



C.M.S.A.(MD)No.48 of 2006

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.03.2024

PRONOUNCED ON : **19.06.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.48 of 2006
and
C.M.P.(MD)Nos.4543 and 4544 of 2023

K.S.Sivakumar

... Appellant / Appellant / Petitioner

Vs.

S.Gayathri

... Respondent / Respondent/ Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act, 1955 read with U/S 100 of CPC, to set aside the Judgment and decree dated 15.03.2005 in C.M.A.No.13 of 2003 on the file of the Additional District & Sessions Judge, Fast Track Court, Dindigul confirming the Fair and Executable Order dated 06.11.2002 in H.M.O.P.No.3 of 1998 on the file of the Principal Subordinate Judge, Dindigul.

For Appellant : Mr.A.N.Ramanathan

For Respondent : Mr.N.Vallinayagam



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C.M.S.A.(MD)No.48 of 2006

JUDGMENT

This Civil Miscellaneous Second Appeal has been preferred against the Judgment and decree dated 15.03.2005 made in C.M.A.No.13 of 2003 on the file of the Additional District and Sessions Judge, Fast Track Court, Dindigul, confirming the fair and final order dated 06.11.2002 made in H.M.O.P.No.03 of 1998 on the file of the Principal Subordinate Judge, Dindigul.

2.The petitioner is the husband and the respondent is the wife. The petitioner / husband filed a petition under Section 13 (1) (1-A) of Hindu Marriage Act, 1955, seeking to dissolve the marriage between the petitioner / husband and the respondent / wife by decree of divorce on the grounds of cruelty.

3.For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.



C.M.S.A.(MD)No.48 of 2006

4.The case of the petitioner in short is as follows:-

(i)The marriage between the Petitioner and Respondent was solemnized according to Hindu rites and customs and usage of their community at Mahalingam Nadar Deivaanaiammal marriage hall, Dindigul.After their marriage, the couple lived together for about ten days at the petitioner's parents' home in Dindigul. During this short period, the respondent began harassing the petitioner. On 24.11.1994, the respondent's parents visited the petitioner's house. Out of respect, the petitioner welcomed them and intending to give them privacy, the petitioner stepped aside and left that place. However, the respondent misunderstood this gesture and accused the petitioner of insulting her parents that night. From then on, the respondent frequently insulted the petitioner and his family over trivial matters. Moreover, she used to claim that all men should be subservient to women. Despite the petitioner's best efforts to address the ongoing issues, the respondent's attitude did not improve. Though the petitioner was exhausted he was under the impression the respondent's attitude would change for the better.

(ii)The petitioner also arranged a honeymoon trip for the couple, but the respondent refused for the same. Later, they moved to Chennai and continued



C.M.S.A.(MD)No.48 of 2006

their married life, but the respondent's behaviour remained unchanged. Matters worsened as the respondent began verbally abusing the petitioner and his parents without any reason. The respondent also pressured the petitioner to quit his job in Chennai and move to the United States for a new job, insisting that they both travel together on the same flight. Despite the petitioner's efforts to meet these demands, he faced difficulties securing a suitable job in the U.S. that would allow them to travel together, which led to further disputes initiated by the respondent. This caused mental pressure and stress to the petitioner.

(iii) During this stressful period, the petitioner's younger brother, a medical student, fell in love with one of his classmates and informed the family about his desire to marry her. As the eldest son, the petitioner took responsibility for arranging the wedding, which took place on 27.04.1995 in Barkala, Karnataka.

(iv) Although the respondent and her parents attended the wedding, they did not participate with full commitment. At the Coimbatore railway station, the respondent and her parents insulted the petitioner's family. Ignoring the petitioner's request, the respondent's parents left the petitioner and his family at the railway station and went directly to Periyakulam. However, the petitioner



C.M.S.A.(MD)No.48 of 2006

did not take this incident as an offence and brought the respondent back to Chennai. Even after returning to Chennai, the respondent's behaviour did not improve.

