



C.M.A(MD)No.756 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :23.10.2024

CORAM

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

C.M.A(MD)No.756 of 2022

and

C.M.P.(MD).No.867 of 2023

C.S.Rajendra Kulothungan

...Appellant

Vs.

P.Sindhu Sowmiya

...Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, to call for the records relating to the impugned fair and decreetal order dated 27.05.2022 made in H.M.O.P.No.2 of 2020, on the file of the Family Court, Karur and set aside the same.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.J.Barathan for
Mr.V.Sasikumar



C.M.A(MD)No.756 of 2022

WEB COPY

J U D G M E N T

[Order of the Court was made by **Mr.K.K.RAMAKRISHNAN, J.**]

Husband is the appellant and he has filed this Civil Miscellaneous appeal challenging the dismissal order of his divorce petition in H.M.O.P.No. 2 of 2020 on the file of the Family Court, Karur without accepting his plea for the divorce on the ground of cruelty.

2. The appellant married the respondent on 08.01.2013 according to the Hindu Rites and their caste customs. The appellant was M.Sc., degree holder and completed Ph.D., in Bio-technology and got Doctorate. The respondent was M.Sc., degree holder. The appellant was working in Novozymes South Asia Pvt Ltd., Bangalore. The respondent was working in UST Global, Bangalore. After marriage both lived together at Bangalore. The respondent became pregnant and hence she was brought to the Lalbagh Nursing Home Bangalore. At the time, due to uterine tumours, the doctors advised to be extremely careful and get admitted immediately on getting labour pain. The respondent without acting as per



C.M.A(MD)No.756 of 2022

doctor's advise, continued to ride her two wheeler to reach the work place. At the time her mother stayed with her to help during pregnancy.

One morning, the respondent developed labour pain and she informed the appellant. Instead to going to the hospital, she without heeding appellant's advise went to the hospital in evening and took treatment. The appellant came to know that the respondent left the hospital against the medical advise within two days. The respondent again developed pain and on the way to the hospital the respondent started quarrelling with the appellant on flimsy reason and she allegedly abused him in vulgar words.

According to the appellant during the course of the pregnancy, the respondent got gestational diabetes and thyroid problem and she was given medication for thyroid problem. The doctor advised her to keep the blood sugar in control by taking balanced intake and walking. But the respondent did not understand the seriousness and failed to give the correct particulars of the blood sugar to him. The father of the appellant also advised her to take care of her health and act as per the advise of the doctor. That being the situation, the appellant was infected by flu and hence he isolated himself and stayed in a separate room of his house. Then, within two days, the respondent also complained of body pain and



C.M.A(MD)No.756 of 2022

WEB COPY

hence both of them went to the Lalbagh Nursing Home. The doctor diagnosed the respondent with urinary track infection. Due to that womb also was found affected and hence she begot a premature female baby on 04.09.2013. In spite of the best neonatal intensive care in the K.R. Hospital, the child died. According to the appellant the doctors informed that the baby had respiratory distress syndrome and was infected with streptococcus which was caused due to the uterine infection. Due to that said baby was kept in the intensive care unit and baby's condition was critical. The same was not at all realized by the respondent and the respondent shouted at the appellant and yelling whether the baby was more important than her. In spite of the treatment, the baby died after 14 days on 18.09.2014. The events stated above caused mental agony and severe depression to the appellant and only due to the negligence of the respondent, the child died. Hence the death of the child caused severe trauma in the mind of the appellant.

2.1.Apart from that the respondent has not disclosed her salary particulars to the appellant till date and he alone met the family expenses and the respondent demanded Rs.25,000/- per month and the appellant failed to give the same. Therefore, the respondent started to abuse the



C.M.A(MD)No.756 of 2022

appellant in obscene words and to lash him with belt. The respondent consulted the doctor and doctor informed that she could beget second child even with uterine fibroid but uterine fibroid should be removed before the next pregnancy. The same was not informed to the appellant.

