



C.M.A.No.3141 & 3142 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
04.03.2024

PRONOUNCED ON
28.03.2024

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

C.M.A. Nos.3141 & 3142 of 2018
and C.M.P.No.23830 & 23831 of 2018
and 16362 & 16363 of 2022

S.Rajendra Babu

... Appellant in both C.M.As

Vs

C.Ramba

... Respondent in both C.M.As

PRAYER in C.M.A.No.3141 of 2018:- Civil Miscellaneous Appeal had been filed under Section 19 of the Family Court Act, 1955 against the common order dated 14.07.2018 passed in O.P.No.4741 of 2012 by the IInd Additional Family Court at Chennai and pass such further order.

PRAYER in C.M.A.No.3142 of 2018:- Civil Miscellaneous Appeal had been filed under Section 19 of the Family Court Act, 1955 against the common order dated 14.07.2018 passed in O.P.No.4627 of 2016 by the IInd Additional Family Court at Chennai and pass such further order.



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In both C.M.As.

For Appellant : Mr.C.Shankar
For Respondent : Mrs.C.Ramba
Party-in-Person

COMMON JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

These appeals have been preferred by the appellant/ husband as being aggrieved against the common order under which an application for divorce filed by him on the ground of cruelty under section 13 (1) (i-a) of the Hindu Marriage Act, 1955, had been dismissed and the O.P. Filed by the respondent/ wife for Restitution of Conjugal Rights had been allowed.

2. The brief facts arising to this litigation is as follows:-

The marriage was solomonized between the appellant and the respondent on 21.08.2008 as per the Hindu rights and customs. After sometime into the relationship their had occurred various disputes between them where in the appellant husband had claimed that there was mental harassment/ cruelty on the part of the respondent wife as she had insisted upon the appellant to separate himself from his family, failing which she had been threatening with suicide. The same had been resisted by the wife



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by contending that it was the appellant husband who had been not only mentally torturing her but also physically abused her which led to the filling of various criminal cases by her and therefore she had also filed O.P. for restitution of conjugal rights on the claim that the appellant husband without any reasonable cause had deserted her.

3. Heard Mr.C.Shankar,learned counsel for the appellant and Mrs.C.Ramba, Party-in-Person for the respondent.

4. The learned counsel for the appellant submit that after the marriage had been solomonized and the parties started to live together, the respondent started to behave indifferently. She often used to pick up quarrel for no reasons whatsoever with him and his parents. He would further submit that since it was found that she had certain difficulty in conceiving a child, the appellant and also the respondent had jointly been taking medical treatment. He would submit the reports of the appellant as well suggest that there were no medical reasons on his side for begetting a child. He would further submit that the respondent was very adamant and



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had pressurized the appellant to disown his family namely his parents and demanded a separate house for their living. He would submit that in a vacant portion of the property the respondent had moved out and had been insisting the appellant to join her in the said portion.

5.He would further submit that since the appellant had not acceded to her request she had threatened to commit suicide and in fact she had even attempted to do so twice. Since, the claim of the respondent for a separate residence followed with threat of suicide had gone beyond control, the appellant had approached the family court seeking divorce under the ground of mental cruelty. He would submit that thereafter, the respondent had initiated criminal complaints against the appellant and his family members based upon false and frivolous allegations. He would submit that in fact one of the criminal complaint which included the sister of the appellant was quashed by the court in respect of his sister alone. This itself would indicate that the respondent had been making false and frivolous complaints even against the person who had no role to play in the family of the appellant. The conduct of the respondent was only to coerce



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the appellant to see that her demands are met. He would submit that the respondent had made various unsubstantiating claims as to the payment of monies for the construction of the house. He would submit that the said construction had been carried out on the basis of a housing loan by the appellant and the appellant had not taken any money from the parents of the respondent as claimed by her. He would further submit that in fact on the pleadings made by the appellant and on the basis of the evidences recorded, the trial court had given a finding that there has been a demand on the part of the respondent for a separate residence leaving the parents of the appellant. He would further draw the attention of this Court to such a categorical finding given by the learned Judge. He would submit that the trial Court had also given a specific finding that due to the conduct of the respondent in filing repeated criminal cases, the appellant had lost his job and had given a categorical finding that the appellant had lost peace of mind and in clear terms had held that the conduct of the respondent is a clear act of mental harassment.