(v)The petitioner's brother's wife used to write letters to the petitioner, addressing him as "Brother" and ending the letters with "Yours Affectionately". The respondent could not accept this brother-sister bond and began accusing the petitioner of having an inappropriate relationship with his brother's wife. These baseless accusations caused the petitioner immense mental distress.

(vi)On 27.05.1996, the petitioner on getting a job in Singapore, left for Singapore leaving the respondent behind at her parents' house in Periyakulam. Later, on 17.06.1996, the respondent rejoined the petitioner in Singapore. However, the respondent continued to raise objections, including disapproving of the letters, phone calls and insisted that the petitioner sever all contact with his parents and his brother's family. During this time, the petitioner received the news that his brother's wife was pregnant. This situation further escalated the tensions caused by the respondent's behaviour.



(vii)The respondent expressed a strong desire to have the first child in the family and insisted that the pregnancy of the petitioner's brother's wife be terminated. When the petitioner refused, the respondent threatened to commit suicide and, on one occasion, even attempted to hang herself in the house they were staying in. The petitioner intervened and prevented the attempt. Following this, the respondent frequently argued with the petitioner and, at times, physically assaulted him. These actions led the petitioner to believe that the respondent was not in a stable state of mind and was suffering from mental disturbances. However, the respondent refused the petitioner's suggestion to seek treatment from a psychiatrist in Singapore.

(viii)The respondent's behavior made it impossible for the petitioner to focus on his work. As a result, the petitioner's employer asked him to resign from his job. The petitioner resigned and returned to India with the respondent on 16.07.1997. The respondent insisted that the petitioner not inform his parents about their return, but the respondent informed her parents. Upon returning to India, they went directly to her parents' house in Periyakulam. To avoid conflict and satisfy the respondent, the petitioner accompanied her to Periyakulam. While being there, the respondent and her parents demanded that the petitioner hand over all his earnings from Singapore to the respondent's



C.M.S.A.(MD)No.48 of 2006

father, petitioner refused, and he returned to Dindigul.

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(ix)Despite several attempts at mediation to resolve the disputes, no resolution was reached, and the respondent continued her unacceptable behaviour. According to the customs of the petitioner's community, a special ceremony is held for a pregnant woman in her seventh month. However, this ceremony was not conducted by the respondent's parents. The petitioner made several attempts to reconcile with the respondent, but the respondent refused to cooperate and continued staying at her parental home for reasons best known to her. Moreover, around May 1996, the respondent's father borrowed ₹1,00,000 from the petitioner but did not repay the amount. The respondent's actions caused the petitioner immense mental anguish, suffering, and emotional distress.

(x)The petitioner was admitted at Jawahar Hospital in Madurai for 14 days to receive treatment for depression. These actions of the respondent indicate that the respondent is suffering from a psychopathic disorder, which has caused significant mental distress to the petitioner. As a result, on 02.12.1997, the petitioner, through an advocate, sent a notice to the respondent requesting that the respondent undergo treatment for the psychopathic disorder.



C.M.S.A.(MD)No.48 of 2006

However, after receiving the notice, the respondent sent a reply with false allegations refusing to undergo treatment for the illness.

(xi) Given these circumstances, the petitioner has been unable to lead a peaceful life with the respondent, and the petitioner's safety is at risk due to the respondent's behaviour. Therefore, the petitioner has filed this petition seeking relief of divorce from the respondent.

5.The case of the respondent in short as follows :-

(i) The claim and allegations of the petitioner were denied as false and fraudulent except those that are expressly admitted by the respondent. The factum that the petitioner and the respondent got married to each other alone is admitted. At the time of the marriage, the petitioner was employed in Chennai. After the wedding, the petitioner decided to permanently reside in Chennai and, therefore, took only a short leave for the marriage, staying in Dindigul until the end of that leave. Subsequently, the petitioner's parents and the respondent's parents accompanied the couple to Chennai and helped them settle there. Contrary to what is stated in the petition, the claim that the petitioner and respondent lived as a family in Dindigul for only about 10 days after the marriage is false. Similarly, the allegation that the respondent began harassing the petitioner within 10 days after the marriage is also untrue.



