



WEB COPY



C.M.A.No.2865 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	04.07.2024
PRONOUNCED ON	:	26.07.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.M.A.No.2865 of 2023 and
C.M.P.No.26826 of 2023

C.S.Aravindan

... Appellant

Vs.

S.Geetha @ S.Malini

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 104 of Civil Procedure Code, praying to set aside with regard to relief “b” order passed in H.M.O.P.No.4361 of 2022 dated 19.08.2023 on the file of 3rd Additional Family Court, Chennai.

For Appellant : Mr.A.Shankar

For Respondent : Mr.M.A.Sivakumaran



C.M.A.No.2865 of 2023

WEB COPY

J U D G M E N T

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

Seeking to set aside the decretal order passed in H.M.O.P.No.4361 of 2022 on the file of III Additional Principal Family Court, Chennai, dated 19.08.2023, with regard to relief “b” granted by the Court below, the aggrieved respondent/husband therein has preferred the present Civil Miscellaneous Appeal.

2. The material facts which need to be summarized for the purpose of the present appeal are thus:-

2.1. The marriage between the appellant and the respondent was solemnized on 02.09.2019 at SPS Marriage Hall, Saidapet, Chennai as per Hindu Rites and Customs. Out of the wedlock, a female child was born on 31.08.2020, but the new born died on 08.09.2020. Due to the family dispute that arose between the appellant and the respondent, the respondent/ wife filed a petition before the III Additional Principal Family Court, Chennai in



C.M.A.No.2865 of 2023

H.M.O.P.No.4361 of 2022 for dissolution of marriage on the ground of cruelty under section 13(1)(i-a) and sought for a direction to pay Rs.5,00,000/- (Rupees Five Lakhs only) to her as permanent alimony.

2.2. The Court below, vide order dated 19.08.2023 dissolved the marriage solemnized between the appellant and the respondent by granting a decree of divorce on the ground of cruelty and also directed the appellant/ husband to pay a sum of Rs.5,00,000/- towards permanent alimony to the respondent/wife, within a period of six months. Aggrieved against the payment of alimony to the respondent /wife, the appellant/ husband has preferred the present Civil miscellaneous Appeal.

3. Mr.A.Shankar, learned counsel for the appellant submitted that the respondent / wife has not preferred any separate petition under Section 24 of Hindu Marriage Act 1955 or under Section 125 of the Criminal Procedure Code for claiming maintenance. He also submitted that the respondent/wife has not made any serious allegations amounting to cruelty and since both the appellant as well as the respondent have reached the intention of getting divorce, the appellant / husband did not raise any objection for the divorce



C.M.A.No.2865 of 2023

sought for by the respondent/wife.

4. Even though the appellant/husband was willing to live with the respondent/wife, the respondent has filed a petition seeking for divorce before the Trial Court on the ground of cruelty by stating that the appellant and his family members suspected her character and also ill-treated her, but there is no sufficient proof to prove the said allegations. The learned counsel for the appellant submitted that the respondent/wife has illicit relationship with one Shankar, with whom the respondent had frequent telephonic conversations and also had sent messages vide whatsapp. Moreover, the respondent is a highly qualified B.E. Graduate and she is capable to maintain herself and therefore, according to the learned counsel for the appellant, he contended that the respondent is not entitled to claim maintenance from the appellant.

5. Furthermore, the learned counsel would submit that the respondent has suppressed the fact of filing a petition under Section 125 of Criminal Procedure Code in M.C.No.436 of 2023 after obtaining the divorce from the appellant in the present H.M.O.P.No.4361 of 2022. Therefore, the



C.M.A.No.2865 of 2023

learned counsel for the appellant prayed to set aside the order passed in H.M.O.P.No.4361 of 2022 dated 19.08.2023, with regard to relief “b” granted, on the file of 3rd Additional Family Court, Chennai.

6. According to the learned counsel for the appellant, the Trial Court has granted decree of divorce by setting the appellant as *exparte*. The Trial Court failed to consider that there are no grounds to prove the alleged cruelty caused by the appellant. Without any valid grounds, the Trial Court has granted divorce. Therefore, the fair and decreetal order passed by the Trial Court are liable to be set aside and hence, he prayed for allowing this appeal.

7. Per contra, Mr.M.A.Sivakumaran, learned counsel appearing for the respondent would submit the following:-

7.1. The above facts are not in dispute. From the very beginning of the marriage, the respondent/wife gave due respect to the appellant and his parents and as a dutiful wife and daughter-in-law, she took more care in household affairs. During her pregnancy, medical expenses of Rs.80,000/-



C.M.A.No.2865 of 2023

was incurred by her parents. After the death of the new born, the parents and the younger sister of the appellant blamed the respondent for such happening.

