



C.M.A(MD)No.663 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2024

CORAM:

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

C.M.A(MD)No.663 of 2019
and
C.M.P(MD)No.8123 of 2019

Rajesh

... Appellant

Vs.

Kavitha

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984 to set aside the Fair and Decreetal Order dated 18.06.2019 in H.M.O.P.No.187 of 2018 on the file of the Family Judge, Kanyakumari District at Nagercoil.

For Appellant : Mr.V.Meenakshi Sundaram

For Respondent : Mr.N.Dilipkumar



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JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN, J**)

The appellant is the husband. The respondent is the wife. The appellant filed the petition for divorce against the respondent in H.M.O.P.No.187 of 2018 on the file of the Family Court, Kanniyakumari District at Nagercoil under Section 13(1)(ia), 13(1)(ib) & 13(1)(iii) of the Hindu Marriage Act, 1955, on the ground of desertion, cruelty and incurable disease.

2. The facts of the case of the appellant as per the petition for divorce filed before the Family Court are that the marriage between the appellant and the respondent was solemnized on 03.11.2006 as per the Hindu Rites and Rituals. At the time of the marriage, it was informed that the respondent completed B.Sc., Degree. Later, the appellant came to know that the respondent never completed B.Sc Degree as informed earlier. Therefore, the respondent and her family members cheated the appellant. However, the appellant lived with the respondent. Since the appellant was working in Dubai, after marriage, he took



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the respondent with him. While they were in Dubai, the respondent always kept silent. Even the respondent did not take care herself and despite advice, the respondent never changed her behaviour. While they were in Dubai, the respondent got pregnant, hence, they returned back to India on 30.08.2007. Thereafter, a male child was born on 08.12.2007 and thereafter, they went back to Dubai with child. Due to the attitude of the respondent, there was a serious misunderstanding between both. Whenever the appellant advised to change her behaviour, she used to scolded him with filthy language. The respondent never care the child and the appellant. Since the respondent's behaviour was extreme, she was taken to the hospital and the Doctor, after clinical examination, found that the respondent had conductive hearing loss on both ears. Despite that, the appellant adjusted and tolerated everything for the welfare of the child and their family. Thereafter, on 13.12.2009, the second child was born. Even then, the attitude of the respondent did not change. On 11.01.2012, the respondent consulted a Doctor at Nagercoil and the Doctor found that the respondent was suffering from Schizophrenia and he also advised to consult a Specialist. Accordingly, the respondent consulted one Dr.Ravichandran and the respondent took medicine for the same. The behaviour and attitude of the respondent had



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become worsen. The respondent did not take care either the children or herself and the health conditions of the respondent is also affected severely. Due to the chronic residual schizophrenia, the respondent was admitted before the Shanthi Vanam Trust at Trichy and she is undergoing treatment. The appellant is paying fee for the food and accommodation as well as medicine expenses. The children are under the custody of the appellant. In the above said circumstances, the appellant was constrained to file the petition for divorce on the above said grounds.

3. The facts of the case of the respondent as per the counter filed by her before the Family Court are that after made thorough enquiry only, the appellant got married the respondent and out of their wedlock, the respondent gave birth to two children. The appellant cunningly took the children from the respondent and left the respondent at her residence by making an endorsement in All Women Police Station at Kanyakumari District stating that he will provide good education to the children and look after his wife. The appellant voluntarily deserted the respondent. From 04.06.2009, the respondent and her children lived separately in a house at Mela Krishnanputhoor. Her brothers only are helping for her



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livelihood. At the time of marriage, the appellant was not particular about the educational qualification of the respondent. Knowing fully well about her qualification, he married her. The appellant also took the respondent to Dubai, where she was treated as a servant made and not as a wife. Though the respondent did all the housekeeping work and take care of the children, the appellant ill-treated the respondent stating that she was under qualified for his status and job in Dubai. When the respondent got pregnant on the second time, she was forced to send India for delivery for the second child. After birth of the second child, the appellant deserted the respondent and she lived in India with the children. The appellant forcibly took the respondent to the hospital even without any disease or ailment. Since the respondent is the wife, mother of two children, she has to depend on the appellant. The appellant is employed in Dubai and earning more than Rs.2.25 lakhs per month, but not spending for the respondent. The children were also taken away by the appellant forcibly by undertaking given before the All Women Police Station at Kanniyakumari and made false allegation about the health conditions of the respondent. The respondent was left alone in India without any care. She never caused any cruelty to the appellant and she never deserted the appellant and she has no ailment as alleged by the appellant.



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4. After completion of the pleadings, during the enquiry, on the side of the appellant, the appellant has examined as P.W.1 and 6 documents were marked as Exs.P.1 to P.6. On the side of the respondent, the respondent has examined as R.W.1 and no document was marked.

5. After completion of evidence, while hearing the arguments, the Family Court formed the following points for consideration:

“1. Whether the appellant-husband proved the plea of cruelty against the respondent-wife?