2.2. The respondent was leading marital life with ego and hence the appellant is unable to understand the mental condition of the respondent. She was adamant and domineering. One day, she behaved rudely with the appellant at the instigation of her mother. She also abused him in filthy language even in the presence of the neighbour and other relatives which caused mental cruelty. That being the situation unfortunately her mother also passed away in the last year. The respondent did not heed to the advise of her father and nobody was available in her family to advise her to lead the peaceful martial life with the appellant. She started to ill-treat the appellant for flimsy reasons and she used to engage in petty quarrel without any reason. But the appellant had all along tolerated the same with the belief that she would change her attitude to lead happy marital life. But the respondent without changing her adamant character, has not come forward to live with the appellant peacefully. There was number of mediation on several occasions and all



C.M.A(MD)No.756 of 2022

ended in vain. The respondent without sharing anything with the appellant, talked back which resulted in assault. She removed her thali and hurled on the appellant. The conduct of the respondent also became worse and hence she was taken to a psychiatrist for counselling and the same did not give any fruitful result.

2.3. According to the appellant, the respondent used to threaten him that she would lodge a complaint under the dowry prohibition Act and detain him and his family members in prison. This also caused mental cruelty to him. She also threatened him that she would come to his office and shame him. Therefore, he has filed the application for divorce on the ground of cruelty.

3. The respondent filed the counter affidavit denying all the allegation made in the above petitions. The respondent specifically stated that even before marriage, both searched for rental house at Bangalore and both of them entered into rental agreement with the landlord in Kacharakanahalli at Bangalore. After marriage, they lived in the said house. They also went to honeymoon to Kulumanali and stayed for a week. After her pregnancy, both jointly chose the hospital namely



C.M.A(MD)No.756 of 2022

WEB COPY

Lalbagh Nursing Home for consultation and treatment for the reason that her sister had already taken treatment satisfactorily in the said hospital. At the time of the check up during the pregnancy, it was found that she had fibroid in her uterus. The uterine fibroid is common phenomena and the same does not cause any hindrance to pregnancy. She specifically denied that she was not obeying the advise of the doctor. She meticulously followed the doctor's advise. As per doctor's advise she avoided lifting of weight, washing clothes and avoided strenuous work and she called her mother. She only took care of the above work and she never rode her two wheeler and she only travelled in her swift car or company cab to reach her workplace. After arrival of her mother, she never felt labour pain as alleged by the appellant. She routinely visited the Lalbagh nursing home and had the check up. The growth of the fetus was normal. Therefore, she denied the allegation in this aspect. She was more concerned about the safe birth of the child. She also stated that during the pregnancy gestational diabetes and thyroid problem one common and she was continuously taking medicine for the same. She also stated that she always followed the advise of the appellant and her in laws.



C.M.A(MD)No.756 of 2022

WEB COPY

3.1. During the 7th month of pregnancy, baby shower function took place at Gobichettipalayam with participation of all the appellant family members and the respondent family members. After a week, she went to Bangalore. The third week of the September, she got fever and took treatment in the hospital and returned to home and on the next day, she had the (water break in her uterus) rupture of amniotic fluid sac and immediately rushed to hospital and girl baby was born through the caesarean Section. Due to the premature birth of child, her weight was only 2.2 kg and there was breathing problem and hence baby alone was admitted in the neonatal wing of K.R. Hospital situated far away from the place of her hospital. She took treatment in Lalbagh Nursing Home and child was taking treatment at K.R. Hospital. Her breast milk was sent to the said hospital for every 2 hours in a sterilized container. In spite of the treatment for 14 days, the baby died on 18.09.2013. Therefore she got mental depression and was in pain. In the above circumstances the allegation that she scolded the appellant is not correct. The appellant blamed her that due to her carelessness, the child died. But she was tolerating the same without shouting at him as alleged in the petition.



C.M.A(MD)No.756 of 2022

WEB COPY

3.2. She also denied the allegation of assault as pleaded in the petition. She also stated that he knew about her salary and both were sharing the information relating to the work even before the marriage. The betrothal took place on 12.09.2012 and the marriage was celebrated only on 08.01.2013 and during this period both were working at Bangalore and they were sharing all information including the earnings and the same was proved through the execution of the lease deed made jointly on 07.11.2012. She never demanded any amount from him as alleged in the petition and she never had been adamant and never attempted to dominate the will of the petitioner. Her mother also never instigated to abuse him. She always discharged her responsibility as dutiful Hindu wife. She never disrespected either the appellant or other family members. She also never made a threat to give the complaint either to police or in the company. She always made sincere efforts to have reunion but the appellant refused to take her back. He was under the wrong impression and in hallucination that she was responsible for the death of the baby. She also had a hope that hallucination in the mind of the appellant would become normal on proper counselling and she was ready to live with him. Hence she seeks to dismiss the divorce petition.



