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CMA NO.975 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 26 / 04 / 2024

JUDGMENT DELIVERED ON: 02 / 07 / 2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.975 OF 2017

A.Mallan

... Appellant /
Petitioner

Vs.

Rani

... Respondent /
Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the fair and decreetal order dated 27.06.2016 in O.P.No.278 of 2008 on the file of the III Additional Family Court, Chennai and allow the O.P.No.278 of 2008 as prayed for.

For Appellant : Mr.J.Saravana Vel

For Respondent : Ms.V.Srimathi



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J U D G M E N T

R.SAKTHIVEL, J.

This Civil Miscellaneous Appeal has been preferred by the appellant / petitioner challenging the order dated June 27, 2016 passed in O.P.No.278 of 2008 by the III Additional Family Court, Chennai.

2.For the sake of convenience, the parties will be referred to as per their array in the Original Petition.

FACTS IN BRIEF:

3.The case of the petitioner is that the marriage between the petitioner and the respondent was solemnized on February 6, 1974 as per Hindu rites and customs. From their lawful wedlock, they had three children: two daughters and one son. All of them are married. The daughters are settled in their respective matrimonial homes. Although their son - Rajan is married, he is not yet settled in life. He continued to live with the petitioner, causing serious rift between the petitioner and the respondent since 1995. The respondent, being an ardent supporter of Rajan, has been spoiling him with excessive pampering. Because of the respondent's blind support for Rajan, he did not focus on his studies.



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3.1. With much effort, the petitioner managed to get Rajan admitted to the reputed school for pursuing Standard VI. However, due to his poor conduct, he could not continue there. Subsequently, the petitioner, with great difficulty, enrolled Rajan in a typing class to learn desktop publishing (DTP). As usual, he did not complete the course.

3.2. Then, the petitioner admitted him for training in operating an Excavator (JCB). Rajan obtained a certificate of training from the Small Industries Service Institute, Chennai (SISI), and a license for operating an Excavator (JCB) in January 2004. This qualification is highly sought after in West Asia. However, after obtaining the SISI certificate, Rajan lied during an interview, claiming he did not have a license to operate the vehicle, in order to avoid securing a job in Dubai.

3.3. The petitioner's goal was to settle Rajan in his life. The respondent caused untold mental agony and torture by hurdling the petitioner's efforts to reform his son – Rajan. Rajan began seeking money on false pretexts. Whenever the petitioner denied, the respondent used to secretly offer money to Rajan thereby spoiling him.



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3.4. Adding on to the mental agony, the respondent falsely claims title over the petitioner's property. The petitioner through his meticulous savings, constructed 4 flats over the plot allotted by the Tamil Nadu Slum Clearance Board in the name of the respondent. Though the plot is allotted in the name of the respondent, it was given to the petitioner's family for joint enjoyment. Further, the respondent raised false allegation that the appellant is in a relationship outside of marriage with the maid servant.

3.5. Unable to bear with the cruelty caused by the respondent, the petitioner moved out of the house on June 17, 2005. Thereafter, the respondent took a sum of Rs.1,85,000/- (lease amount) on February 24, 2007, without the knowledge of the petitioner. The petitioner tried to arrange for panchayat and get his share and expressed his wish to dissolve the marriage. The respondent initially claimed Rs.25 Lakhs and later, claimed Rs.45 Lakhs as permanent alimony from the petitioner to agree for divorce.

3.6. The petitioner could not undergo the torment and the disgrace caused by the respondent who pampered their 30 years old son



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and did not show any human respect or consideration towards the petitioner. Therefore, he caused a legal notice dated October 26, 2007. The respondent gave a reply on November 5, 2007 with false and baseless allegations against the petitioner and sought for restitution without creating the environment for re-union. Hence, the petitioner filed a petition under Section 13(1)(i-a) of Hindu Marriage Act, 1955.

4.The respondent filed a counter denying the allegations made by the petitioner in the Original Petition filed for divorce. The respondent has stated that she neither claimed Rs.25 Lakhs nor Rs.45 Lakhs as permanent alimony from the petitioner. The mere fact that the respondent's son is living in his parental home even after marriage does not mean that he caused rift between the petitioner and the respondent. The respondent's son – Rajan has no bad antecedents till date. Since the respondent is a house wife, there is no possibility of her giving money to her son without the knowledge of the petitioner. The petitioner never admitted Rajan for any excavator operator training. The petitioner ill-treated the respondent's mother also.



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4.1.The respondent has further stated that the property situated at MGR Nagar was allotted by the Tamil Nadu Slum Clearance Board in the name of the respondent. The property was developed with her parental support and not the petitioner's support.

4.2.Further, the petitioner left the matrimonial home in the month of August 2005 and came back and reunited with the respondent after a few months. The respondent has always been an affectionate and caring wife. Till date the petitioner and the respondent are residing together in the petition mentioned address. The respondent never made any allegation as if the petitioner is in a relationship outside of marriage. The petitioner also has responsibility towards his son and daughters for studies and jobs etc. There is no cause of action for filing divorce petition. Hence, the respondent prayed to dismiss the Original Petition.

