



WEB COPY



C.M.A.No.918 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.07.2024

PRONOUNCED ON : 24.07.2024

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.No.918 of 2023

and

C.M.P.No.8477 of 2023

Suganya

... Appellant

Vs.

R.Nirmal Kumar

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 19 of Family Court Act to set aside the judgment and decree passed in H.M.O.P.No.156 of 2018 dated 14.03.2022 passed by the learned Family Court, Cuddalore.

For Appellant : Mr.D.Ashokkumar

For Respondent : No appearance

JUDGEMENT



C.M.A.No.918 of 2023

WEB COPY

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

This Civil Miscellaneous Appeal is preferred as against the fair and decreetal order passed in H.M.O.P.No.156 of 2018 on the file of the Family Court, Cuddalore, wherein, the appellant herein has filed a petition before the trial Court for granting divorce under Section 13(1)(i-a) of the Hindu Marriage Act (in short, 'the Act'), on the ground of cruelty. The trial Court has dismissed the petition on 14.03.2022. Aggrieved by the said order, the appellant has preferred the present Civil Miscellaneous Appeal.

The case of the appellant is as follows:

2. The marriage between the appellant and the respondent took place on 12.06.2015 at Centre for Periyar Inter-caste marriage and Social Welfare Association at No.2, Kuruvappam Street, Puthupalyam, Cuddalore Taluk & District, and the said marriage was registered on the file of Joint Sub-Registrar-I, Cuddalore. However, the said marriage was solemnized without the knowledge of the family members of the appellant as well as the respondent, and after marriage they lived separately in their respective houses. Thereafter, the said marriage was



C.M.A.No.918 of 2023

WEB COPY

brought to the knowledge of their parents and the marriage was accepted by the parents. On 12.06.2017, a marriage reception was held at KEM Marriage Hall, Pattambakkam. Thereafter, the appellant and the respondent were lived as a husband and wife. At the time of marriage reception, the appellant's parents gave a sum of Rs.3,00,000/- as sridhana, 10 sovereigns of gold jewels to the appellant and 4 sovereigns of gold jewels to respondent.

2.1. While appellant and the respondent were living together, the respondent used to come home with drunken mood and harassed the appellant by demanding a sum of Rs.2,00,000/- as dowry from her parents and he has also assaulted the appellant. The appellant has narrated the above said facts to her parents, and both the family members have convinced the appellant and the respondent to resume matrimonial relationship. Thereafter, the appellant and the respondent jointly lived together and within a month, the respondent again used to come home with drunken mood and assaulted the appellant. On 20.05.2018 by demanding dowry, the respondent heavily beaten the appellant and sent out her from the matrimonial house. Thereafter, the appellant is living



C.M.A.No.918 of 2023

WEB COPY

with her parents. Though the family members convinced them by conducting Panchayat through elders for re-union, the respondent refused for the same. Hence, the appellant has filed a petition seeking for divorce.

The case of the respondent is as follows:

3. The petition is false, frivolous and it is liable to be dismissed in limine. The marriage between the appellant and the respondent is true and their marriage reception was held on 12.06.2017 at KEM Marriage Hall, Pattambakkam. The allegations made by the appellant that, the appellant's family presented a sum of Rs.3,00,000/- for house hold utensils and 10 sovereigns of gold jewels to the appellant and 4 sovereigns of gold jewels to the respondent are all false. The averments that the respondent demanded a sum of Rs.2,00,000/-, assaulted and harassed the appellant by way of demanding the aforesaid amount are all denied as false. There is no child was born from and out of the wedlock between the appellant and the respondent. The appellant and the respondent are backward communities and the appellant's family is richer than the respondent's family. The appellant's parents are not inclined to accept the intercaste marriage and only at the instigation of the appellant's



C.M.A.No.918 of 2023

family, the present petition is filed. Therefore, the petition is liable to be dismissed.

4. Before the trial Court, on the side of the appellant, the appellant has examined herself as PW1 and her mother was examined as PW2 and marked Exs.P1 to P10 and on the side of the respondent, the respondent examined himself as RW1. The house-owner was examined as RW2 and neighbour of the house was examined as RW3, and Exs.R1 to R4 were marked. The trial Court, after hearing both sides and on perusing the records, dismissed the petition filed by the appellant. Aggrieved by the said order, the present Civil Miscellaneous Appeal is filed.

