



C.M.S.A(MD)No.29 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:20.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.S.A(MD)No.29 of 2012

R.K.Thandavamooorthi

.. Appellant/Appellant/Petitioner

Vs.

G.Selvarani

.. Respondent/Respondent/
Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 r/w 100 of Code of Civil Procedure, praying this Court to set aside the judgment and decree dated 05.06.2012 passed in H.M.C.M.A.No.95 of 2009 on the file of Principal District Judge, Tiruchirappalli confirming the Judgment and decree dated 01.12.2009 in O.S.No.7 of 2025 on the file of the learned Principal Subordinate Jude, Tiruchirappalli.

For Appellant : Mr.S.Rajasekar

For Respondent : Mr.M.Senthilkumar



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JUDGMENT

This petition is filed by the appellant to set aside the order passed in HMCMA.No.95 of 2001 passed by the learned Principal District Judge, Tiruchirappalli wherein the appellant herein has filed the appeal as against the order passed in HMOP.No.7 of 2005 on the file of the Principal Subordinate Judge, Tiruchirappalli.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking before the Tribunal.

3.The brief facts of the case before the trial Court is as follows:

The marriage between the petitioner and respondent was solemnized on 03.06.2002 at Trichy. After marriage, they lived as husband and wife for only one week and thereafter the brother and sisters of the respondent insisted and compelled the petitioner to get transfer to a place near Nagapattinam or to leave the job at Karur. Since the petitioner was not agreed for the request of the family members, the respondent started to quarrel with the petitioner for petty matters and



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refused for conjugal relationship. Thereafter, the respondent's father took her to his house and the respondent's jewels are with the petitioner. The petitioner was awaited till September 2002, but the respondent did not return to matrimonial home. Hence, he sent notice to the respondent and filed HMOP.No.221 of 2002 under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights. In the said petition, the respondent filed counter with untrue averments and inspite of service of notices, she has not taken back the articles left by her in the matrimonial home and without any valid reason, the respondent left the petitioner and living separately. She left from the matrimonial home by her own and the respondent is not willing to lead marriage life, hence, there is no chance for re-union. Hence, the petition for divorce on the ground of desertion and cruelty is filed.

4.The gist of the respondent's/wife case is as follows:

The respondent was not living with the petitioner as separate family at Karur. She was living along with the mother and two elder sisters of the petitioner at Trichy. Further, the allegation that the respondent's elder sister insisted the petitioner to get transfer to Karur is



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utterly false and the petitioner's family was driven away the respondent by demanding the additional dowry viz., jewels, household articles and a car, though Rs.30,000/- was given as dowry at the time of marriage. Thereafter, the petitioner did not take any steps for re-union with her. In the petition filed by the petitioner in HMOP.No.221 of 2002, she filed counter expressing her willingness to live with the petitioner. The petitioner's mother and sister demanded heavy dowry viz., household articles, jewels and one Maruthi Car. Already at the time of marriage, they had given 50 sovereigns of gold ornaments to the respondent and 7 sovereigns of gold ornaments and Rs.50,000/- towards marriage expenses, to the petitioner. Being not satisfied with the dowry, the petitioner's mother and sisters demanded additional dowry and car also. The petitioner's mother and sister have ill-treated the respondent and she was beaten up by the petitioner on 03.03.2003 and they attempted to murder the respondent. Even then, the respondent is willing to join and lead the matrimonial life with the petitioner. Therefore, the petition for divorce filed by the petitioner is liable to be dismissed.



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5. Before the trial Court, on the side of the petitioner, she examined PW1 and PW2 and marked Ex.P1 to Ex.P3. On the side of the respondent, RW1 was examined and no documents were marked.

6. After considering the oral and documentary evidence adduced by both side, the trial Court has dismissed the petition in HMOP.No.7 of 2005. As against the dismissal order, the petitioner filed an appeal before the learned Principal District Judge, Trichy, in HMCMA.No.95 of 2009 on the file of the first appellate Court. The first appellate Court also dismissed the first appeal by confirming the order passed by the trial Court. As against the judgment passed by the first appellate Court, the present appeal has been preferred on various grounds.

