



C.M.A.No.2834 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	18.07.2024
PRONOUNCED ON	:	21.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.M.A.No.2834 of 2022
and C.M.P. No.22082 of 2022

Malarkodi

.... Appellant

Vs

E. Maharajan

.... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 19(1) of the Family Court Act praying to set aside the fair and decreetal order dated 30.08.2022 passed in H.M.O.P. No.2643 of 2019 on the file of the IV Additional Family Court, Chennai.

For Appellant : Mr.M.Packiaselvan

For Respondent : Mrs.G.Sridevi



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J U D G M E N T

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

The aggrieved respondent/wife, before the Court below, has preferred this Civil Miscellaneous Appeal against the order passed in H.M.O.P.No.2643 of 2019 on the file of the IV Additional Family Court, Chennai dated 30.08.2022, granting divorce to the appellant/wife and the respondent/husband, thereby dissolving the marriage, on the ground of cruelty as well as desertion.

2. Before the Trial Court, on the side of appellant /wife, she was examined as RW1 and five exhibits Ex.R.1 to Ex.R.5 were marked. On the side of respondent / husband, he was examined as PW1 and nine exhibits Ex.P.1 to Ex.P.9 were marked. The Trial Court after considering the evidences adduced on both sides, granted divorce on the ground of cruelty and desertion.

3. This Court heard both sides and perused all the materials available



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on record.

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4. On hearing both sides and perusing all the records, the point for determination is whether the respondent / husband has proved the grounds of 'cruelty' and 'desertion' for granting divorce. In this case, there is no dispute in respect of the marriage that took place between the parties on 27.04.2001 as per Hindu rites and customs. It is also admitted that both lived as husband and wife happily for more than 2 years and no child was born to them.

5. According to the appellant, the respondent filed a petition seeking for divorce without any valid reason and there is no ground to attract 'cruelty' and 'desertion'. But for the respondent, after marriage, the appellant caused cruelty by demanding share from the property belonging to the mother of the respondent and without any valid reason, she left the matrimonial home and has been residing at her brother's house for more than 16 years.

6. On a careful perusal of the above evidences and documents filed



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by the respondent/husband, it is clear that the respondent has proved his case on cruelty as well as desertion. The evidence of PW1, in respect of desertion reveals that both of them are living separately for more than 16 years and the said fact has not been denied by the appellant. Moreover, the evidence of PW1 shows that the appellant demanded share in the property belonging to the mother of the respondent and she threatened to commit suicide and left the matrimonial home without any valid reasons. Therefore, the respondent proved his case of desertion and cruelty.

7. Though the appellant was examined as RW1 and marked exhibits Ex.R.1 to Ex.R.5, she has not taken any steps for restitution of her conjugal rights and even in the counter, she has made allegations against the respondent and his family members, which do not infer that the appellant has any intention for re-union with the respondent. Therefore, the Trial Court, after considering the evidences adduced on both sides, has correctly allowed the petition, granting divorce, thereby dissolving the marriage that took place between the appellant and the respondent.

8. This Court has already discussed that the respondent has proved



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the grounds of 'cruelty' and 'desertion' for granting divorce. 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 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



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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 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



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inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. 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.

9. In view of the above discussion, this Court is of the opinion that the order passed by the Trial Court is just and reasonable and it does not warrant interference. However, the appellant has lived with the respondent for more than two years and is without any employment. Therefore, taking into consideration that she lived with him for more than two years, it would be appropriate to direct the respondent to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the appellant towards permanent alimony. Therefore, the respondent is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the appellant towards permanent alimony within a period of three months from the date of receipt of a copy of this judgment.



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10. Accordingly, the Civil Miscellaneous Appeal has no merits and deserves to be dismissed. In the result, the Civil Miscellaneous Appeal stands dismissed with a direction to the respondent / petitioner to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the appellant / respondent towards permanent alimony within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, the connected civil miscellaneous petition is closed.

(J.N.B.J.) (P.D.B.J)
21.08.2024

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To

The IV Additional Family Court, Chennai.



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

sts

Judgment made in
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Dated:
21.08.2024