



C.M.S.A.(MD).No.23 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.S.A.(MD)No.23 of 2013

R.Rajasekar

... Appellant/Appellant/Petitioner

-vs-

S.Chitradevi.

... Respondent/Respondent/Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act r/w under Section 100 of C.P.C, against the order of the Principal District Judge, Theni passed in H.M.C.M.A.No.4 of 2011, dated 27.09.2012 confirming the judgment of the Sub Court, Uthamapalayam in H.M.O.P.No.73 of 2008, dated 31.01.2011.

For Appellant : Mr.C.K.M. Appaji
For Respondent : Mrs.A.Banumathy

J U D G M E N T

This Civil Miscellaneous Second Appeal has been filed by the appellant as against the order passed in H.M.C.M.A.No.4 of 2011 on the file of the Principal District Court, Theni, wherein, the petitioner has filed the



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appeal as against the order passed in H.M.O.P.No.73 of 2008 on the file of the Uthamapalayam. The appellant herein has filed the petition seeking divorce as against the respondent on the ground of cruelty. The Trial Court dismissed the petition and challenging the same, the petitioner preferred the appeal and the same was also dismissed by the first appellate Court, and as against the said order, the present Civil Miscellaneous Second Appeal has been preferred by the petitioner.

2. The brief facts of the averments made in the petition before the trial Court are as follows:

The marriage between the appellant/petitioner and the respondent was solemnized on 05.03.2007, at Chinnamanur “Rukmani – Dhamodharan Wedding Halls” under the Hindu Marriages Act. After the marriage, they lived at Bangalore for some days and thereafter the petitioner was transferred to New Delhi in the month of April 2007. At that time, he sent the respondent to her parents house at native place. Thereafter, he said that he will take her along with him while coming back, but the respondent tortured the petitioner continuously. He came back to his home because of the torture of the respondent. Thereafter, on 31.05.2008, the respondent went her parents house



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at Iluppur. When the petitioner sent the notice through his counsel, dated 28.07.2008. there was no response, thereby he filed the petition for seeking divorce.

3. The brief averments in the counter filed by the respondent are as follows:

The petition is not maintainable either in law or on facts. After the marriage, the respondent was living happily with her husband at Bangalore. Thereafter, the petitioner was transferred to New Delhi. At that time, the petitioner's parents told her that they can live together only after paying a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as dowry. The respondent is willing to live with her husband. Hence, the petition is liable to be dismissed.

4. Before the Tribunal, on the side of the petitioner, P.W.1 to P.W.4 were examined and Exhibits Ex.P.1 to P.4 were marked. On the side of the respondent, R.W.1 was examined and no document was marked. After analyzing the evidences adduced on both the sides, the trial Court dismissed the petition, as against the same, the first appeal was filed by the petitioner in H.M.C.M.A.No. 4 of 2011. The first appellate Court also dismissed the



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appeal by confirming the order of the trial Court. As against the said judgment, the present appeal has been preferred on various grounds including the following substantial questions of law:

1) Whether the ingredients of Section 13(1-a) (1-b) of Hindu Marriage Act are proved by the Appellant and whether the Court below are right in dismissing the Divorce Petition?

2) Whether the findings of the Court below that the conduct of the wife not accounted for cruelty to the appellant by ignoring the evidence on record is sustainable?

3. Whether for grant of divorce on the ground of irretrievable break down of marriage, the technicalities should stand in any way to grant relief to the appellant?"

5. The learned counsel appearing for the appellant would contend that the marriage between the petitioner and the respondent took place on 05.03.2007 and they were living happily. Thereafter, the appellant was transferred to New Delhi and hence, he left her in her parents house.



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Thereafter, due to the torture given by the respondent, the appellant came to his native place. However, the respondent refused to live with him and she was living separately. The respondent did not come to the appellant/petitioner and made phone call to her and he went back to Delhi and also she threatened to commit suicide by opening gas cylinder, to prove the same the petitioner has examined P.W.1 to P.W.4 and marked Exs.P1 to P4. But the trial Court without considering on his evidence and erroneously dismissed the petition. Thereafter, the appellant/petitioner filed the appeal before the first appellate Court and the first appellate Court also without analyzing witnesses in proper prospective manner, dismissed the appeal. Therefore, the orders passed by the court below are liable to be set aside by allowing this appeal.