(ii)The claim that the respondent's parents visited the petitioner's home in Dindigul on 24.11.1994 and that the respondent quarreled with the petitioner and scolded him for leaving the place after welcoming the respondent's parents is entirely false. No such incident occurred as described by the petitioner. These events have been fabricated by the petitioner. Likewise, the claim that the respondent stated that all men should be subservient to women and refused to go on a honeymoon is also false. Since the petitioner had taken only 10 days of leave for the marriage and had to return to work afterward, no arrangements for a honeymoon were made. After the petitioner and respondent began their family life in Chennai, the respondent lived amicably with the petitioner. The claim of the petitioner that the respondent did not change their behaviour and began insulting the petitioner's parents without any reason is also false. The respondent never intended to insult the petitioner's parents and was living peacefully with the petitioner in Chennai.

(iii)Similarly, the claim that the respondent demanded that the petitioner leave his job in Chennai, move to America, and ensure they travelled on the same flight is also baseless. The respondent made no such demands. Important facts have been deliberately concealed by the petitioner in the petition. Petitioner's mother is a well-established practising doctor. It is well-known that



C.M.S.A.(MD)No.48 of 2006

the petitioner was suffering from dust allergy and mental depression even before the marriage. Furthermore, the petitioner had undergone surgery for the removal of a kidney stone. These facts were hidden by the petitioner's parents, and the marriage was conducted in Dindigul following an engagement held in Periyakulam, without disclosing these issues to the respondent's parents. Petitioner's parents demanded a huge sum of dowry, cash and gold jewellery. The betrothal took place on 23.10.1994 in Periyakulam. It was agreed that the marriage would be held in Dindigul and that the respondent's parents would provide a cash amount of Rs. 20,000/- and Rs. 5,000/- for the groom's attire to the petitioner's parents. In addition, 60 sovereigns of jewellery and other items were provided to the petitioner at the time of the marriage. The respondent held a Bachelor of Commerce degree, and all academic certificates belonging to the respondent, along with their jewellery, were placed in a safety deposit box at Bharat Bank, Dindigul, by the petitioner.

(iv) When the petitioner's brother fell in love with a fellow student and expressed his desire to marry her, informing his parents to make the necessary arrangements, the petitioner's parents were upset and distressed by their younger son's attitude. This situation caused worry and stress for the petitioner, which led to him acting beyond acceptable limits at his workplace. He began



C.M.S.A.(MD)No.48 of 2006

insulting the respondent and, on some occasions, even resorted to physical violence. Growing suspicious of the respondent, the petitioner started locking her in the house before leaving.

(v) Eventually, with the intervention of the respondent's parents, the petitioner's parents agreed to arrange the marriage for the petitioner's brother. Contrary to what has been claimed, the respondent and her parents attended the petitioner's brother's wedding, with full commitment. The claim that the respondent's parents insulted the petitioner at Coimbatore Railway Station on their way back to Dindigul after the wedding is false; it was, in fact, the petitioner who insulted the respondent's parents. Despite this, the respondent's parents bore no grudge and attended the wedding reception on 01.05.1995. Therefore, all the claims made by the petitioner in this regard are entirely false. Even after the petitioner's brother's marriage, the respondent continued to lead a peaceful family life with the petitioner in Chennai and remained accommodating and respectful toward him. The respondent never raised any issues regarding letters written by the petitioner's brother's wife. In March 1996, the petitioner was unable to travel to the United States due to a leg injury sustained in an accident. During this time, the respondent provided care and treated the petitioner tirelessly, day and night.



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(vi) In this situation, the petitioner secured a job in Singapore and moved there on 27.05.1996 after recovering from the injuries sustained in the accident. Subsequently, on 17.06.1996, the respondent joined the petitioner in Singapore. The petitioner's parents, brother, and sister-in-law once visited Kodaikanal and, on their way, stopped at the respondent's parents' house, where they had refreshments and lunch with them. Whenever the petitioner's parents travelled to Periyakulam or towns in the southern region occasionally, they would occasionally visit the respondent's parents' house in Periyakulam.

