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C.M.A.No.314 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

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

C.M.A.No.314 of 2017

K.Rajesh

..Appellant

Vs.

Vidya Lakshmi Rajesh

..Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act against the common order and decreetal order dated 18.10.2016 made by the II Additional Family Court at Chennai in H.M.O.P.No.4020 of 2012 denying the relief of restitution of conjugal rights to the appellant, while allowing H.M.O.P.No.1521 of 2013 granting divorce to the respondent.

For Appellant : Mr.R.Swaminathan

For Respondent : Mr.A.Ganesh.



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JUDGMENT

WEB COPY (The order of the Court was made by Mrs.J.Nisha Banu,J.)

This Appeal has been filed by the appellant/husband challenging the denial of restitution of conjugal rights filed by the appellant passed by the learned II Additional Family Judge in O.P.No.4020 of 2012 by common order dated 18.10.2016.

2. Though the appellant filed an appeal before this Court in C.M.A.No.313/2017 against the grant of decree of divorce and directing him to pay Rs.30 lakhs as permanent alimony to the respondent/wife, today(20.11.2024), the learned counsel for the appellant had withdrawn the C.M.A.No.313/2017 and contested the present CMA.No.314/2017 seeking restitution of conjugal rights.

2. (i) The case of the appellant before the trial Court is that the marriage between the appellant and the respondent was solemnized on 14.12.2000 at Venkat Sesh Mahal, Padi,Chennai and they lived together at Thanjavur. The appellant was doing business at the time of marriage and thereafter, he closed his business in the year 2006. He purchased a house availing housing loan and taking financial assistance from the respondent's parents. Out of their wedlock, two daughters were born to them namely Prithyankara and Sowbernika, aged 8 years and 5 years



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respectively. The appellant came with his parents, respondent and their children to Chennai on 26.06.2006 to attend two weddings. On 01.07.2006, the respondent's mother came to the wedding hall at Pondy bazaar and created a scene stating that the appellant lost his right to live with his wife and children, pointing out the loss he had suffered in his business and forcibly took the respondent and the children to her house.

(ii) After counselling by respondent's uncle, the appellant closed his business. He joined in M/s. Shriram EPC Ltd., as Manager Marketing and he was living with his parents at Chennai. The appellant also sought to return Rs.15 lakhs by way of DD and delivered to the respondent's parents, but the DD was returned after 2, 3 days for reasons unknown. A letter dated 01.03.2011 sent through lawyer was replied vide her lawyer notice dated 21.03.2011 making untenable allegations against the appellant, accusing of drinking and smoking, apart from giving false information by the appellant about his educational qualifications etc. at the time of marriage.

(iii) The appellant's father is an epileptic patient and he has been taking medicines and it was informed to the respondent's parents even before marriage. The appellant did not beat his father as stated by the



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respondent, but on occasions of violent fits, he had comforted his father by patting on his back. The appellant had stopped drinking even before the birth of his first daughter. The appellant was not even allowed to visit his daughters. Hence, he filed a petition for restitution of conjugal rights.

3. A counter was filed by the respondent/wife stating that the appellant, under the influence of alcohol, treated the respondent cruelly. The appellant borrowed huge sum of money from several persons. Because of addicted to alcohol and other bad habits, the business of the respondent was closed. He was always interested in going around with his friends and consuming alcohol. The appellant also demanded money from the respondent and her parents which almost comes to Rs.15 lakhs. Since the respondent suffered a lot in the hands of the appellant, she decided not to live with him any more. Appellant's father never had any disease or illness as alleged in the petition. He was taking sleeping pills and other pills just for being in trance. At times, he used to behave aggressive and the appellant used to tie up his father in a chair to prevent from being aggressive and beat his father severely. Most of the occasions, the respondent used to be in her room with the children by locking from inside. The respondent had suffered a lot at the hands of the



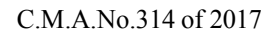
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appellant. There is no possibility of reunion. Hence, she prayed for dismissal of O.P.No.4020/2012 filed for restitution of conjugal rights.

4. Since the respondent/wife had also filed a petition for divorce in O.P.No.1521/2013, both O.Ps were tried together and a common order was passed. Before the Trial Court, appellant/husband examined himself as P.W.1 and marked five documents as Exs.P1 to P5. On the side of the respondent/wife, she examined herself as R.W.1 and no document was marked. The trial Court found that the appellant/husband committed mental agony and cruelty to the respondent/wife and therefore, dismissed the petition filed by the appellant/husband seeking restitution of conjugal rights and allowed the petition filed by the wife by granting decree of divorce and also directed the appellant/husband to pay Rs.30 lakhs to the respondent/wife as permanent alimony. Against the dismissal of r restitution of conjugal rights, the appellant/husband has filed the present appeal.

6. Heard the learned counsel for the appellant, the learned counsel for the respondent and perused the materials available on record.

7. It is not in dispute that the appellant and the respondent got married on 14.12.2000 and due to wedlock, they have got two



8. From the above, it is seen that the appellant had neglected and abandoned the children. It is also seen that the appellant/husband caused mental agony and cruelty to the respondent/wife. The trial Court, only after considering all the factual aspects of the case, had given a finding that the act of the appellant/husband had committed cruelty to the respondent/wife and that she is entitled to divorce on the ground of cruelty and desertion and granted the same, with which, we are of the opinion that there is no infirmity or illegality, warranting interference by



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this Court. Therefore, this appeal filed for restitution of conjugal rights cannot be entertained and the same has got to be dismissed.

9. In the result, the Civil Miscellaneous Appeal is dismissed. The order and decretal order dated 18.10.2016 passed by the learned II Additional Family Judge, Chennai, in H.M.O.P.No.4020 of 2012 is confirmed. No costs.

(J.N.B,J.) (R.S.V., J.)
20.11.2024
(2/2)

Index : Yes / No
vsi

To

The II Additional Family Court, Chennai

J. NISHA BANU, J.



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and
R.SAKTHIVEL,J.

vsi

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