6. He would further submit that the trial court thereafter had given a finding that the subsequent events that had occurred after the filing of the



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original petition had not been brought on record by way of an amendment

for it to appreciate the same in considering the grounds of cruelty. He

would further submit, the Court has given reasons that since all the criminal complaints filed by the respondent having culminated in filing of a charge sheet and that since the trial in those cases are pending, only on completion of the trial in favour of the appellant it could be concluded that such complaints were frivolous and only thereafter the same could be treated as a cruelty against the appellant and holding so had held that the ground of cruelty had not been established by the appellant. In that context, he would submit that in a preceding paragraph to the said finding, the court below had given a categorical finding that there is an element of mental harassment to the appellant by the respondent. He would submit that such contra findings given by the trial Court would have to be interfered with by this Court. He would further submit that in view of the categorical finding, at least to the fact that there has been a mental harassment, in view of the demand of the respondent for a separate residence leaving the appellant's father and mother would itself be a sufficient ground to allow the O.P. filed by the appellant.



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7. In respect of the issue relating to the restitution of conjugal rights

he would submit that the application itself had been filed by the respondent only in the year 2016 that is after 4 years of the filing of the divorce petition. He would further submit that in the counter filed by the appellant to the said O.P. he had categorically indicated the various criminal cases that had been launched by the respondent against the appellant. He would submit that the mandate of section 9 of the Hindu marriage act is that if the deserting party has a reasonable cause to leave away from the matrimonial life, then the court should be slow in granting the relief of restitution of conjugal rights. He would submit that the appellant had filed O.P. for divorce on the ground of cruelty and the respondent had initiated criminal cases against the appellant and his family members and this would itself be a reasonable cause for the appellant to refrain from engaging himself in the matrimonial life with the respondent. Therefore, he would submit that the court below had not analysed this aspect and had mechanically held that in view of the dismissal of the petition filed by the appellant, had ordered the petition filed by the respondent for restitution of conjugal rights. Hence, he would also seek interference of this Court.



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8. The respondent having appeared as Party-in-Person would submit that the divorce petition filed by the appellant was bereft of any material facts except to make a bald allegations that the respondent has spoken ill about him. She had argued that even though the appellant had alleged that the respondent had sought for a separate matrimonial home, there has been no pleadings that had been made by the appellant in his petition for divorce. She would further submit that the petition had been filed under Section 13(1) (i-a) of the Hindu Marriage Act, 1955. The repeated reasonings given in the petition is irretrievable break down of marriage. She would submit that such a ground is not available under Section 13(1) (i-a) of the Hindu Marriage Act, 1955. She would further submit that it is the imagination of the appellant that the respondent had attempted to commit suicide and that there was a threat of suicide. She would submit that except for a bald statement in the petition, the appellant had not substantiated the same by producing any independent witnesses to support his claim.

9. In that context, she would submit that the petition filed by the appellant for divorce under Section 13(1) (i-a) is not supported by any



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materials whatsoever, both oral and documentary to prove the ground on which such provision can be invoked for divorce. On the other hand, she would submit that it was the appellant who had mentally and physically tortured her leading her to approach the police for reliefs and she would submit that on the complaints filed by the respondent, charge sheets have been filed against the appellant and his family members and the trial of the criminal cases are pending adjudication. She would further submit that the Court below had rightly dismissed the petition by refusing to look into the facts that had occurred subsequent to the petition as the appellant himself had not taken any petition seeking to amend the petition to include the subsequent facts. She would further submit that it was the respondent who had suffered at the hands of the appellant and since, she was confident of mending the ways of the appellant she had also taken out an application for restitution of conjugal rights. She would submit that the appellant had no cause much less any reasonable cause to be away from the matrimonial life with the respondent. She would further submit that the appellant had been in the habit of threatening the respondent for obtaining money from the respondent's family. All the dispute had arose when the respondent's



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family had demanded the amount given by them as loan to the appellant for construction of the house. Only with a view to not repay the amount, the appellant had filed this application for divorce.