(vii) Contrary to the petitioner's claims, the allegation that the respondent quarrelled with the petitioner for alleging that he has an inappropriate relationship with his brother's wife is entirely false. If the petitioner's accusations were true, the respondent could not have acted as a caring and devoted wife, such as when she took care of the petitioner during his two-month recovery from the accident. Similarly, she would not have independently moved to Singapore and fulfilled her responsibilities as a dutiful wife. The allegations that the respondent forced the petitioner to sever contact with his parents and brother's family while in Singapore are also baseless. Claims that the respondent objected to phone calls and letters from the petitioner's family



C.M.S.A.(MD)No.48 of 2006

are untrue. On the contrary, it was the petitioner who insisted on cutting ties with the respondent's parents. Additionally, the petitioner has control over the key to the mailbox in their home in Singapore, showcasing his dominance over the respondent. The respondent did not inform her parents about the situation. Moreover, it was due to the petitioner's inappropriate behaviour certain women in Singapore and Chennai caused trouble for the petitioner, despite this, the respondent intervened and resolved the issues. The respondent also learned from the petitioner that he had been in love with a woman named Yamini, but due to his suspicious and controlling nature, Yamini chose to marry another man.

(viii) The petitioner had written letters to his parents, instructing them to contact his office address for any required details. The respondent has also filed a letter dated 23.04.1997 written by the petitioner. Due to the petitioner's suspicious nature, he reportedly locked the respondent inside their house in Singapore and committed this domestic violence against her. The petitioner allegedly harassed the respondent by cursing and physically abusing her. He also urged the respondent to commit suicide, either by jumping from the 16th floor or hanging herself.



(ix) Contrary to the petitioner's claims, when the petitioner's brother's wife announced her pregnancy, the respondent allegedly became angry and demanded that the first child in the family should be hers. She insisted that the petitioner's brother's wife terminate her pregnancy. These allegations, as stated by the petitioner, are entirely false. When the petitioner refused to comply, it was alleged that the respondent threatened and attempted to commit suicide. This claim is also untrue, as it was the petitioner who inflicted cruelty upon the respondent.

(x) The petitioner reportedly experienced severe stress and fainted due to palpitations at his workplace. As a result, he was admitted to a hospital in Singapore for three days in April 1997 and received treatment. Following this incident, the petitioner lost his job in Singapore and returned to India. Despite the hardships, the respondent was accommodating and fulfilled all the petitioner's needs while being in Singapore, even during her pregnancy. The respondent claims that the petitioner's accusations regarding her conduct are baseless.

(xi) The petitioner, who was mentally disturbed, received treatment from a psychiatrist in Singapore. However, he never insisted the respondent take



treatment for depression. It is noteworthy that the respondent was conceived with child even before the petitioner's brother's marriage but it eventually got aborted. The respondent's thriftiness enabled the couple to save money while in Chennai, and the petitioner reportedly lent that money for interest in Uttampalayam and Kambam areas. The petitioner's claim that the respondent's father received a loan of Rs. 1,00,000/- in May 1990 is also false.

(xii) The petitioner's assertion that he was admitted to Madurai Jawahar Hospital for 14 days for mental anguish and depression is also denied. During the period between 15.08.1997 and 27.08.1997 when petitioner was admitted in the above hospital, the respondent, who was pregnant, took care of the petitioner while managing her own condition as well. The petitioner's depression reportedly predated their marriage.

(xiii) When the couple returned from Singapore to Chennai, from 16.07.1997 until 23.07.1997, they stayed at the respondent's sister's house in Tambaram. From there, they directly travelled to Periyakulam and then petitioner leaving behind the respondent travelled to Dindigul. The respondent later joined the petitioner in Dindigul following a mediation on 13.08.1997.

However, on the same day, due to the petitioner's bad habits, he experienced



C.M.S.A.(MD)No.48 of 2006

stress and was admitted to Jawahar Hospital for treatment until 27.08.1997.

Petitioner's attitude caused mental stress to the respondent making her fall sick.