5. On 10.06.2024, when the matter was taken up for arguments, both the learned counsels filed a Joint Compromise Memo, stating that the respondent is ready to give consent for the divorce as they have settled the disputes amicably between them. However, this Court is not inclined to accept the compromise, based on the judgment of Hon'ble Supreme Court in the case of *Sanjeeta Das Vs. Tapan Kumar Mohanty*



C.M.A.No.918 of 2023

reported in **(2010) 10 SCC 222**, wherein the Hon'ble Supreme Court held that no Court can assume jurisdiction to dissolve the Hindu Marriage simply on the basis of the consent of the parties *de hors* the grounds enumerated under Section 13 of the Act, unless of course, the contesting parties proceed under Section 13B of the Act. Therefore, this Court is inclined to pass orders on merits.

6. The learned counsel for the appellant would contend that, the marriage between the appellant and the respondent was admitted by the respondent and after the marriage both lived as a husband and wife. After sometime, the respondent used to beat the appellant by demanding a sum of Rs.2,00,000/- as dowry. However, the appellant has not fulfilled his demand of dowry and the respondent caused cruelty by beating the appellant very often. In order to prove the same, the appellant was examined as PW1 and her mother was examined as PW2. PW1 and PW2 have categorically deposed about the cruelty caused by the respondent. The respondent has also not stoutly denied the appellant's averments and he has filed only a formal counter and there is no specific denial and the denial is only evasive. Therefore, the respondent admitted the pleadings



C.M.A.No.918 of 2023

of the appellant. However, the trial Court failed to consider the same and erroneously dismissed the petition filed by the appellant. The trial Court believed the evidence of RW1 that he has taken care of the appellant and helped her. However, there is no pleadings in the counter filed by the respondent. Without the pleadings, the respondent adduced the evidence and the said evidence is not reliable and acceptable. Therefore, the order passed by the trial Court is liable to be set-aside and the appellant is entitled to get decree for divorce on the ground of cruelty.

7. The case of the respondent before the trial Court is that, though the appellant has filed the petition seeking for divorce on the ground of cruelty, she has failed to prove the same by adducing sufficient evidence. Thereby, the trial Court has dismissed the petition.

8. Upon hearing the submission made by the learned counsel for the appellant and on perusing the materials available on record, the point for determination in this appeal is whether the appellant has proved the cruelty caused by the respondent and thereby entitled to decree for divorce.



C.M.A.No.918 of 2023

WEB COPY

Point :

9. In this case, there is no dispute in respect of relationship of the parties and the marriage between the appellant and the respondent, which took place on 12.06.2015. According to the appellant, after the marriage, the appellant and the respondent lived as husband and wife and there is no child born to them. After sometime, the respondent had harassed the appellant by demanding dowry under the influence of alcohol and often assaulted her and the same was informed to appellant's mother. The PW1 has deposed about the cruelty caused by the respondent and her mother was also examined as PW2, who has deposed about the assaults made by the respondent.

10. Per contra, the evidence of RW1 states that, he has incurred medical expenses for the appellant and he has also produced the medical bills and medical records. However, there is no pleadings in the counter and without pleadings, the said evidence cannot be adduced. The respondent also not filed a detailed counter, the respondent has filed only a formal counter without any specific denial. On the other hand, the



C.M.A.No.918 of 2023

appellant has categorically deposed about the cruelty caused by the respondent. Therefore, the appellant has proved that the respondent caused cruelty, thereby, the appellant is entitled to divorce on the ground of cruelty.

11. The trial Court after elaborate discussion, believed the evidence of RW1, it has failed to consider that there is no pleadings in the counter in respect of the medical treatment and the medical bills said to have been incurred by RW1. Further, the trial Court failed to consider that there is no specific denial about the pleadings of the appellant and the counter filed by the respondent is only evasive denial. The trial Court failed to consider the evidences of PW1 and PW2, who have categorically deposed about the cruelty caused by the respondent. Therefore, the order passed by the trial Court is unsustainable and the same is liable to be set-aside. Thus, the point is answered accordingly.

12. In the result, this Civil Miscellaneous Appeal is allowed and the fair and decretal order passed by the trial Court in H.M.O.P.No.156 of 2018 are set-aside and the petition is allowed. The



C.M.A.No.918 of 2023

marriage solemnized between the appellant and the respondent on 12.06.2015, is dissolved. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B.J) (P.D.B.J)
24.07.2024

Index : Yes / No
NCC : Yes / No
jd

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

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



WEB COPY



C.M.A.No.918 of 2023

C.M.A.No.918 of 2023
and
C.M.P.No.8477 of 2023

24.07.2024