10. The respondent had also by way of written submission filed detailed arguments in support of her contention. Even though, she had filed two written arguments, one on 07.03.2024 and another on 08.03.2024, we are taking on record only the written submissions submitted by her on 08.03.2024, since the written submission filed on 07.03.2024 had not been served upon the appellant. The respondent by a registered post had sent an additional written arguments directly to us. We do not approve the conduct of the respondent in directly communicating with us. The respondent admittedly is also a qualified Advocate and she cannot feign ignorance of the procedure in which the pleadings, documents and written submissions are to be filed in court. Since, the said additional written arguments submitted by the respondent has not been done following the procedure, we do not propose to even look into the same. Even though, we could have initiated proceedings against her for directly communicating with us by sending a registered post, for the reason that



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she being a qualified Advocate, we refrain from doing so for the simple reason that she also appears as a Party-in-Person. We hope that the respondent does not indulge in such practices atleast in future.

11. Her further contention is that to substantiate the case for restitution of conjugal rights, she would rely upon the evidence of the appellant recorded in C.C.No.391 of 2014, wherein, the appellant seems to have made a deposed that the appellant was ready to live with the respondent and only the respondent was refusing to live with him. She would submit that the respondent had never refused to live a matrimonial life with the appellant. But, it was the appellant for the reasons best known to him was trying to be away from the matrimonial life and it was the appellant who had initiated a petition for divorce and not the respondent. She would further submit that the appellant had not come up with clean hands and had suppressed various material facts. She would also draw attention of this Court to the petition filed by the appellant for divorce and contend that the pleadings itself is contradictory to each other and that his evidence does not support the pleadings and in fact had exceeded the pleadings and therefore, this Court should not to look into the deposition



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of the appellant and to confine the same with the pleadings made in the application. She would further submit that it was the appellant who had failed to perform his duty as a husband and in spite of various efforts made by the respondent for a normal life. It was the appellant who had been harassing her right from the day one of marriage. She would further submit that the appellant had not proved any hatred or wrath on her part against the appellant. In fact she would submit that it was the appellant who had hatred towards the respondent and had committed various activities which had led to the filing of criminal complaint by her. She would submit that there was no cruelty whatsoever on her part to maintain the application under Section 13 (1) (i-a) of the Hindu Marriage Act. She would further submit that no additional witness were produced by the appellant to substantiate his claim even. She would further submit that the quash petitions filed by the appellant/ husband and his parents had been dismissed, which itself shows that there is a *prima facie* case of the criminal conduct of the appellant and his family members against the respondent. She had also submitted the details of various activities which led to the criminal cases. We have not recorded the said submissions as the



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criminal cases are pending trial and in that aspect, we do not propose to give any findings of the same. She would pray to dismiss both the C.M.As. and direct the appellant to lead a plausible matrimonial life with the respondent.

12. We have considered the rival submissions made by the learned counsel appearing for the appellant as well as the respondent, who is appearing Party-in-Person and perused various documents that had been placed before us.

13. The appellant had filed a petition under Section 13 (1) (i-a) of the Hindu Marriage Act which reads as thus under:-

*“ 13.**Divorce:-** (1) Any marriage solemnized, whether before or after the commencement of this Act, may on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other part*

.....

(i-a) has, after solemnization of the marriage, treated the petitioner with cruelty;”

14. The said provision vests right with a partner of marriage to seek



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divorce on the ground of cruelty. On a careful and thorough perusal of the petition filed by the appellant in O.P.No.4741 of 2012, we could find that the appellant had made an allegation of attempt to suicide by the respondent. He had made various allegations of misbehaviour and a wordy quarrel at the instance of the respondent. He had also averred that he had been attempting to reconcile with the respondent but the same was with vain as the respondent had increased behaviour of not reconciling the matrimonial relationship with him. He had repeatedly stated that in view of the conduct of the respondent, the marriage had ended in a irretrievable break down. However, during the evidence, the appellant seems to have improved his case by contending that the respondent had been demanding a separate matrimonial home. Such submission was not there in the pleadings filed in the support of the O.P. Further, as rightly pointed out by the Court below, eventhough the facts of the criminal cases had been admitted to by the respondent, the appellant had not taken any steps to amend his pleadings to include the filing of criminal cases and losing of his job to add to the grounds of cruelty. Further, as rightly pointed out by the Court below all the criminal complaints had culminated into calender