(xiv)Following which, the respondent was taken by her parents from Dindigul to Periyakulam for treatment. The doctor in Periyakulam advised her to rest and continue treatment. Despite this, the petitioner's mother issued an ultimatum on 16.09.97, threatening that the respondent must immediately return to Dindigul or never come back to their house. Due to her health, the respondent could not travel on that date. Subsequently, the petitioner entirely rejected the respondent by refusing to allow her to return to Dindigul. The petitioner's mother allegedly told the respondent to give birth to the child and die, remarking that it is common for mothers to die in such circumstances. She further stated that even if the respondent were slowly poisoned to death, it would not matter, only if you are alive you would go and disclose about my family, my son's bad habits, particularly regarding his relationship with other women. She also questioned, "Who are you to inquire about my son?" . The petitioner reportedly insulted the respondent by claiming, "I know how to cast spells, manipulate, and lure anyone to my side. I also know how to deceive God by making false promises, and I will get your signature on anything."



C.M.S.A.(MD)No.48 of 2006

(xv)The respondent gave birth to a baby girl on 12.01.1998, at Convent Hospital, Theni. This was immediately communicated to the petitioner and his parents, but they did not visit to see the child.

(xvi)The petitioner allegedly inflicted unspeakable cruelty on the respondent and, on 02.12.1997, issued a notice rejecting her entirely while including false allegations. In this notice, the petitioner described the respondent as suffering from a "psychopathic disorder," further exacerbating her distress and thereby inflicting cruelty on her. Despite the petitioner's actions, the respondent desires to reconcile and live a peaceful family life, adhering to her role as a devoted Hindu wife, provided the petitioner assures the court that he will treat her with respect and humanity.

(xvii)The respondent issued a conciliatory reply to the petitioner's notice on 20.12.1997, refraining from mentioning the petitioner's atrocities. However, the petitioner has now filed this petition by misusing legal procedures and concealing the truth. Thus, the respondent respectfully submits that this petition is not legally maintainable, lacks a valid cause of action, and should be dismissed with costs awarded to the respondent.



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6.The learned trial court has framed one issue. Following which,three witnesses were examined as P.W.1 to P.W.3 and Ex.P1 to Ex.P8 were marked on the side of the petitioner. Two witnesses were examined as R.W.1 and R.W.2 and Ex.R1 to Ex.R16 were marked on the side of the respondent.

7.The learned Trial Court observed that the petitioner's allegations against the respondent, such as finding fault with his parents and claiming men should be subservient to women were unsubstantiated, relying solely on oral statements without supporting evidence. The learned Court noted that the petitioner never raised these issues with family members and admitted during his testimony that the respondent never fought with his parents. Regarding the claim that the respondent's parents were not fully committed at the petitioner's brother's wedding, the learned Trial Court highlighted that P.W.3, in her deposition, did not corroborate this claim. The learned Trial Court found all the allegation of the petitioner baseless. The learned Trial Court noted that Ex.R3, a letter written by the petitioner and admitted in Court, contradicts the claim that the petitioner and respondent had issues due to the respondent's behavior. If there had been a lack of peace or unity, the petitioner would not have written such a thoughtful and caring letter. This indicates that there was no conflict



C.M.S.A.(MD)No.48 of 2006

between them before the petitioner went to Singapore. Additionally, Ex.P6, Ex.P7, and Ex.R8, letters written by the respondent to the petitioner's parents in Dindigul, had expressing genuine care and affection for the petitioner's family, including his mother, father, brother, and sister-in-law. Ex.P2 and other letters written by the petitioner to his and the respondent's parents do not mention any marital issues, contradicting the petitioner's claims of discord. The petitioner himself arranged for the respondent to join him in Singapore shortly after he moved, demonstrating his intention to maintain the relationship. The learned Trial Court found that the petitioner suffered from pre-existing health issues, including dust allergy, depression, and kidney stones, which contributed to his stress and health decline. The petitioner admitted to being treated for depression in Singapore and later in India, but there was no evidence linking this to the respondent's actions. The respondent consistently cared for the petitioner during his illnesses and hospitalizations, including when he fainted in Singapore, after his return to India, and during his treatment at Jawahar Hospital. These actions indicate concern and support, refuting claims of neglect or harassment. The learned Trial Court concluded that the petitioner and respondent's marital problems were typical disputes magnified by family tensions rather than acts of cruelty or harassment by the respondent. The learned Trial Court proceeded to conclude that there was no truth in the reasons