6. The respondent has not taken any steps for reunion and the appellant and the respondent are living separately for more than 15 years. Therefore, the appellant/petitioner is entitled to get divorce on that ground also. In support of his contention, he relied upon the judgment in **2022 Live Law (Sc) 167 (Debananda Tamuli V. SMTI Kakumoni Katakya (2) 2008-3-L.W.864 (Dr.Gopal Ramanathan Vs.Jayashree)**



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7. The learned counsel appearing for the respondent would contend that in order to prove the allegations made in the petition with regard to the cruelty there is no evidence adduced by the appellant/petitioner though the appellant/petitioner examined P.W.1 to P.W.4, those evidences are not reliable and none of the witnesses examined on the side of the petitioner spoke about witnessing the alleged threatening of the respondent to commit suicide. Therefore, the Trial Court came to a conclusion that the appellant failed to prove the cruelty and also ground of desertion. The first appellate Court after analyzing the evidences correctly dismissed the appeal. Therefore, there is no merit in this appeal and the same is liable to be dismissed.

8. In this case, there is no dispute between the parties about the marriage between the petitioner and the respondent and they have no issues. The main contention of the appellant is that the respondent did not live and speak with the parents of the appellant/petitioner and she gave mental torture to the appellant to take her to New Delhi and she also attempted to commit suicide by opening the gas cylinder. To prove the same P.W.1 to P.W.4 were examined and Exs. P.1 to P.4 were marked. The petitioner side witnesses categorically deposed about the alleged attempt of committing suicide but the



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trial Court dismissed the petition on the ground that the allegation of suicide was not mentioned in the petition.

9. The respondent contented that the respondent has denied the allegations made in the petition and even now she is ready and willing to live with the appellant/petitioner, but did not take any steps by filing petition for restitution of conjugal rights. As far as the substantial question of law is concerned, the appellant/petitioner has examined P.W 1 to P.W4 and marked documents P.1 to P.4 which clearly established the cruelty caused by the respondent and it is also an admitted fact that both the appellant and the respondent are living separately for more than 15 years. Therefore the appellant has proved the case under Section 13 (1)(b) of the Hindu Marriage Act.

10. The second substantial question of law is, “whether the findings of the Court below that the conduct of the wife not accounted for cruelty to the appellant by ignoring the evidence on record is sustainable”, In this context on the side of the appellant he examined witnesses and they categorically deposed about the cruelty caused by the respondent. The rial Court without appreciating the evidence in an appropriate and prospective manner,



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erroneously dismissed the petition disbelieving the evidence of the appellant/petitioner. Therefore, the findings of the trial Court are not sustainable. This substantial questions of law are answered, accordingly.

11. Substantial question of law No.3 is “Whether the grant of divorce on the ground of irretrievable break down of marriage, the technicalities should stand in any way to grant relief to the appellant? As far as the grant of divorce on the ground of irretrievable break down of marriage, is concerned as per the Hindu Marriage Act, there is no ground mentioned in the Act. But, however the Hon'ble Supreme court by invoking Article 142 of Constitution of India granted divorce on the ground of irretrievable break down of marriage. Therefore, this Court cannot grant divorce on the ground of irretrievable break down of marriage. However, already held in the previous points that the petitioner has proved the case and the orders passed by the Court below have not appreciated evidence in proper perspective manner. Therefore the order passed by the Courts below are liable to be set aside and the petitioner is entitled for the relief of divorce.



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12. Considering the age of the parties and considering the fact that the petitioner has not paid maintenance to the respondent so far and the respondent has not taken any steps for maintenance, this Court is inclined to award a sum of Rs.11,00,000/- (Rupees Eleven Lakhs only) towards permanent alimony to the respondent. In view of the above answers for the substantial questions of law, this Civil Miscellaneous Second appeal is liable to be allowed accordingly, this Civil Miscellaneous Second Appeal is allowed. The judgment passed by the Principal District Judge, Theni, passed in H.M.C.M.A.No.4 of 2011, dated 27.09.2012 confirming the order of the Sub Court, Uthamapalayam in H.M.O.P.No.73 of 2008, dated 31.01.2011 the order passed by the first appellate Court are set aside and the marriage between the petitioner and the respondent dated 05.03.2007 is dissolved. The petitioner is directed to pay a sum of Rs.11,00,000/- (Rupees Eleven Lakhs only) towards permanent alimony to the respondent. There shall be no order as to costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal District Judge,
Theni.
2. The Sub Court,
Uthamapalayam.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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