



C.M.A.No.2271 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

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P.Thangamani

...Appellant

vs.

P.Krishnaveni

...Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984 to set aside fair and decreetal order dated 08.01.2015 passed in H.M.O.P.No.1304 of 2010 on the file of the Additional Family Court, Coimbatore.

For Appellant : Mr.S.Saravanan

For Respondent : No Appearance

JUDGMENT

(The order of the Court was made by Mrs.R.Kalaimathi, J.)

The appellant herein having aggrieved by the order of dismissal passed in H.M.O.P.No.1304 of 2010 dated 08.01.2015 on the file of the



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Additional Family Court, Coimbatore has preferred this Civil Miscellaneous Appeal.

Facts narrated in brief by the petitioner:

2. Marriage between the petitioner and the respondent was solemnized as per Hindu Customs in the presence of both elder members, friends and relatives on 13.06.2003 at the Vinayaga Temple, Eachanari and at the C.R.N. Marriage Mahal, Eachanari. After marriage, a boy baby was born to the respondent through the petitioner. The petitioner would further submit that the respondent/wife was living in the matrimonial home happily for some time along with him and his mother. Thereafter, she started to indulge in unnecessary arguments with his mother and she used to go to her parents home often. After birth of the child, she refused to come to the matrimonial home. At the behest of elders of the both sides, matter was settled and he agreed to live separately in the interest of his family. Again on 01.12.2005, she quarreled with the petitioner and went to her parents home. Despite the steps taken by the interested persons, several times, when the respondent was called to come back to matrimonial home, she refused to come back.



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3. It has been further averred that when a legal notice dated 06.10.2010 was issued to the respondent, she sent a reply notice contending that the petitioner demanded dowry and he committed cruelty by beating her and she was treated like a servant maid, and reuniting with her husband would not be safe for her life, which are totally incorrect. For his rejoinder notice dated 28.10.2010, she did not send any reply for the same. Therefore, it is made clear by the respondent wife that she was not interested to live along with her husband. For the past 6 years without any acceptable reason, she has avoided to live together with the petitioner. Hence this appeal.

4. The details given in the counter by the respondent/wife are precisely stated hereunder. The marriage date and place are admitted. She quarreled with her mother in law and denied the fact that she compelled her husband to set up a separate family. She would state that she was living in a joint family consisting of her husband's mother, sisters, brothers and their children. It is her further contention that the petitioner insisted her for abortion and as she was overburdened with the household work, she suffered abortion. Because of that, she went to her parents home. Thereafter, upon the undertaking given by the petitioner and his



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mother, they lived together and she gave birth to a boy baby on 24.10.2004. Eleven months after delivery, for name sake, he did set up a separate home and he used to take food only at his mother's home. It is the further contention of the respondent that, at the instigation of her mother in law, the petitioner demanded an amount of Rs.15,00,000/- and sent her to her parents house. She got money from her parents, but still he slapped her by stating that the money got from her parents was insufficient. The petitioner sent her to the matrimonial home in order to get jewels from her parents by keeping the custody of the child with him. Because of that, she was not in a position to lead her life along with her husband. For the past 5 years, child is taken care of by her and fearing of the beatings of her husband, she did not go to her husbands house, and she is ready to live together along with her husband and sought for dismissal of the petitioner. The allegations raised by her husband are denied by the respondent/wife. In the given circumstances, whether the order of dismissal passed by the trial Court is liable to be interfered with or not is the moot question.

5. The date of marriage and place of marriage are admitted facts, and it is an arranged marriage.



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6. The main allegation of the petitioner/husband is that after some time, the respondent used to quarrel often with him and his mother and she would go off to her parents house is the main ground alleged. The next ground put forth by the petitioner/husband is that, during the settlement talks, as she demanded to live separately with her husband, he came out of the joint family, set up and lived with her. Thereafter also, she made quarrel and left the matrimonial home and thereby, he has parted with his wife and child, and living a meaningless life.

7. On the petitioner's side, three witnesses inclusive of the petitioner have been examined [R.Subramani (P.W.2) and K. Thangaraj (P.W.3)]. Copy of the marriage invitation, reply notice of the respondent/wife are Ex.P.1 and Ex.P.4. The respondent has examined herself as R.W.1.