C.M.A(MD)No.756 of 2022

WEB COPY

4. The appellant to prove his case has examined himself as PW1 and marked the Ex.P1 to Ex.P5 and the respondent examined herself as RW1 and her father as RW2 and marked Ex.R1. The learned Trial Judge has considered the entire evidence on record and dismissed the divorce petition filed by the appellant by passing the impugned order dated 27.05.2022. Challenging the same, the appellant has filed this appeal.

5. The learned counsel for the appellant would submit that the learned trial judge failed to consider the Ex.P5 in proper manner and the available evidence clearly proved the cruelty both mental and physical undergone by him due to the act of the respondent and erroneously declined to grant divorce.

5.1. In the Ex.P5 the respondent clearly admitted all the allegation made against her and hence no further proof is necessary to grant divorce on the ground of cruelty. The same was not properly considered by the learned trial judge. Therefore, there was perversity in the finding of the learned trial judge that there was no case of cruelty.

5.2. The repeated acts of the respondent to assault him with belt



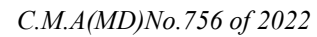
C.M.A(MD)No.756 of 2022

and spitting on the face of the appellant not only caused intolerable cruelty and also same degraded his dignity. The same was not properly considered by the learned trial judge.

5.3. The learned trial judge failed to consider that the respondent has not properly heeded to the advice of the doctor and in result the child died.

5.4. Finally the learned counsel for the appellant submitted that there was a separation for 10 years on end and hence their marriage had become dead wood and the marital relationship has irretrievably broken down and there was no chance for reunion and even reunion at the age of 42 and 39 would serve no purpose. Hence, he seeks to allow the appeal and pray for grant of divorce.

6. The learned counsel for wife submitted that the forceful contention of the appellant that she used to spit on his face is without any pleadings. The mere sending of apology letter in the interest of the matrimonial harmony by way of reply to the mail transaction does not amount to proof of every allegation made in the course of argument. It is duty of the either spouse to snuff out the burning fire of discord between



7. He also further submitted that nowadays most of the women has the pregnancy related complication like thyroid, diabetics, fibroid in uterus. The said common problem is not a ground to seek the divorce. It is the duty of the husband to take care and to give moral support and to show more affection in order to come out of the said issues. But, the appellant filed this petition under the wrong impression that the child died due to that problem. It is admitted case, due to rupture of amniotic fluid sac “(the water pot in the uterus)” baby had suffered the respiratory complication and hence the child died in spite of the best treatment given by the both family members. The Learned trial judge considering all the evidence and demeanour of witness has held that the



C.M.A(MD)No.756 of 2022

appellant had not established that due to the negligence of the respondent, the child had died. Therefore he seeks for confirmation of the dismissal order passed by the Learned Trial Judge.

8. The Learned counsel further read the entire evidence of the both RW1 and PW1 and the entire contents of the documents which had been mainly relied by the appellant counsel i.e., the reply sent by the respondent regretting her mistake and requested for reunion and submitted that the respondent was always in favour of reunion and there was no strained relationship between the parties and there was apprehension in the mind of the appellant that the fibroid in the uterus would have led to complication in birth of child. The respondent even in the said regret email specifically stated that every steps had been taken to remove the said fibroid problem by taking treatment in the Manibal Hospital and the same also was intimated to the appellant's father who was a doctor. Further he stated that she *bonafidely* took steps for reunion by offering prayer to the god and also took yoga class. Finally she requested the appellant to drive away the hallucination in the issue of fibroid problem and its complication. She never made any complaint and



C.M.A(MD)No.756 of 2022

WEB COPY

also she never made any visit to the company of the appellant. In all circumstances, only there is a temperamental differences and petty squabbles and the same does not deserve to award of capital punishment of divorce to the marriage. He also submitted that even before the marriage and after the marriage both had cordial relationship. Even as per the evidence of the appellant, both jointly lived for more than 9 months after the death of the child. Even as per the evidence that he alone left the matrimonial home and started to live separately in the hostel. Even during the proceedings in Gopichettipalayam Court, the respondent frequently visited the house of the appellant and maintained the peaceful relationship with her father in law and mother in law.