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cases on a charge sheet laid by the concerned police after due investigation. In such view of the matter, we cannot at present presume that such filing of criminal cases itself would amount to mental cruelty by the respondent. Only on completion of a criminal case trial, wherein, the appellant and his family members are acquitted, it would lead to a conclusion that there had been cruelty on the part of the respondent, which would enable the appellant to rely upon such facts to file the application. Even, had the criminal complaints filed by the respondent against the appellant and his family members, after the investigation had been closed as mistaken as facts, then at least it could lead to presumption that there has been cruelty suffered by the appellant at the hands of the respondent. That is not the case here. Further, there has been no independent evidence that had been led by the appellant to substantiate his claim of cruelty either as per his pleadings or as per the depositions in the case. When that being so, we concur with the findings of the trial Court that the appellant had miserably failed to substantiate his case of cruelty against the respondent.

15. Coming to the claim of the respondent for restitution of conjugal



rights, it could be seen that the Court below had ordered restitution without assigning any reasons whatsoever, except to record the fact that the respondent had pleaded and deposed that she is willing to rejoin her husband. It is also not known, how the court can give a direction to the appellant to rejoin the respondent in a portion where the respondent is residing. Section 9 of the Hindu Marriage Act reads as under:-

*“ 9. **Restitution of Conjugal rights.**- When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.*

2[Explanation.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]”

16. A reading of the aforesaid provision would show that either the husband or the wife has without reasonable excuse withdraw from the society of the other and that when there is no legal ground why the application should not be granted, a decree for restitution of conjugal



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rights can be ordered. In the present case, firstly, the appellant had filed an O.P. for divorce in the year 2012. Thereafter, much water had flown under the bridge, where various criminal cases had been filed by the respondent against the appellant and his family members which had all culminated under Calender Cases and the trial is on the way. The respondent had filed the O.P. for restitution of conjugal rights only in the year 2016. Firstly, had she really wanted to have matrimonial relationship to be restored, at the earliest, she should have filed an application for restitution immediately when the appellant had filed petition for divorce. She had not done so. Further, the respondent in his reply to the application had narrated various criminal cases that had been filed by the respondent against him and his family members. Filing of such criminal cases had not been disputed by the respondent and in fact she draws support from that to claim that it was the husband who had harassed her. The trial Court had not appreciated the mandate of the Section 9 of the Hindu Marriage Act by giving a finding as to whether there was no reasonable cause on the part of the appellant to withdraw from the matrimonial life. His withdrawal from matrimonial life was firstly by issuance of an Advocate notice for dissolution of marriage



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followed by a petition filed by him as early as in the year 2012. When his intention was reflected, the respondent has not assigned any reasons whatsoever to say as to why there was a delay of four years in her to approach this Court. Further, various criminal cases have also been launched by her against the appellant and his family members. These factors would itself be a reasonable cause for the appellant to be away from the matrimonial relationship with the respondent. This aspect had been completely over looked by the trial Court in automatically granting a decree of restitution of conjugal rights.

17. For the foregoing reasons, we are of the view that C.M.A.No.3141 of 2018 filed against the decree in O.P.No.4741 of 2012 will have to be sustained and the dismissal of the O.P. is hereby upheld. However, C.M.A.No.3142 of 2018 filed against the O.P.No.4627 of 2016 would have to be allowed and the decree in O.P.No.4627 of 2016 would have to be set aside.

18. In fine, the C.M.A.No.3141 of 2018 is dismissed and C.M.A.No.3142 of 2018 is allowed and the decree in O.P.No.4627 of 2016 is set aside. However, there shall be no order as to costs. Consequently,



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connected miscellaneous petitions are closed.

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(R.S.K.,J.) (K.B., J.)
28.03.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
gba

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

gba

To

The Additional Family Court – II
Chennai.

A Pre-delivery order made in
C.M.A.No.3141 & 3142 of 2018
and C.M.P.No.23830 & 23831 of 2018
and 16362 & 16363 of 2022

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