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C.M.A.No.2940 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.No.2940 of 2022

D.Arul Don Bosco @ Johnson @ John

... Appellant

Vs.

Sheela Margret

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 55 of Indian Divorce Act to set aside the fair and decretal order dated 29.07.2022 passed by the learned Family Court Judge, Udthagamandalam in O.P.No.9 of 2019.

For Appellant : Mr.L.Mouli

For Respondent : Mrs.R.Sripriya



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JUDGEMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Civil Miscellaneous Appeal is preferred as against the order passed in O.P.No.9 of 2019 on the file of Family Court, Udhagamandalam, dated 29.07.2022, wherein the appellant herein has filed a petition before the trial Court under Section 10(1)(ix)(x) of the Indian Divorce Act, 1869. The trial Court dismissed the petition vide order dated 29.07.2022. Aggrieved by the said order, the present Civil Miscellaneous Appeal is filed.

The brief averments of the petition are as follows:

2. The respondent is the legally wedded wife of the appellant and their marriage was solemnized on 13.09.2007 at Sagayamatha Chruch, Masanagudi, as per the Christian Rites and Customs. Out of the wedlock, a female child namely Kavya was born to them and now she is aged about 10 years old. At the time of marriage, the appellant was a



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temporary employee in the Staff College Officer's mess in MRC, Wellington. Right from the date of marriage, the respondent very often picked up unnecessary quarrels even for silly reason without any reasonable cause. After one month of their marriage, the respondent left the matrimonial home without any reason. After, counseling by the well wishers, the respondent promised to come back to the matrimonial home, but she did not come back. The respondent started to live with her parents with the minor child. Further, the respondent has given false compliant before the R1 Police Station, Gudalur, against the appellant and his parents. At the time of enquiry, the respondent gave in writing that she is not willing to live with the appellant.

2.1. The appellant was working at Dubai for the past 10 years and he used to visit India every year for Christmas vacation. At that time, the respondent used to come and stay with the appellant only for one or two days and thereafter she left to her parents house. The appellant gave a petition before the Social Welfare Officer at Ootacamund, wherein, the respondent stated that she is not willing to live with the appellant and she agreed for one time settlement for herself and her minor child. The



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appellant has paid a sum of Rs.1,00,000/- in the name of the minor child and the balance amount would be paid after one month. In the meantime, the respondent had taken away all her belongings in the presence of Social Welfare Officers. Thereafter, the appellant filed a petition seeking for divorce on the ground of cruelty before the District Judge, Ootacamund in IDOP. No.54 of 2011. However, the case was not pressed, since the respondent agreed to live with the appellant. Pursuant to which, they jointly lived together only for four days and thereafter, the respondent left to her parents home. Therefore, the appellant issued legal notice dated 12.02.2019, and the same was received by the respondent, but she did not sent any reply. Hence, the respondent filed the present petition.

The brief averments of the counter filed by the respondent are as follows:

3. This petition is false, frivolous and the same is liable to be dismissed in limine. The appellant and his parents only treated the respondent with cruelty. The allegations made in paragraph nos.4 to 6 are all denied as false. It is true that the appellant visits India once in a year.



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But, the appellant never been taking care of the respondent and their daughter. During the absence of the appellant, his parents used to torture the respondent and treated her with cruelty by abusing her with unparliamentary words. Finally, the appellant and his parents chased the respondent away from the matrimonial home. Thereafter, they never visited the respondent/wife and her daughter to take them back to the matrimonial home. The appellant convinced the respondent that he is paying lumpsum amount for the expenditure of the respondent and her daughter during his absence and only after believing his words, the respondent has signed some papers. The petition filed in IDOP No.54 of 2011 was withdrawn only to escape from the claim of interim maintenance. The respondent has always been ready and willing to live with the appellant. The respondent never deserted the company of the appellant and now she is depending her old and ailing father for her maintenance and the education of her daughter. Therefore, the petition is liable to be dismissed.

4. Before the trial Court, on the side of the appellant, the appellant has examined himself as PW1 and one Katherina was



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examined as PW2 and also marked Exs.P1 to P7. On side of the respondent RW1 was examined and no documents were marked. The trial Court after hearing both sides and perused the records, dismissed the petition vide order dated 29.07.2022.