9. The learned counsel further submitted that the pleadings relating to the spitting is totally absent. The contention of the learned counsel for the appellant that she repeatedly spat on the face of the appellant is not only without evidence and also there is no pleadings. Except the averment in the mail sent to the wife after the intended separation, there was no other material either to presume or infer the said act. Even the particulars of the mail also not annexed with the list of document filed



C.M.A(MD)No.756 of 2022

along with the petition. Hence, she has no opportunity to explain the said mail. Therefore, the learned trial judge correctly declined to give credence to the above reply mail of regretting on the part of the respondent. Therefore, in all aspect the learned trial court correctly considered everything and dismissed the petition.

10. The learned counsel further submitted that further plea of learned counsel for the appellant before this court that the marriage relationship was totally broken and there was no chance for reunion due to their separation for more than 9 years and there is no possibility of reunion after the age of 43 years and there is no further possibility of matrimonial bliss and happy life due to the long separation by relying the judgment of the Hon'ble Supreme Court in the case of **Naveen Kohli v. Neelu Kohli**, reported **2006 (4) SCC 558** is not applicable to the present case in view of the Hon'ble Constitution Bench judgment in the case of **Shilpa Sailesh v. Varun Sreenivasan**, reported in **2022 15 SCC 754** where the Hon'ble Constitution Bench has held that this court has no jurisdiction to consider the irretrievable break down of marriage and he also distinguished the said judgment on facts. Further it is not the case of



C.M.A(MD)No.756 of 2022

WEB COPY

the appellant before the trial court that the divorce was on the ground of desertion and the appellant filed the petition only on the ground of cruelty. Therefore he seeks to reject the contention of the appellant.

11. This Court considered the rival submissions and perused the materials available on record and the impugned judgment and the precedents relied upon by them.

12. The question arises in this appeal is that whether the appellant is entitled to the relief of divorce?

13. The appellant has filed the divorce petition to dissolve his marriage with the respondent dated 18.01.2013 on the ground of cruelty i.e., under Section 13 (1)(i-a) of the Hindu Marriage Act. In his petition he pleaded that before marriage both were working in Bangalore. The marriage that took place between him and the respondent was arranged one and the betrothal took place on 12.09.2012. Thereafter there was a premarital sharing of their feelings with each other and the same went to the extent of the matrimonial residence in Bangalore by jointly entering



C.M.A(MD)No.756 of 2022

WEB COPY

the execution of the lease deed dated 07.11.2012 to lead their matrimonial life immediately after the marriage purposed to be held on 18.01.2013. The appellant also admitted that before the marriage both had exchange of information to lead a happy married life. Immediately, after the marriage, both went to the Bangalore and lead their matrimonial life peacefully and happily. Even they went to Kulumanali on honeymoon and stayed for one week. In the happy matrimonial life, the respondent also became pregnant and both jointly decided to take treatment at Lalbag Nursing Home considering the fact that the respondent's sister already got treatment in the said hospital and begot twin children without any complication. After the pregnancy only, both came to know about the fibroid which is common and the respondent had developed thyroid and pregnancy diabetics problem. From the records and the evidence, it is seen that the respondent had been taking medicine and periodically undergone check up. Even though, the appellant alleged that the respondent was attending the office during the pregnancy period by riding the two wheeler, it is seen from evidence, she had attended the office in her car or the office cab. It is also admitted fact that the appellant suffered from the "*flu fever*" in the month of September 2013.



C.M.A(MD)No.756 of 2022

WEB COPY

Even though the appellant isolated himself in the said house, the respondent complained of body pain and hence both went to the Lalbag Nursing Home. At that time the doctor diagnosed the respondent and found urinary track infection and gave the treatment. Subsequently, on 04.09.2013, she had rupture (amniotic fluidsac the breaking of the “water pot”) of the uterus. Therefore she got admitted in the Lalbag Nursing home and doctor advised to go for caesarean Section and the female child was born prematurely.