7. The learned counsel for the appellant would contend that after the marriage, they lived as husband and wife for one week alone and thereafter, they lived separately and already the respondent ill-treated the petitioner and also not willing to live with the petitioner and she left from the matrimonial home and filed petition for dissolution of marriage on the ground of cruelty as well as desertion. Already the same petitioner



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filed a petition for restitution of conjugal rights in HMOP.No.221 of 2002 and the same was withdrawn and as per the undertaking given by the respondent/wife. Thereafter, the respondent not complied the order of the Court and she did not come forward to restitute the conjugal rights. Therefore, the present petition has been filed before the trial Court for divorce by the appellant herein. But the trial Court, without considering the petition, dismissed the petition and the first appellate Court also without analysing the evidence, simply dismissed the appeal by confirming the judgment and decree of the trial Court. Therefore, the present appeal is filed. For the past 20 years, the petitioner has been living separately and there is no scope for re-union and thereby the marriage has to be dissolved by granting decree of divorce. To support his contention, he relied the judgment in ***Samar Ghosh v. Jaya Ghosh, reported in 2007 (4) SCC511.***

8. The learned counsel for the respondent would contend that the respondent is ready and willing to live with the petitioner, but the petitioner wantonly neglected the respondent and has not taken any steps for re-union and already he filed a petition for restitution of conjugal



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rights in HMOP.No.221 of 2002. In that petition also, the respondent expressed her willingness and the same was withdrawn and thereafter, the petitioner has not taken any steps for re-union and the petitioner and his family members also ill-treated the respondent and the petitioner still having custody of the jewels belongs to the respondent. The petitioner has not proved the ground of cruelty as well as desertion. The trial Court after considering all these aspects correctly dismissed the petition and the first appellate Court also perused the records and rightly dismissed the appeal by confirming the order of the trial Court. Therefore, the present appeal is liable to be dismissed and there is no Substantial Questions of Law involved in this case. Hence, this appeal is liable to be dismissed.

9. This Court has heard both side and perused the records.

10. Upon hearing both side and perused the records, this Court framed the following Substantial Questions of Law:

1. Whether the act of separation by the respondent/wife comes under the purview of Section 13 (1)(i) (i-b) of the Hindu Marriage Act, and whether the petitioner is entitled for divorce?



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2.The learned First Appellate Judge is right in holding without valid reasons that the appellant has not taken any steps to bring back the respondent?

3.The finding of the learned First Appellate Judge that the respondent was willing to live with the petitioner relying upon the counter filed by the respondent in HMOP.221 of 2002 without noticing the prolongation of desertion by the respondent is right?

Substantial Question of Law No.1:

11. In this case, it is admitted that after the marriage, the respondent and the petitioner lived as husband and wife only for one week. Thereafter, due to misunderstanding, they lived separately and the same was admitted by the parties. The petitioner filed HMOP.221 of 2002 for restitution of conjugal rights. In that petition, the respondent expressed her willingness to live with the petitioner. Therefore, it shows that after filing of HMOP, both are ready to live together. After that there was no relationship between the parties as husband and wife. The parties are living separately for more than 20 years. According to the petitioner, the respondent, without any valid reasons, left from the matrimonial



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home and she lived along with her brothers and sisters and they insisted the petitioner to get transfer or to quit his job. In order to prove the same, the petitioner also examined the witnesses and respondent also filed written statement denying the allegations as against the parents and sisters of the petitioner. If the respondent is ready and willing for re-union with the petitioner, she would not have blamed the in-laws and the parents of the petitioner. Further, the petitioner only taken steps for re-union in the year 2002 itself and thereafter, in that petition, the respondent taken a plea that she is ready to live with the petitioner, and then the petitioner withdrawn the petition. But even after withdrawal of the petition, both parties have not living together and still they are living separately. The said fact is also admitted by both parties.

12. At this juncture, the learned counsel for the appellant relied upon the judgment reported in **2007(4)SCC511 [Samar Ghosh v. Jaya Ghosh]**, wherein in paragraph No.95, the Hon'ble Supreme Court has held as follows:

“95. Once the parties have separated and the separation has continued for a sufficient length of



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time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The Court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.”

13. On careful perusal of the judgment, it is clear that the Court should make an endeavour to reconsider the parties, if it found that break down is irreparable then divorce should not be withheld. In this case also even after the withdrawal of the restitution of conjugal rights, petition filed by the petitioner/appellant, both parties did not live together and the respondent also did not take any steps for restitution of conjugal rights. Thereafter considering the number of years of separation and considering that the petitioner in his evidence clearly stated that the petitioner wantonly without any reasons left from the matrimonial home and thereafter did not return to reconstitute the conjugal rights. Long



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separation also amounts to break down of the marriage. In view of the above said judgment of the Hon'ble Supreme Court and in view of the above discussion, this Court is of the opinion that the act of separation by the respondent also comes under the ground of cruelty.

