



C.M.A.No.44 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.44 of 2023

S.Ravi

... Appellant

Vs.

R.Lakshmi

... Respondent

Prayer: The Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act 1984 to set aside the order and decree dated 05.04.2022 passed in O.P.No.403 of 2017 by the learned III Additional Principal Judge, Family Court, Chennai.

For Appellant : Mr.S.S.Swaminathan

For Respondent : Mr.G.Thangavel

JUDGMENT

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

This appeal has been filed by the appellant/husband/respondent against the fair and decretal order dated 05.04.2022 passed in O.P.No.403 of 2017 by the learned III Additional Principal Family Court, Chennai, wherein decree of



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divorce has been granted as sought for by the wife, on the ground of cruelty.

Hereinafter, for the sake of convenience, the parties will be denoted as per their array before the Trial court.

2. O.P.No.403 of 2017 has been filed by the Petitioner/wife before the Family Court, Chennai. The averments in the petition is that they got married on 25.08.1999 at Chennai and had been leading the matrimonial life. She gave birth to a female child on 15.06.2000 and a male child on 17.07.2008.

3. The respondent-husband was doing building supervisor work and they were residing in the house allotted to her by her parents. The allegation of the petitioner against her husband is that he did not do any work for nearly six years and failed to maintain the family and therefore, she was depending upon her parents for her day to day life. Furthermore, he was in the habit of drinking alcohol and quarrelled with her.

4. According to the petitioner, respondent did not come to house and maintain the family but has been continuously causing undue hardship to the petitioner by quarelling, threatening and drinking alcohol. The petitioner/wife having felt that she lost all hopes for reunion, filed OP for divorce.



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5. In the counter filed before the Family Court, the respondent-husband denied all the allegations and stated that he faced insults at the hands of the petitioner and he was ready and willing to live with the petitioner for the sake of children in any place other than the place of petitioner's father.

6. According to the respondent/husband, he met with a major accident and lost his vision in one eye and impaired vision in the left eye. The petitioner did not come to hospital and not allowed the children to see him. The petitioner and her parents are living in the premises which is owned by the petitioner but the construction therein was put up by him out of his money. It is further stated in the counter that the petitioner's allegations are false and with an ulterior motive, she filed the petition for divorce.

7. On the side of the petitioner/wife, she was examined as P.W.1 and marked Ex.P.1 to Ex.P.5. On the side of the respondent, he was examined and Ex.R.1 to R.9 were marked. The trial court after examining the evidence, pleadings, counter and arguments of both sides counsel, held that the respondent/husband failed to state about his employment and income in his proof-affidavit. The respondent has taken a ground that he is very fond of the petitioner and his children. The respondent is trying to project his case as if the



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petitioner deserted him only from 10.11.2016, but, on the other hand, he deserted the petitioner and his children from 10.09.2015 onwards.

8. The trial court pointed out that the petitioner has proved her case through cogent, oral and documentary evidence. The learned Judge held that cruelty alleged may largely depend upon the type of life the parties accustomed to or their economic and social conditions and their culture and human values to which they attach importance; where there has been a long period of continuous separation it may fairly be concluded that the marital bond is beyond repair. Holding so, the Trial court allowed the petition for divorce filed by the petitioner-wife.

9. The appellant-husband filed this appeal mainly on the ground that the petitioner-wife has not proved cruelty alleged against him by any specific incidents and no reason is put forth for such allegation.

10. Per contra, the learned counsel for the respondent-wife would submit that the trial court after analysing entire evidence on record, correctly concluded that the respondent-wife proved her case and thereby dissolved the marriage on the ground of cruelty.



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11. We have heard the learned counsel for both sides and we have absolutely no doubt that this is a case of irretrievable breakdown of marriage. The husband and wife have been living separately from the year 2015. The grounds taken by the appellant-husband for setting aside the order of divorce passed in OP.403/2017, has no merits. If only for the sake of their children, new lease of life is given to the husband and wife by setting aside the order, in reality, under the facts and circumstances of the case and taking note of the long separation whereby there developed continued bitterness, it is not possible for such reunion. Therefore, on the ground of irretrievable breakdown of marriage, the decree of divorce granted by the trial court, is confirmed. The present appeal is dismissed. No costs.

(J.N.B., J.) (R.S.V., J.)
19.11.2024

nvsri

To
**The III Additional Principal Judge,
Family Court, Chennai.**



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and
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