14. Due to the premature delivery the female child got the respiratory problem and the child was admitted in a separate hospital namely K.R.Hospital in the neonatal wing. From the record it is also clear that the respondent was sending her breast milk every two hours to the baby in a sterilized container. Both child and the mother were unfortunately separated. In spite of the best treatment and in spite of the best care taken by the both families, the child died on 18.09.2013. Thereafter, both continued their matrimonial life for 9 months.



C.M.A(MD)No.756 of 2022

WEB COPY

15. According to the appellant, the death was caused due to the carelessness of the respondent in not following the advise of the appellant to take proper care of urinary infection and avoiding of riding of the two wheeler to reach her office and also the respondent had fibroids problem in uterus . The same created in his mind a hallucination that she had incurable fibroid problem which would make hindrance to the happy married life and also the baby's death was caused due to the urinary infection. This court perused the records and finding of the learned trial judge in this aspect. According to the learned trial judge death of baby was not due to the urinary infection and their complication. The learned trial judge also considered the evidence and gave the finding that the appellant has not established that the death occurred due to the urinary infection. This court perused the evidence of the P.W.1, R.W.1, R.W.2 and the other documents. From the evidence it is clear that due to the breaking of the “water pot of uterus” **amniotic fluidsac**, she was admitted in the hospital and the doctor advised to go for the caesarean. The death was due to the respiratory problem. In all the cases of the breaking of the “water pot” **amniotic fluidsac**, the baby would swallow infected water. Due to swelling **amniotic fluid**, there was a respiratory



C.M.A(MD)No.756 of 2022

problem. There was no supporting evidence to prove the allegation that the death of the baby was due to the urinary infection. The baby was admitted in neonatal wing and also was with ICU ventilation support. Therefore the learned trial judge correctly held that there was no evidence to prove the allegation of the appellant that the death was caused due to the urinary infection. As held by the learned trial judge motherhood is like the birth. This court declines to accept the case of the appellant that the respondent during the period of motherhood has not followed the medical advise. The said case of the appellant itself against the universal truth that no women would act against advise of doctor during the said motherhood period. Her act, thinking, feeling will be towards the birth of the child in good health. In such circumstances and seeing the evidence available on record it can be found out that she frequently visited the hospital and had the check up. It is true that she had the fibroid problem and the same came to the knowledge only after the pregnancy test. It is not the case of the appellant that she suppressed the said fact. In the said circumstances the appellant failed to consider the condition of the respondent i.e., she had undergone caesarean and baby was admitted in another hospital. She not only had undergone the pain of



C.M.A(MD)No.756 of 2022

caesarean and also stressed out because of separation of child and the treatment given to the baby. In the said circumstances temperamental difference would arise commonly. Fibroid is matter of small issue in the modern advance medical science. At that time, it is the duty of the husband to give the utmost care both medically and morally. Supportive hands cures any decease. Without understanding the same, the husband himself separated the company of the wife and filed the divorce petition and above all caused the mental cruelty to him cannot be accepted. This court finds no acrimonious charges made against the respondent. Even after the discharge from the hospital, both were living for more than 9 months. Suddenly there was some hallucination in his mind regarding the fibroid problem. Therefore, he acted indifferently and left the matrimonial home and stayed in the hostel. Even during the divorce proceedings the respondent went to her father in law and mother in law's house and continued the cordial relationship. Only on the part of the appellant there is some rigid attitude. Everyone has some health problem. It is duty of the every party to the marriage, to redress the health problem after the marriage. It is not the case of the either party that suppressed the health problem. It is not the case of the appellant that the fibroid problem



C.M.A(MD)No.756 of 2022

existed earlier to the marriage and the same was within the knowledge of the respondent and intentionally she suppressed of the said fact. That apart, if any health issues arise after the marriage, it is not fair on the part of the either spouse to file the divorce petition to break the martial relationship. Tolerance is the basis of married life. In the said circumstances this court is unable to accept the argument of the learned counsel appearing for the husband that the wife was responsible for the death of the baby and she caused mental cruelty to the husband.