C.M.S.A.(MD)No.48 of 2006

given by the petitioner and the learned Trial Court found no valid grounds or substantial evidence to grant the petitioner the relief of divorce. Consequently, the learned Trial Court found the petitioner's claims for divorce unproven and dismissed the petition accordingly. Assailing the same, the petitioner/husband preferred an Appeal in C.M.A.No.13 of 2003 before the learned Additional District Judge, Dindigul.

8.The learned First Appellate Court proceeded to observe that the evidence from both sides, including witness testimonies and exhibits, revealed no grave or serious allegations or errors by either party. The respondent wife demonstrated love, affection, and possessiveness towards her husband, while the petitioner was noted to be under stress and tension. A dispute over a loan involving the respondent's father may have contributed to their strained relationship. The learned First Appellate Court concluded that their differences were exaggerated, leading to ill feelings and separation. Despite having a six year old daughter, the couple remains estranged, which has only deepened their rift. The court emphasized that parenthood transforms the spouses' priorities, requiring them to focus on the child's welfare, even at the cost of personal differences. It is unfortunate that the appellant and respondent have failed to reunite for their child's sake, neglecting the greater responsibility of parenting



C.M.S.A.(MD)No.48 of 2006

over their conjugal discord.

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9.The learned First Appellate Court viewed this petition as extraordinary and believes the appellant did not genuinely seek a divorce. After six years, the court feels the passage of time may have brought maturity and a change in attitude for both parties. It suggests that resuming conjugal life, particularly for the welfare and future of their child, could lead to a fresh start. When questioned, the appellant's counsel failed to provide a clear justification for the divorce, even after consulting the appellant. The learned First Appellate Court inferred that the primary motive might be to remarry, which the counsel did not refute. In Tamil Nadu's cultural context, matrimonial relationships are expected to endure for a lifetime, based on mutual understanding and tolerance. The court concurs with the trial court's finding that the allegations of cruelty or psychopathic mental disorder against the respondent were unsubstantiated by evidence. Hence, the First Appellate Court found no irregularity in the Trial Court's judgment. Consequently, the First Appellate Court dismissed the appeal in C.M.A.No.13 of 2003.

10.Assailing the same, the appellant husband has preferred this Civil Miscellaneous Second Appeal.



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11. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the respondent and carefully perused the materials available on record.

12. This is a case where the petitioner husband has filed a Petition for divorce on the grounds of cruelty and the psychopathic disorder of the respondent wife. To substantiate his claim, he was examined as P.W.1 and two other witnesses were also examined on his behalf as P.W.2 and P.W.3 through whom Exs.P1 to P8 were marked. On the side of the respondent wife, two witnesses were examined including the respondent wife and Exs.R1 to R16 were marked. All the allegations of arrogance, insubordination, perverted behavior, disrespectful attitude towards the elders of the petitioner's family, non-cooperation during the marriage of the petitioner's brother, failure to discharge the duties of a dutiful wife and psychopathic disorder as claimed by the petitioner could not be ably proved by the petitioner by bringing in cogent oral and documentary evidence. Considering the letters marked as Ex.P6, Ex.P7 and Ex.R8 written by the respondent to the petitioner's parents, the learned Trial Court proceeded to observe that those letters would reveal the decent and genuine nature of the respondent, who as a dutiful daughter-in-law has