5. Aggrieved by the said dismissal of the petition, the appellant/husband has preferred the present Civil Miscellaneous Appeal.

6. The learned counsel for the appellant would contend that the appellant has filed a petition before the Family Court, Udthagamandalam for granting divorce on the ground of cruelty. The respondent very often made quarrels with the appellant and left from the matrimonial home without any valid reasons and she disrespected the appellant and his parents. The respondent had given a false complaint as against the appellant and his parents before All Women Police Station, Gudalur and the Superintendent of Police. During enquiry, the respondent has given in writing that she is not willing to live with the appellant. The respondent never been a dutiful wife and she has not performed her bounden duties towards the appellant. In order to prove the same, PW1 and PW2 were



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examined and Exs.P.1 to P.7 were marked. However, the trial Court failed to consider the evidences filed on the side of the appellant and erroneously dismissed the petition. Therefore, the order passed by the trial Court is liable to be set-aside.

7. The learned counsel for the respondent would contend that, most of the time, the appellant was at Dubai and even when he visited India, he did not taken care of the respondent and their child. When the appellant was in Dubai, his parents made quarrels with the respondent and they threatened the respondent, thereby, she left the matrimonial home. The child is only about 10 years old and thereby, the appellant is liable to maintain the child and the respondent/wife. The appellant refused to pay maintenance to them and the respondent is always ready and willing to live with the appellant, however, the appellant is refused for the same. Before the trial Court, the respondent examined herself as RW1 and after considering the evidence adduced on both sides, the trial Court dismissed the petition. Therefore, the order passed by the trial Court is liable to be confirmed by dismissing this appeal.



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8. Upon hearing on both sides and perusing the materials available on record, the point for determination arose in this appeal is whether the appellant proved the ground of cruelty and thereby, he is entitled to decree for divorce as against the respondent.

Point:

9. In this case, there is no dispute in respect of relationship of the parties. The marriage between the parties are also admitted. Due to the wedlock, a female child was born, who aged about 10 years old and now she is under the custody of respondent/wife. The appellant has filed a petition before the trial Court for dissolving marriage on the grounds of cruelty and desertion. In order to prove the case, the appellant was examined himself as PW1 and also examined another witness PW2, who deposed about the cruelty caused by the respondent and deserted him wilfully. Though the appellant has stated about the happenings, in order to attack the grounds, there is no sufficient evidence. As far as the desertion is concerned, the appellant has not stated an exact date, when the respondent was left from the matrimonial home and residing her parents home for more than two years from the date of filing of the



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petition. There is no pleadings and there is no evidence to prove the ground of desertion. As far as the ground of cruelty is concerned, the appellant stated that the respondent is very often left from the matrimonial home and thereafter she come back and live with the appellant and PW2, deposed that the respondent gave a compliant against the appellant stating that she is not willing to live with the appellant. Mere wordy quarrel between the couples would not amount to cruelty and even after the complaint given by the respondent, thereafter, they re-united and thereby, there is no sufficient evidence to prove the cruelty. It is also admitted fact, that already, the appellant filed a petition in IDOP No.54 of 2011, and the same was not pressed and both of them had agreed to live together and they jointly lived together. Therefore, the evidence adduced by the appellant is not sufficient to prove the grounds of desertion as well as the cruelty.

10. In this context, the trial Court also after elaborate discussion thoroughly discussed about the evidence adduced on both sides and fairly came to the conclusion that the appellant is not entitled to



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relief of divorce on the grounds of desertion as well as the cruelty.

Therefore, the order passed by the trial Court is reasoned order and it does not warrant any interference.

11. In view of the above discussion, this Court is of the opinion, that the Civil Miscellaneous Appeal has no merits and deserves to be dismissed. Thus, the point is answered.

12. In the result, this Civil Miscellaneous Appeal is dismissed.

No costs.

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

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Index : Yes / No

NCC : Yes / No

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

jd

To

1. The Family Court,
Udhagamandalam.
2. The Section Officer,
V.R. Section,
High Court, Madras.

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