel and beat her. She was sent out of the appellant's house on 07.07.2010. The allegation that she had a premarital relationship with one Suresh is the appellant's own imagination and because of his habit of suspicion. He never believed her. The DNA test report clearly established that the appellant is the father of the child M.Nandini. She is not willing to go for divorce for the purpose of the child.

5. It is seen from the records that notice was ordered to the respondent/wife on 23.09.2019 and the notice sent to the respondent was returned as 'unclaimed'. Subsequently, the respondent entered appearance through counsel. When the matter was listed on 30.09.2022, 13.10.2022 & 03.11.2022, there was no representation for the respondent. Thereafter, on 22.11.2022, learned counsel counsel for the respondent requested time and the matter was posted on 05.12.2022. Thereafter, on 07.03.2023, at the request of both sides counsel, the matter was referred



6. Heard the appellant/Party in person and perused the materials
ble on record.



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7. The undisputed facts are that the marriage between the appellant and the respondent had taken place on 24.06.2010. A female child was born on 24.03.2011 and they lived together till 07.07.2010. It is the allegation of the appellant that the respondent did not share her bed with him and that the child was not born to him but it was born to her through pre-marital sex with her uncle's son. However, the trial Court held that the allegation of the appellant as to the paternity was proved as false through DNA test report. Therefore, the allegation of the appellant that the respondent did not share her bed and that the child was not born to him, cannot be countenanced.

8. Though the respondent had stated that she is willing to live with the appellant for the purpose of the child, till date, she has not come back to the matrimonial home. Though notice was served through court on the respondent and the respondent also entered appearance through counsel, there was no representation for the respondent. On several occasions, when the matter was called, there was no representation for the respondent. Subsequently, the matter was also referred to mediation where the parties appeared but no settlement was reached. Thereafter,



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when the matter was listed before the Court, there was no representation for the respondent. Therefore, it could be inferred that the respondent is not willing to live with the appellant.

9. The allegation of the appellant is that on 07.07.2010, the respondent left the matrimonial home and did not return to matrimonial home. The appellant and the respondent are living separately for the past 13 years. The Family Court held that though the appellant had made allegation of cruelty as against the respondent, the same has not been established by him. There was no representation for the respondent on several occasions. Though several opportunity was given to the respondent to prosecute the case and informed to the counsel for the respondent to get instruction from her client, the respondent did not show any inclination to prosecute the case. The act of the respondent shows that she did not have any intention of joining with the appellant. For the past 13 years, they are living separately. The above act of the respondent amounts to desertion. Thus, an adverse inference could be drawn as against the respondent that she had deserted the appellant.



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10. It is to be noted that though the respondent/wife, in her counter, has denied all the allegations made by the appellant against her and she is always ready and willing to live with the appellant, however, she had not shown any intention of living with the appellant. Moreover, the respondent has not filed any petition seeking restitution of conjugal rights to prove her intention to join her husband. Therefore, we are of the opinion that there is hardly any chance of their living together even if they are reunited by a court's order.

11. Considering the circumstances of the case and that the respondent/wife has also not filed any petition for restitution of conjugal right and that they are living separately for the past 13 years and though several opportunity was given to the respondent to show her bonafide, she did not show any interest in prosecuting the case, we are of the opinion that there is no chance of reunion. 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 on the ground of desertion and cruelty. However, we are of the opinion that to meet the ends of justice, the respondent/wife shall be granted permanent alimony



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of Rs.5,00,000/-.

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12. In the result, the order and decretal order dated 02.08.2019 passed by the learned IV Additional Family Judge, Chennai in O.P.No.3125/2014 are set aside. The marriage between the appellant/husband, B.Madhu and the respondent/wife, K.Lakshmi Praba, is dissolved by a decree of divorce, according to the provisions of the Hindu Marriage Act, 1955. The appellant is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) by way of permanent alimony to the respondent/wife within 3 months from the date of receipt of a copy of this order. The respondent/wife is at liberty to seek for maintenance for the child before the appropriate court in accordance with law. Accordingly, the Civil Miscellaneous Appeal is disposed of No costs.

(J.N.B,J.) (R.S.V., J.)

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Index : Yes / No
Speaking/Non-speaking order
vsi

To
The IV Additional Family Court at Chennai



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and
R.SAKTHIVEL, J.

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