8. The petitioner has examined himself as P.W.1. He has filed his proof affidavit in line with averment made in the petition. Cousin Sister of the petitioner Thiru.R.Subramani son of Ramasamy Gounder has supported the version of the petitioner. It is the evidence of P.W.2, that, without any reason, often the respondent used to go to her parents house. When this was resisted by the petitioner, it became an issue and she



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would also often quarrel with her mother in law. He has also stated that he has settled the quarrel between the petitioner and respondent on few occasions and suddenly on 01.04.20005, she quarreled with the petitioner and left the matrimonial home, went and stayed with her at parents residence along with her child. At the request of the petitioner, he along with Thangaraj, Balasubramanian, Siva Subramanian, Myilsamy and Magesh Babu went to the parents residence in the year 2006 for talk of settlement. In the panchayat, the respondent, her parents and her two sisters husband were there. During the settlement talks, the respondent refused to live with the petitioner and she would state that if she is compelled to live with her husband she would commit suicide along with her child. Her parents also stated that they could not compel their daughter to go to her matrimonial home. Yet another witness (P.W.3), his father's side relative, one Thangaraj son of Kandhigounder aged about 67 years has spoken about the above said issues and supported the case of the petitioner.

9. The main contention of the respondent/wife is that, soon after the marriage, she was in the joint family consisting of her husband's mother, brothers, sister and their children. When she was in the joint family, she was in the family way. Because of the work burden, she suffered by



abortion. The doctor had opined that, sever household work is the reason for abortion. She was affected physically and mentally and came to her parents house. Only after eleven months from her date of delivery, her husband came and they were taken to the matrimonial home and she lived separately along with her child and her husband was taking food at her mother's residence. Though she has stated that she was assaulted and her husband demanded an amount of Rs.15,00,000/-, and for that, she was sent out of the matrimonial home, the respondent has not taken any positive steps to reunite with her husband either through settlement talks or lodging of complaint before the police or by issuance of notice. On the other hand, she has stated that she is so scared of her husband's beating and she is ready to reunite with her husband.

10. It is the specific evidence of the respondent/wife that, at the instigation of her mother in law only, she had difference of opinion with her husband and on her (wife) demand only, a separate matrimonial home was set up by the petitioner was admitted by her.

11. When her child was one year old, she came to parents home once for all, and she did not take any effective steps to reunite with her husband. In the year 2010, the petitioner/husband has filed the petition for



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divorce on the ground of cruelty and desertion under Sections 13 (1) (ia) and 13 (ib) of the Hindu Marriage Act, 1955.

12. In *Dr.N.G.Dastane Vs. Mrs.S.Dastane* reported in 1975 (2) SCC 326, the Hon'ble Supreme court has held that:

“27. The misconception regarding the standard of proof in matrimonial cases arises perhaps from a loose description of the respondent's conduct in such cases as constituting a “matrimonial offence”. Acts of a spouse which are calculated to impair the integrity of a marital union have a social significance. To marry or not to marry and if so whom, may well be a private affair but the freedom to break a matrimonial tie is not. The society has a stake in the institution of marriage and therefore the erring spouse is treated not as a mere defaulter but as an offender. But this social philosophy, though it may have a bearing on the need to have the clearest proof of an allegation before it is accepted as a ground for the dissolution of a marriage, has no bearing on the standard of proof in matrimonial cases.”

13. It is relevant to refer the observations made by the Hon'ble Supreme Court in *V.Bhagat Vs. D. Bhagat* reported in (1994) 1 SCC 337:



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“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

14 It is relevant to refer to the observations made by the Hon'ble Supreme Court in the matters of granting of divorce on the ground of cruelty in *Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal* reported in



(2012) 7 SCC 288. The Hon'ble Supreme Court has observed that “... *The testimony of the appellant husband established that the wife was crumpling the ironed clothes, hiding the keys of the motorcycle and locking the gate to trouble him and the said incidents were taking place for a long time. In such circumstances it is surprising to find that the courts below could record a finding that the appellant used to enjoy the childish and fanciful behaviour of the wife pertaining to the aforesaid aspect. This finding is definitely based on no evidence. Such a conclusion cannot be reached even by inference nor any surmises and conjectures would permit such finding to be recorded. The embarrassment and harassment that might have been felt by the husband can easily be visualised...*”

15. In the case of *Roopa Soni Vs. Kamalnarayan Soni* reported in 2023 SCC Online SC 1127 has observed that “...*the court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — libre recherché scientifique i.e. “free scientific research”...*”.