16. The learned counsel for the appellant submitted that the respondent picked up a quarrel with the appellant for flimsy reasons and abused him in vulgar words. She also said to have assaulted him and spat on him. To prove the same, he relied Ex.P.4. In his evidence, he admitted that he has not pleaded the spitting and also the date of the assault. In the case of the cruelty, it is necessary to plead the incident which caused both mental and physical cruelty. A long line of the Hon'ble Supreme Court judgments reiterated the said principle. In this case, his specific allegation is that she attempted to fling the Mangal Suthra on the face of the appellant and also spat on him. There was no pleading in this aspect



C.M.A(MD)No.756 of 2022

WEB COPY

and the document relied by the appellant also was not filed along with the divorce petition. If the party wants to rely any admission in any of the documents, it must be brought to knowledge of the opposite party to explain the said admission. This Court perused Ex.P4 and Ex.P5 and the same is as follows:

Ex.P4	Ex.P5
I am sending this mail to convey my stand on the issue between us. First of all I want to make this clear that I left the Kacharakanahalli house in the 2nd week of August out of sheer frustration due your cruel behaviour towards me. What happened in August 2014 was not the first time. I guess it was the third or fourth time. You seem to have absolute disregard for my feelings and I have undergone extreme humiliation by your actions. The relationship between you and me started deteriorating after you started using offensive language not only against me but also about my parents. It was shocking to hear you tell that "I killed the baby". You have told this quite a few times to subdue me and make me list to you. It did not stop there. You have lashed me with "Thaali Chain" and also have bitten me. Spitting on anybody is abominable. You have spat on me any times. I still remember, vividly, on the night of Dec 31,2013, after lashing me with "Thaali Chain", you kept spitting on me tenuously!! I have tried to tell you that your behaviour is unacceptable and i have even warned you that I would leave the house if his kind of behaviour continued. But you never seemed to have any regret for your actions and continued to harass me. I tried to avoid confrontation and remain calm. But you tried to instigate me by using foul language or slapping me. Once you even lashed me with my belt to instigate me. It was appalling when you said that you would file a dowry harassment case against me and my parents if I did not attend your repeated phone calls, you have also sent SMS that you would come to my office and create a scene here!!! It is shocking that even though I am living separately and do not disturb you, you send me nasty SMSs, calling me NAMES!!! After facing all this, I HAVE DEVELOPED AVERSION TO LIVE WITH YOU. I cannot believe what you said to the psychiatrist in my presence the other day- That you were upset because of your mother's illness and showed all the anger on me. What about the people you have hit in your family before. What reasons you are going to give for those??? You yourself have told me that you get violent when angry!!! As the doctor said, you have unmanageable anger and temper tantrums!!! Regarding the Kacharakanahalli house, i have already spoken the house owner that i am not going to renew the agreement. If you want to continue staying in the house, you are welcome and in that case, you have to renew the agreement for the next period and pay the full rent. I have also sent a letter to owner him on this.	Just now i saw your mail. It is so painful for me to see this. Sorry for everything. There were lot of problems after marriage, immediate pregnancy with complications like fibroid, eventually baby died, amma also died due to illness. We did not get chance to share the feelings between us. Now I want to get treated this fibroid. I am going to clouddine and Manipal hospitals for consultation. Even you want me to consult a doctor that mama was suggesting, i am ready to come there as well. I feel this is right time "because i am alone so that i can understand and respect your feelings a lot. I am going for meditation class from ISHA and also visiting lot of temples and doing Pooja's for the welfare of us. I just messaged you that I will come to your office but I have never come to your office after August. It is just a message i wrote to you don't take it to heart. I don't have any intention to come to your office. I always have full respect to your family members, I spoke everything out of anger. Please forgive me. I already apologized to your family members. All of your family members have forgiven me and they are speaking to me with lot of love and affection. I promise you will never hurt them. Athai and Mama are very good to me. They have asked me to come to Gobi. Regarding our problem, am not speaking to any of your relatives i am speaking only with Athai as per Mama's suggestion. I am always waiting for you.... please come back we will live our life. Regarding the house rent whatever the new rent increased i can pay for it. No problem in that. As usual, i will share the rent with increased amount. You please pay to him. Please understand that I cant live without you. There is no life for me without you. Please do not avoid me. Please forgive me. Please i beg to you to give another chance and i promise and assure you that there will not be any problem hereafter. Psychiatrist told me that you need 3 weeks time till Jan 10th to decide and come back. I am hoping that you will give me another chance and lets lead a meaningful life.