4.3.On the side of the petitioner, the petitioner examined himself as P.W.1 and Ex-P.1 to Ex-P.9 were marked. On the side of the respondent, respondent examined herself as R.W.1 and her son Rajan was examined as R.W.2 and her daughter Anitha was examined as R.W.3 and Ex-R.1 to Ex-R.4 were marked.



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4.4.The learned III Additional Family Court, Chennai, having found that there existed no matrimonial dispute between the parties and the dispute is only with regard to bringing up of their son Rajan (R.W.2), came to the conclusion that the same cannot be treated as cruelty by the wife against her husband and dismissed the petition filed for divorce.

4.5.Feeing aggrieved with the fair and decretal order passed by the III Additional Family Court, Chennai, the petitioner is before this Court.

5.This Court has heard Mr.J.Saravana Vel, learned counsel for the petitioner and Ms.V.Srimathi, learned counsel for the respondent.

6.The learned counsel for the petitioner has submitted that the respondent caused mental cruelty to the petitioner; that The Tamil Nadu Slum Clearance Board allotted a house site to the petitioner's family and the petitioner constructed Flat therein; that the respondent did not allow the appellant to enter into the Flat; that without the consent of the petitioner, the respondent leased out a portion of the Flat to a third party; that the respondent made false allegation as if the appellant has



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relationship with another woman outside of the marriage; that the respondent had been pampering their son; due to which, their son Rajan did not pay heed the advice of the petitioner; that the petitioner and the respondent are living separately for more than ten years; that the Family Court did not consider the evidence properly; and that the Family Court did not consider the fact that the respondent caused mental cruelty to the petitioner. Accordingly, he prayed to allow this Civil Miscellaneous Appeal.

6.1. In support of his submission, learned counsel for the appellant relied on the judgments of the Hon'ble Supreme Court in *Rakesh Raman Vs. Kavita* [2023 SCC Online SC 497]; *Rajib Kumar Roy Vs. Sushmita Saha* [2023 SCC Online SC 1221] and *Roopa Soni Vs. Kamalnayan Soni* [2023 SCC Online SC 1127].

7. Per contra, learned counsel for the respondent has submitted that the marriage between the appellant and the respondent took place on February 6, 1974; that the appellant and respondent were living as husband and wife for nearly 35 years and three children were born out of their wedlock; that a plot was allotted by The Tamil Nadu Slum Clearance Board in the name of the respondent, in which the appellant has



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no right at all; that the petitioner has a house in Saligramam, Porur, Chennai; that her Son Rajan is now married and settled; that the respondent did not commit cruelty to the appellant as alleged; and that the respondent wants to keep the marriage alive. Accordingly, she prayed to dismiss this appeal.

8.This Court has considered the submissions made on either side and perused the materials available on record.

9.The point that arises for consideration in this Civil Miscellaneous Appeal is whether the respondent caused mental cruelty to the appellant.

10.Admittedly, the marriage between the appellant and the respondent took place on February 6, 1974. Out of their wedlock, they have two daughters and one son. All of them now married. According to the petitioner, the respondent excessively pampered his son Rajan and thereby, she spoiled his life. Further, his son joined in Industrial Training Institute and obtained SISI Certificate and license to operate Excavator (JCB). But he did not go abroad for employment owing to the respondent's



pampering.

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11. Admittedly, the petitioner is now living separately. Perusal of the evidence available on record do not suggest any cruelty caused by the respondent against the appellant. The alleged cruelty stated by the petitioner are all normal wear and tear in the family. Excessive pampering of the son does not amount to cruelty in the facts and circumstances of this case. Further, from the evidence of R.W.2, it can be seen that Rajan has grown up the ladder of life and is settled now. There is no reason for the petitioner to be worried about his son. As far as the allegation of relationship outside of marriage is concerned, it is the petitioner's daughter examined as R.W.3 who had alleged the same in her deposition. The respondent has not made any such allegation. As a matter of fact, in her counter statement, she has denied the said allegations as false.

12. According to the appellant, the Tamil Nadu Slum Clearance Board allotted land to the petitioner and the respondent for joint enjoyment. The evidence available on record would show that both the petitioner and respondent contributed and constructed building consisting of Ground Floor, First Floor and Second Floor. Though it is allotted in the



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name of the respondent, the petitioner claims independent title over the property.

13.This Court is of the opinion that the issue cannot be dealt with here and has to be dealt with in a separate proceedings, if the petitioner is willing to pursue the same. According to the petitioner, the respondent had leased out a portion of the Flat to third parties and denies share in the lease amount. Assuming a moment that the version of the petitioner is true, even then, it would not amount to cruelty. Hence, this Court is of the considered view that the appellant did not establish the alleged cruelty caused by the respondent. The learned Family Court Judge after evaluating the evidence available on record, rightly come to the conclusion that the alleged mental cruelty was not proved. There is no need to interfere with the said findings. The point that arises for consideration in this Civil Miscellaneous Appeal is answered accordingly in favour of the respondent and against the petitioner.

14.There is no quarrel with regard to the proposition of law laid down in the decisions submitted by the learned counsel for the petitioner. But the said decisions would not be applicable to the facts and



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circumstances of the case on hand.

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15.In the result, the Civil Miscellaneous Appeal is dismissed.

No costs.

[R.S.M., J.]

[R.S.V., J.]

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

The III Additional Principal Judge
III Additional Family Court
Chennai.



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AND

R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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