maintained cordial relationship with her in-laws. None of the allegations of the petitioner was corroborated by his witnesses, that is, P.W.2 or P.W.3. Ex.R3 is a letter written by the petitioner to the respondent, while he was in Singapore. The same would reveal that his relationship with the petitioner had been very cordial and loving, when he left for Singapore leaving the respondent in India for pursuing a job. However, the respondent has appropriately proved by deposing proper evidence and bringing in documentary evidence that the petitioner failed to behave as a dutiful father even after the birth of a daughter. Alleging cruelty or psychopathic mental disorder against a wife by a husband is not an ordinary trait, which could be easily taken by a wife. However, in the instant case, despite all the allegations the respondent had continuously and consistently shown her indulgence repeatedly to rejoin with her husband petitioner as a dutiful Hindu wife and a dutiful mother for the well-being of her daughter. Both the learned Trial Court as well as the First Appellate Court after considering the oral and documentary evidence produced by the respective parties and the pleadings as well as the evidence deposed, had come to a conclusion that all the allegations made by the petitioner in his pleadings are baseless and the grounds put forth by him in his pleadings, was also not proved before the learned Trial Court with probable evidence. On such circumstances, the petitioner's case has to necessarily fail. I am also of the considered view that



based on the evidence led by the rival parties and also through the pleadings of the respective parties, the petitioner husband had failed to establish that he was subjected to cruelty at the hands of his respondent wife, due to her indifferent attitude and psychopathic mental disorder. The petitioner had miserably failed to discharge the onerous responsibility of substantiating even a single fact to demonstrate any of the erratic behaviour of the respondent wife. The term “mental cruelty” has been defined in the Blacks Law Dictionary (8th edition, 2004) as under colon:-

“The term "mental cruelty" has been defined in the Black's Law Dictionary [8th Edition, 2004] as under:

"Mental Cruelty - As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse."

The concept of cruelty has been summarized in Halsbury's Laws of England [Vol.13, 4th Edition Para 1269] as under:

"The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders



them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other; weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists."

In 24 American Jurisprudence 2d, the term "mental cruelty" has been defined as under:

"Mental Cruelty as a course of unprovoked conduct toward one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse."

13. In the instant case, to determine whether the instances of mental



cruelty enumerated by the petitioner husband would cumulatively be adequate to grant a decree of divorce on the ground of mental cruelty, considering the entire facts and circumstances of the case, I am of the considered view that the claim of the petitioner that the respondent had been disrespectful and undutiful towards him during the entire period of life has not been proved by the petitioner by bringing in probable evidence. That apart, the allegations of psychopathic disorder suffered by the respondent has never been touched by the petitioner or the witnesses examined on the side of the petitioner and their testimony has miserably failed to prove the contentions pleaded by the petitioner in his Petition. The Hon'ble Supreme Court in the case of **Chetan Das v. Kamala Devi** reported in Manu/Supreme Court/0262/2001 in Para No.14 at Page Nos.258 - 259 has held as under:-

“Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be



appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case."

14. Giving time and importance to the institution of marriage and the welfare of the girl child begotten by the respondent through the petitioner, both the learned Trial Court as well as the learned First Appellate Court had rightly concurred with each other and dismissed the petitioner's petition for divorce.

15. The Hon'ble Apex Court in the case of ***Vishwanath Agrawal .Vs. Sarla Vishwanath Agrawal reported in (2012) 7 SCC 288*** has dealt with the case of concurrent findings by the Trial Court and the First Appellate court and has held that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. The relevant portion of the same is extracted as follows:

"36. In Major Singh v. Rattan Singh it has been observed that when the courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider



C.M.S.A.(MD)No.48 of 2006

whether the reasons given by the courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.

37. In Vidhyadhar v. Manikrao it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdiction under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decision of this Court in Abdul Raheem v. Karnataka Electricity Board.”

16. Fully fortified by the judgment by Hon'ble Apex Court and fully satisfied by the concurrent findings of the learned Trial Court Dindigul and the learned District Court, Dindigul and holding that the decisions of both the lower Courts are fully supported by the evidence, I am not inclined to interfere with the Judgment and decree passed by the learned District Judge in C.M.A.No.13 of 2003 and H.M.O.P.No.3 of 1998.



C.M.S.A.(MD)No.48 of 2006

17. Accordingly, this Civil Miscellaneous Second Appeal is dismissed.

There shall be no order as to costs. Connected miscellaneous petitions are closed.

19.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The Fast Track Court,
Dindigul.
2. The Principal Subordinate Judge,
Dindigul.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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