



C.M.A. No.2343 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	09.07.2024
PRONOUNCED ON	:	21.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.M.A.No.2343 of 2022
and C.M.P.No.18233 of 2022

S. Bakyalakshmi

.... Appellant / Respondent

Vs

T. Arunkrishna

.... Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act praying to set aside the judgment and decree dated 10.08.2022 in F.C.O.P. No.62 of 2020 passed by the learned Judge, Family Court, Chengalpet District.

For Appellant : Mr. M. Gnanasekar

For Respondent : Mr. D.S. Ramesh



C.M.A. No.2343 of 2022

J U D G M E N T

WEB COPY

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

The aggrieved wife/respondent before the Court below has preferred the present Civil Miscellaneous Appeal against the fair and decreetal order passed in F.C.O.P. No.62 of 2020 on the file of Family Court, Chengalpet dated 10.08.2022, granting the decree of divorce on the grounds of cruelty and desertion, thereby dissolving the marriage between the appellant/wife and the respondent/husband.

2. This Court heard both the learned counsel appearing for the appellant as well as the respondent and perused all the materials available on record.

3. Before the trial Court, on the side of the appellant/respondent, two witnesses RW1 and RW2 were examined and 16 documents Ex.R.1 to Ex.R.16 were marked as exhibits. On the side of the respondent/ petitioner, the respondent himself was examined as PW1 and three evidences Ex.P.1 to Ex.P.3 were marked as exhibits. The Trial Court, after considering the evidence adduced on both sides, allowed the petition and granted divorce



C.M.A. No.2343 of 2022

by dissolving the marriage between the appellant and the respondent.

Aggrieved by the said order of divorce, the appellant/ wife has preferred the present civil miscellaneous appeal.

4. The marriage between the appellant and the respondent was performed on 15.09.2016 and there is no dispute that the appellant and the respondent lived only for a short period of three months and the appellant has left the matrimonial home by herself. Though the respondent's allegation is that the appellant did not attain puberty, the appellant has proved through photographs that the said allegation was not true but it is equally true that the marriage was non-consummated, as the said fact was not denied by the appellant.

5. The appellant and the respondent are separated for the past eight years and the allegation is very serious in nature that there is no useful purpose in keeping the marriage alive and therefore, this Court is of the opinion that non-consummation of marriage amounts to mental cruelty. 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



C.M.A. No.2343 of 2022

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



C.M.A. No.2343 of 2022

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.



WEB COPY



C.M.A. No.2343 of 2022

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.

6. In view of the fact that the marriage is not consummated on account of non-cooperation of the appellant, which by itself amounts to cruelty and the marriage is irretrievably broken and this Court is of the opinion that the order passed by the Court below, dissolving the marriage held between the appellant and the respondent, is a well reasoned order and the same does not warrant the interference of this Court.

7. In view of the above discussions, this Court is of the opinion that the civil miscellaneous appeal has no merits and deserves to be dismissed. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

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

21.08.2024



C.M.A. No.2343 of 2022

sts
WEB COPY

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No

To:

The Family Court,
Chengalpet.



WEB COPY



C.M.A. No.2343 of 2022

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

sts

Judgment made in
C.M.A.No.2343 of 2022

Dated:
21.08.2024