2. Whether the appellant-husband proved the plea of desertion against the respondent-wife?

3. Whether the appellant-husband proved the plea that the respondent-wife suffered from mental disorder?

4. Whether the appellant-husband is entitled for the relief of divorce as prayed for?

5. To what other relief the appellant-husband is entitled?”

6. After hearing the arguments and considering both the oral and documentary evidence, the Family Court dismissed the petition on the ground that the appellant has not substantiated the allegations levelled in the petition against



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the respondent. Aggrieved over the same, the appellant has filed the present appeal.

7. The learned counsel for the appellant would submit that the respondent and his family members suppressed the educational qualification of the respondent before the marriage and they informed that the respondent completed B.Sc degree. After marriage, the appellant came to know that the respondent has not completed B.Sc degree, however, she was treated as a lovely wife and also the appellant took the respondent to Dubai, where he employed. Though the behaviour of the respondent in Dubai was not upto the description of the dutiful wife, despite he adjusted with her, she gave birth to first child and she never took care, she was sent for giving birth to child and thereafter, he took her along with children. Even after giving birth to two children also, she did not change her behaviour and even she did not give any care to her children. Even after giving birth to the second child also, she has not changed her attitude and her behaviour was worsened day by day. Therefore, she was consulted with the doctor. Initially, the appellant came to know that the respondent was suffering from ear hearing loss and subsequently, he came to know that she was suffering with



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Schizophrenia. The respondent's behaviour towards the children and the appellant was rough and also she used to scold the appellant with filthy language and also made noise. Since her behaviour was endangered to the life of the appellant and their children, she was left in the Santhi Vanam Trust at Trichy and the appellant is taking care of the children and also he is spending for the respondent's expenses. Since she caused mental cruelty and deserted the matrimonial home and suffering with Schizophrenia, which is incurable and unsound mind, except no other option, the appellant to file the petition for divorce in order to safeguard the interest of the children. Though at the time of marriage, the appellant was working in Dubai, subsequently, he left the job and came to India and now he is in Soudi Arabia and the appellant is not getting salary as he was getting in Dubai. He is taking care of his two children and age old parents and also taking care of the expenses of the respondent. Therefore, he is not able to pay any alimony. Originally, the Family Court directed the appellant to pay a sum of Rs.6,000/- as alimony to the respondent, however, subsequently, at the time of deciding the main original petition, the Family Court directed to pay Rs.15,000/- and now, he is unable to pay the same. Therefore, the order passed by the Family Court is liable to be set aside and the appeal is liable to be allowed.



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8. The learned counsel for the respondent would submit that all the allegations made by the appellant in his petition are bald allegations and the allegations were not substantiated with any iota of evidence. The respondent and her family members have not suppressed the educational qualification of the respondent. The appellant knowing fully about her educational qualification, married her and took her to Dubai, where she was ill-treated. Even after giving birth to two children and for the children's welfare, she adjusted with the appellant, however, the reasons best known to him, tried to create the documents against the respondent and also he left the respondent forcibly in the home. Since the respondent has no parents, she lost her parents even prior to the marriage and her brothers were in abroad, nobody is taking care of her and she is hale and healthy and the appellant has not produced any document to show that she is suffering from Schizophrenia and she is incapable of taking care of the children and the appellant filed the petition for divorce with the false allegations. He would further submit that the appellant has not produced any oral and documentary evidence and no independent witness was examined and no medical evidence was produced. Therefore, under these circumstances, the appellant is



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not entitled for the divorce on the ground sought for in the petition. The Family Court rightly appreciated the oral and documentary evidence and dismissed the petition for divorce filed by the appellant and therefore, there is no merit in the appeal and the same is liable to be dismissed.

9. Since the first Appellate Court is the final Court of fact finding Court, this Court has to re-appreciate the entire evidence and give independent finding, for which, this Court has taken the following points for determination:

“(1) Whether the appellant has substantiated the allegations levelled against the respondent on any of the grounds raised by the appellant for divorce?

(2) Whether the Family Court has appreciated the entire materials and has given valid reason for dismissing the petition filed by the appellant?

(3) Whether the appellant has made out a ground for interfering with the order of the Family Court?”

Point Nos.1 to 3:

10. The specific case of the appellant is that the respondent and her family members suppressed the educational qualification of the respondent and the

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respondent is not in habit of hearing the voice of the appellant. Even during pregnancy, she did not take care of herself and ever after giving birth to the first child, she did not change her attitude and after giving birth to the second child, her behaviour was worsen than the earlier and she has caused mental cruelty and she deserted herself from the matrimonial home and she also suffering with incurable ailment of unsound mind.

11. The specific case of the respondent is that she never suppressed the educational qualification and she was acting as dutiful wife while she was in India and also in Dubai. The appellant alone insulted the respondent that she is not qualified upto the standard of the appellant and she is not upto the expectation of the appellant. In spite of his ill-treatment, she adjusted with the appellant and she gave birth to two children. After born of the children, the appellant forcibly left the respondent in home and he also took the two children from her and she is ready to live with him and she is not suffering from any of the ailments much less than the ailments referred by the appellant in the petition.