16. In matrimonial cases, burden of proof lies on the petitioner. However, the degree of probability is not one beyond reasonable doubt, but of preponderance of probabilities.



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17. The allegations raised by the petitioner have been spoken by the petitioner (husband) and by his close relatives, namely R.Subramanian (P.W.2) and K.Thangaraj (P.W.3). Though the respondent/wife has denied the allegations of the petitioner, from the cross-examination of D.W.1, it is pellucid that at her instance, she came out from the joint family and her husband did set up a separate home where she lived along with her child at Salai. She would also accede to the fact that, at the instance of her mother in law only her husband-petitioner quarreled with her.

18. Therefore, the instances of cruelty raised by the petitioner would amount to cruelty or not is the moot question. Cruelty is of two types namely mental and physical cruelty. The petitioner has raised allegations that his wife has caused him mental cruelty and had discarded him without reasonable cause and sought for an order of divorce.

19. As regards the word 'Cruelty', the Court has got a wider spectrum for consideration so as to apply it contextually. It depends upon the educational, social and financial background of spouse, culture, conduct of husband and wife, physical and mental weakness of the spouse, etc. The reasons are enumerative and exhaustive. It differs in



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each household and each person. Even deliberate and willful intention may not matter at times.

20. With the passage of time, due to the impact of, especially electronic media, the concept of cruelty is bound to change from time to time. There cannot be any fixed parameters for determining the issue of cruelty in matrimonial matters. Therefore, it is prudent to adjudicate on a case to case basis, by evaluating in a given situation. Acts of cruelty would differ from person to person and man to a woman and a broad approach is the need of the hour in matrimonial matters. In the modern era, issues have to be dealt with some latitudinarianism.

21. From the evidence of P.W.1, it is pellucid that from 01.12.2005 onwards, she has been living along with her parents. O.P for divorce was filed in the year 2010. Therefore, from the evidence of P.W.1 coupled with evidence of P.W.2 and P.W.3, it is asserted that it was a habit of the respondent, to quarrel with her mother in law and she used to go to her parents home often. Thereafter also, when she was living separately from the joint family from 01.04.2005 onwards , she has been living along with her parents. These acts amount to cruelty according to the petitioner. But, these details were held to be not amounting to cruelty, and the learned



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Trial Judge chose to dismiss the petition, hence this appeal.

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22. The allegations raised by the petitioner has been spoken out in detail by P.W.2 and P.W.3, and it is also made clear that the respondent living with her parents from 01.04.2005 onwards till date. It is also pertinent to note that the respondent did not take any steps to reunite with her husband. The petitioner did not approach the Family Court soon after his wife left the matrimonial home. We feel that home is a pleasant place to live. But, the wife feels otherwise at her matrimonial home and left the same. Now the son is the direct victim. She feel into rough weather and preferred to go out of the matrimonial home.

23. Based on the aforestated discussions, we are of the considered view that the petitioner has proved his case by preponderance of probabilities. In the given circumstances, we are of the opinion that accepting the allegations of the petitioner and an Order of divorce has to be granted on the ground raised under Sections 13 (1) (a) and 13 (1) (b) of the Act of 1955. In sequel to this, the Order of the Trial Court stands set aside and the marriage took place on 13.06.2003 at the Vinayaga Temple, Eachanari stands dissolved.



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24. Accordingly, this Civil Miscellaneous Appeal stands allowed and the order passed in H.M.O.P.No.1304 of 2010 dated 08.01.2015 on the file of the Additional Family Court, Coimbatore stands set aside. There is no order as to costs.

(J.N.B.,J.)

(R.K.M.,J.)

12.08.2024

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and

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To

The Additional Family Court,
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