17.Upon the perusal of Ex.P4 this Court finds no admission of the said fact. The respondent only submitted her regret. On entire reading of Ex.P5, the said regret on her part is only to pacify the dispute and not to complicate the said issues. Hence, the said regret as held by the Hon'ble



C.M.A(MD)No.756 of 2022

Supreme Court in the case of *1995 (3) Suppl SCC 641*, in which, where the apex Court declines to give credence to the similar type of letter of regret written by wife has to be considered. The regret submitted by the wife cannot be put against her and the same does not amount to admission of the said incident. More particularly, without any pleadings to that effect. Even otherwise there is no specific pleadings relating to the date of the incident. The date is not relevant in the normal cases, but, in this case both couples are leading the matrimonial life in peaceful manner before and after birth of the child. It is specific evidence of the appellant that even after the death of the baby, they led a peaceful life up to 9 months. Therefore, the date of the said incident is relevant. After the birth of the baby and before the separation, they lived together peacefully for 9 months which means that earlier allegations have been condoned. Hence, filing the petition with baseless allegation on the basis of Ex.P4 is not accepted.

18. The learned counsel for the appellant submitted that the parties are separated for the past number of years and hence, the marriage became dead wood. The said submission is not acceptable on the ground



C.M.A(MD)No.756 of 2022

that the appellant filed the petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, ie., only on the ground of cruelty. He never pleaded desertion. Apart from that, the period after filing the divorce petition cannot be considered as a desertion. Further, even during the pendency of the proceedings, both family members had cordial relationship between them. Even during the proceedings, the respondent visited the house of the appellant and have had cordial relationship with her mother-in-law and father-in-law. In the said circumstances, the precedents relied by the learned counsel for the appellant in the case of **Samar Ghosh v. Jaya Ghosh**, reported in **2007 (4) SCC 511** is not applicable to this case on the ground that there is a finding in that case, that there we no feeling of emotions towards each other. Even that case, during the illness of the husband, the wife and her family members had not made contact even through the telephone. Therefore, the Hon'ble Supreme Court held that the matrimonial bond had reaptured beyond repair. In this case, it is totally against the said factual circumstances as observed earlier and also appellant himself admitted that he also participated in the marriage of the respondent's sisters and also participated in the funeral rituals of the mother of the respondent and even during the course of the proceedings,



C.M.A(MD)No.756 of 2022

WEB COPY

the respondent visited the father-in-law and mother-in-law house and even in the letter she expressed willingness to reunite. Further, the only impediment in the mind of the appellant is that the respondent has the problem of the fibroid and the same has been solved by taking treatment at Manipal hospital as advised by the father of the appellant. Apart from that she also condoned him and ready to live with him. Hence, this Court finds every *bonafide* offer on the part of the wife. In the said circumstance, what appears from the records, is that the respondent after the cesarean and the separation of baby from her, admitting her in separate hospital would have had some health complication which resulted in temperamental difference and squabbles which only led to some outburst towards the husband, which are not intolerable. There was no levelling of acrimonious charges. This Court also finds no habitual nagging of wife on the part of the respondent. The wife suffering from some fibroid cannot be a reason to file the petition for divorce on the ground of cruelty. In the considerable opinion of this Court, the husband shall take efforts to secure a comfortable life to his wife by inviting her with open arms.



C.M.A(MD)No.756 of 2022

WEB COPY

19. Therefore, this Court finds no merits in the contention of the learned counsel appearing for the appellant and there is no perversity in the finding of the learned trial Judge to interfere with the same.

20. Accordingly, this Civil Miscellaneous Appeal stands dismissed and the fair and decreetal passed in H.M.O.P.No.20 of 2020, by the learned Judge, Family Court, Karur, dated 27.05.2022 is hereby confirmed. Consequently, connected miscellaneous petition is closed.

[P.V.J.] [K.K.R.K.J.]
23.10.2024

NCC : Yes/No

Index : Yes/No

sbm

To

1.The Family Court,
Karur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.756 of 2022

P.VELMURUGAN.J.,
and
K.K.RAMAKRISHNAN.J.,

sbn

C.M.A(MD)No.756 of 2022
and
C.M.P.(MD).No.867 of 2023

23.10.2024