14. The learned counsel for the respondent has relied the judgment in ***V.E.Maya v. K.S.Vetrivel***, wherein the Hon'ble Supreme Court in paragraph Nos.23. has held as follows:

“23. In the instant case, the parties are living separately for more than 12 years. The endeavour to bring re-conciliation between the parties failed, resultantly, the marriage is dead, both emotionally and practically. Continuance of the relationship for namesake is prolonging the agony and affliction would be a cruelty to both the parties. Therefore, we are of the considered opinion that the marriage between the parties has broken down irretrievably and the parties could not longer live together as husband and wife.”



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15. On careful perusal of the above judgment, it is clear that the principle or irretrievable break down of marriage to dissolve the marriage between the parties is not a ground, but in the case on hand, the parties are living separately for more than 20 years. The prolonged separation also comes under the purview of the cruelty and thereby the present appeal is liable to be allowed. This Court has not granted divorce on the ground on irretrievable breakdown of marriage. Therefore, the above said case law will not be applicable to the present case. In view of the above said discussion, this Court holds that the long separation by the respondent would constitute the ground of cruelty. Accordingly the first Substantial Question of Law is answered.

16. Substantial Question of Law No.2:

The second substantial question of law is that when the first appellate Court is right in holding that without valid reasons the appellant did not take any steps to bring back the respondent. In this context, it is admitted fact that already the appellant filed petition for restitution of conjugal rights in HMOP.221 of 2002 and the same was withdrawn and thereafter this petition is filed. But, at the same time, the



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respondent did not take any steps for restitution conjugal rights.

Therefore, the holding of the first appellate Court that the appellant has not taken any steps to bring back the respondent is not acceptable one and the appellant had already taken steps to bring back the respondent by filing HMOP.No.221 of 2002. Hence, the second Substantial Question of Law is answered.

17. Substantial Question of Law No.3:

The first appellate Court found that the respondent had already filed a memo that she is ready to live with the petitioner and thereafter HMOP.221 of 2002 was withdrawn by the petitioner. The trial Court dismissed the divorce petition holding that the petitioner has not taken any steps for re-union. The first appellate Court also dismissed the appeal filed by the appellant by confirming the finding of the trial Court. This Court, in the previous paragraphs, has already discussed on that point. The appellant alone had taken steps for re-union by filing HMOP.221 of 2002. Believing the memo filed by the respondent/wife stating that she is ready and willing to reunion with the petitioner, he had withdrawn the said petition. However, the respondent did not live together with the



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petitioner and further the respondent made allegations as against the relatives and the parents of the petitioner. The respondent has not taken any steps for reunion except filing the memo before the trial Court. But the first appellate Court rendered finding that the respondent was willing to live with the petitioner by relying upon counter filed by the respondent in HMOP.221 of 2022 without noticing the prolonged debate by the respondent and the same is unsustainable and accordingly, liable to be set aside. Thus, the third Substantial Question of Law is answered.

18. In view of the above discussions made in the Substantial Questions of Law, the Courts below have not considered the material aspects and dismissed the petitions. Therefore, the orders of the Courts below are liable to be set aside.

19. During the course of arguments, the learned counsel for the appellant has expressed his willingness to offer a sum of Rs.5,00,000/- (Rupees Five lakhs only) as permanent alimony to the respondent/wife. The appellant is working as Assistant Engineer at Karur Municipality.



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Considering the status of the parties and the request made by the appellant, it is appropriate to award a sum of Rs.12,00,000/- (Rupees twelve lakhs only) towards permanent alimony to the respondent. Accordingly, the appellant is directed to pay a a sum of Rs.12,00,000/- (Rupees twelve lakhs only) towards permanent alimony to the respondent within a period of within a period of two months from the date of receipt of a copy of this order.

20. The learned counsel appearing for the respondent argued that the petitioner is having custody of the jewels and the same may be ordered to be returned back to the respondent. The appellant denied the same in his counter. As far as the contention raised by the respondent/wife in respect of the jewels are concerned, there is no evidence before this Court and it is for the respondent to work out her remedy in the manner known to law.

21. In view of the answers made in the above Substantial Questions of Law and with the above directions, this Civil Miscellaneous Second Appeal stands allowed and the orders passed by the Courts below



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are set aside. The marriage solemnized between the appellant and respondent dated 03.06.2002 is hereby dissolved by granting a decree of divorce. No Costs.

20.02.2024

Index : Yes/No
NCC : Yes/No
PJJ

To

- 1.The Principal District Judge, Tiruchirappalli.
- 2.The Principal Subordinate Judge, Tiruchirappalli.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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