



C.M.A.No.2372 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

C.M.A.No.2372 of 2018

X.Juliet

... Appellant

Vs.

M.Samuel Kennedy Joe

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act to set aside the judgment and decree dated 13.03.2018 in I.D.O.P.No.4616 of 2013 on the file of the V Additional Family Court, Chennai.

For Appellant : Mr.K.Sathiyamurthi
For Respondent : No appearance

J U D G M E N T

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

This CMA is filed against the dismissal of divorce petition in IDOP.No.4616 of 2013, filed by the appellant/wife, on the file of the V Additional Family Court, Chennai.



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2. The appellant is the Wife and the respondent is the Husband.

The appellant married the respondent on 21.05.2007 as per Christian rituals. There was no issue out of the wedlock. The appellant is working as Senior Section Engineer in Signal and Telecommunication Department of Railway Electrification, Egmore, Chennai. After marriage, the appellant came to know that the respondent has not revealed his actual qualification, employment and income and thereafter serious disputes arose between the parties and they got separated from the year 2012 onwards.

3. The appellant filed a petition in O.P.No.4616 of 2013, for dissolving the marriage on the ground of cruelty. The Lower Court, vide order dated 13.03.2018, had dismissed the said petition on the following findings:

"xi) The petitioner simply narrated the events happened in her life with her husband. The petitioner has not proved the ground for divorce as mandated under the Indian Divorce Act in this case. Hence, the petitioner is not entitled the reliefs prays for."

Challenging the said order of dismissal, the appellant / wife has filed the



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present Appeal.

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4. The learned counsel appearing for the appellant submitted that the Trial Court failed to consider that cruelty need not necessarily be a physical harassment and even the mental cruelty by the spouse also comes under the definition of "cruelty" and therefore, the Lower Court dismissing the divorce petition filed by the appellant is unjust and it is against several dictums laid by the Hon'ble Apex Court.

5. Though notice was served on the respondent, when the matter was listed on 30.09.2019, none appeared on behalf of the respondent and therefore, the matter was posted on 03.12.2019. Thereafter, the matter came up before this Court only on 13.12.2022. On that day also, none appeared on behalf of the respondent and again the matter was posted on 21.12.2022 "For Orders". Thereafter, the matter is listed today.

6. Today when the matter is called, once again there is no representation on behalf of the respondent. Though this Court granted opportunity for the presence of the respondent on the earlier two



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occassions, the respondent does not show any interest to get along with the case.

7. Heard the learned counsel for the appellant and carefully perused the impugned judgment passed in O.P.No.4616 of 2013.

8. Perusal of records would go to show that on the ground of cruelty, the appellant filed a petition for divorce against the respondent in OP.No.4616 of 2013 and the trial Judge dismissed the divorce petition stating that the appellant failed to establish the cruelty on the part of the respondent. Further, it is the contention of the appellant that the appellant has been living separately for the past 12 years.

9. In ***Rakesh Raman Vs. Kavita*** reported in ***AIR 2023 SCC 2144***, the Honourable Supreme Court in paragraph 18, held as follows:-

“18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of th e wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the



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two , has to be read as cruelty Under Section 13(1)(ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a marriage would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.'

In the present case also, there is a long separation, thereby it has to be read as cruelty. Therefore, in the light of above judgment, we are inclined to allow this appeal as the matrimonial bond is completely broken and is beyond repair. On the abovesaid ground also the appellant is entitled to divorce.

10. Taking into consideration that the respondent is not before this court and also the fact that the appellant and the respondent are living separately for the past 12 years, one can infer that there is irretrievable break down of marriage and there would be no useful purpose in keeping the marriage alive. Further, both the parties had moved away and settled in their respective lives and hence, there was no need to continue the agony of a mere status without being living together. Hence we are



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inclined to allow this appeal.

11(i). Accordingly, the Civil Miscellaneous Appeal is allowed. The judgment and decree passed in OP.No.4616 of 2013 by the V Additional Principal Judge, Family Court, Chennai, is hereby set aside.

(ii). The marriage between the appellant and the respondent solemnized on 21.05.2007, is hereby dissolved by granting a decree of divorce. No costs.

(J.N.B,J.) (P.D.B., J.)
28.06.2024

Index : Yes / No
Internet : Yes/No
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To
V Additional Family Court, Chennai.

J. NISHA BANU, J.
and



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P.DHANABAL,J.

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