7.2. According to the learned counsel for the respondent, after discharging the respondent from the hospital, she was not taken care of by her in-laws and by her husband and they did not permit the respondent to participate in the funeral ceremony of the baby. On 03.11.2020, the appellant's younger sister informed the parents of the respondent to take back the respondent to their house, as there was suspicion in her character and conduct, since she was in frequent telephonic contact with one Shankar. But later the issue was not escalated and the appellant's family deserted that issue.

7.3. During the period between April 2021 and October 2021, there was no communication between the families of both parties. However, the appellant's father spread false message among the relatives of the respondent as if the conduct and character of the respondent was not good and she had illicit relationship with one Shankar. The respondent and her family



C.M.A.No.2865 of 2023

members were put to great embarrassment and to suffer social disrepute.

7.4. Further the learned counsel for the respondent would contend that for Pongal festival 2022, the appellant's parents requested the parents of the respondent to send the respondent back to the matrimonial house and the appellant had insisted for re-union with the respondent. On 10.02.2022, the appellant based on suspicion in the character of the respondent in respect of certain messages received in her personal cellphone, stated that he wanted to live separately for some time. From that period, the appellant had not even chosen to spend a pie towards maintenance and day-to-day expenses of the respondent.

7.5. According to the learned counsel for the respondent, the respondent/wife could not continue to live with the appellant any longer, as the appellant and his family members have formed an indelible bad impression on her character which has very much affected the mindset of the respondent and finding no other remedial measures, the respondent approached the Trial Court seeking divorce.



C.M.A.No.2865 of 2023

WEB COPY

8. Before the Trial Court, the appellant did not appear and was set *ex parte*. Before the Trial Court, on the side of the respondent, she was examined as P.W.1 and exhibits Ex.P1 to Ex.P6 were marked. Based on the evidences, the Trial Court has granted decree of divorce.

9. Heard both sides and perused the records.

10. The point for determination in this appeal is, '*whether the respondent is entitled to divorce on the ground of cruelty ?*'

10.1. In this case, the respondent/wife herein has filed a petition before the Trial Court for granting divorce on the ground of cruelty. According to the respondent, the appellant and his parents suspected her character and also ill-treated her thereby, they caused cruelty. In order to prove the same, she was examined as P.W.1 and also marked documents as Ex.P1 to Ex.P6. The evidence of P.W.1 clearly establishes the cruelty caused by the appellant. Before the Trial Court, no oral or documentary evidence



C.M.A.No.2865 of 2023

was adduced on the side of the appellant and he was set *exparte* and an *exparte* decree was passed against the appellant.

10.2. Moreover, the appellant has not taken any steps to set aside the *exparte* decree passed against him, but he has straight away filed this appeal on various grounds. Before the Trial Court, P.W.1 /respondent deposed about the cruelty caused by the appellant. To rebut the evidences of the respondent, no contra evidence was adduced by the appellant. Hence, it can be inferred that the evidence adduced by the respondent is reliable and acceptable.

10.3. The Trial Court, after taking into consideration the evidence adduced by the respondent/wife, has correctly allowed the application by dissolving the marriage between the parties and by granting divorce on the ground of cruelty with a direction to the appellant to pay a sum of Rs.5,00,000/- (Rupees five lakhs only) towards permanent alimony to the respondent/wife. The point is answered accordingly.



C.M.A.No.2865 of 2023

WEB COPY

11. The Trial Court has only awarded a meagre amount of Rs.5,00,000/-(Rupees five lakhs only) towards permanent alimony and the same is a reasonable one. Therefore, the order passed by the Trial Court does not warrant any interference by this Court. The Civil Miscellaneous Appeal has no merits and deserves to be dismissed.

12. In the result, this Civil Miscellaneous Appeal is dismissed by confirming the order of the Trial Court. No cost. Consequently, the connected miscellaneous petition is closed.

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

26.07.2024

Internet : Yes/No
Index: Yes/No
Speaking Order: Yes/No
NCC : Yes / No

nr/sts

To:

The III Additional Family Court,



Chennai.
WEB COPY



C.M.A.No.2865 of 2023

J.NISHA BANU.,J.

and

P.DHANABAL., J.

sts

Judgment made in
C.M.A.No.2865 of 2023



WEB COPY



C.M.A.No.2865 of 2023

Dated:

26.07.2024