12. The admitted facts are that the marriage of the appellant and the



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respondent was solemnized on 03.11.2006 and thereafter, both had left India and in Dubai they lived together and they gave birth to two children. The first child was born on 08.12.2007 and the second child was born on 13.12.2009.

13. Disputed facts that according to the appellant, the respondent suppressed her educational qualification and her behaviour was not as a dutiful wife and she never took care of her two children and she voluntarily without any valid reason deserted him and the children and she is suffering from Schizophrenia and therefore, the petition for divorce. According to the respondent, she never suppressed her educational qualification and she was living as a dutiful wife while they were in India and also in Dubai and she gave birth to two children and she was taking care of the children and also the appellant and herself. Without any valid reason, showing the educational qualification of the respondent, she was ill-treated by the appellant and the respondent tolerated all the insults made by the appellant. Even then, after gave birth to the second child, she was forcibly removed from the matrimonial home and dropped at orphanage and the children were forcibly removed from her.



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14. In order to substantiate the allegation made by the appellant in his petition filed for divorce, he examined as P.W.1 and 6 documents were marked. Though six documents were marked, except Ex.P6, all other documents are only related to the relationship and Ex.P6 only shows that the respondent is having some problem in her ear. Ex.P.1 is the Marriage Invitation, Ex.P.2 is the marriage certificate, Ex.P.3 is the marriage photo, Ex.P.4 is the Copy of the Family Card for the respondent and Ex.P.5 is the Copy of the Family Card for the appellant. All the documents are relating to prove the relationship only. In this case, the marriage is not in dispute and the relationship is also not in dispute and the paternity of the children is also not in dispute. However, the only document Ex.P. 6 series are the medical certificate and the medical bills, which clearly shows that she had some problem in her ear. All the documents and evidences produced by the appellant are not helpful to decide the dispute between the parties. Once the appellant has come with specific allegations that she caused mental cruelty and also she deserted herself and she is suffering from Schizophrenia, the appellant has to establish the same.

15. Even though there is no definition for the cruelty, the cruelties are two



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types, one is mental cruelty and another one is physical cruelty. The appellant has not pleaded physical cruelty. A reading of the entire materials shows that except certain allegations in his proof affidavit, the appellant has not established that the respondent has caused mental cruelty and he has not examined any witness and the allegation levelled against the respondent was only bald and the appellant has not established the allegation of cruelty. Though the appellant has stated in his petition that the respondent and their family members suppressed the educational qualification of the respondent, which stoutly denied by the respondent and the appellant has not examined any of the independent witnesses as to whether the respondent and her family members made promise before marriage that the respondent was a graduate. Further, no material evidence has been produced to prove that the appellant suffered with the cruelty caused by the respondent. Though any cruel between the husband and wife within the four wall, it is difficult to prove through independent witness. However, the nature of allegation made by the appellant is not acceptable and out of their wedlock, they gave birth to two children. The marriage was solemnized on 03.11.2006 and the first child was born on 08.12.2007 and the second child was born on 13.12.2009. If at all the respondent's behaviour was that much worsen as stated by the appellant, the



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appellant could not have tolerated the respondent till gave birth to two children and if at all she suppressed her educational qualification, he could have made a complaint before the elders or common man, who gathered before marriage. In this case, there is no such material and the appellant has not examined any of the independent witnesses to prove that the respondent and her family members made false promise that the respondent was a graduate and there is no iota of evidence to show that she caused mental cruelty.

16. As far as the desertion is concerned, the appellant has stated that after the born of the second child on 13.12.2009, the respondent left the matrimonial home, whereas, the evidence of the cross examination of the appellant and also the respondent clearly shows that even after the marriage also, there were access between both the appellant and the respondent and the appellant himself admitted that even after birth of the second child, he took the respondent several time to the hospital. The respondent has also stated that the appellant took her to the hospital and she was forcibly detained in the orphanage with the help of the police. The learned counsel for the appellant would submit that though the respondent is ready to live with the appellant, she has not taken any steps to file



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the petition for restitution of conjugal rights or made a complaint. However, the appellant himself admitted that she was in the orphanage and she has also stated in her evidence that she was forced to stay in home and she was not allowed to go anywhere and only at the time of hearing before the Court only, she was allowed to go with the help of the person in the home and the police. Therefore, mere non-filing of the application under Section 9 of the Act for restitution of conjugal rights, cannot be stated that the respondent is not ready and willing to live with the husband and left the matrimonial home voluntarily without any valid reason. The respondent has explained under what circumstances she is away from the matrimonial home. Therefore, it is for the appellant to prove that the respondent voluntarily left the matrimonial home without any valid reason. Therefore, the appellant is not entitled to grant divorce on the ground of desertion under Section 13(1)(1b) of the Act.

17. As far as Schizophrenia is concerned, the appellant made allegation that she was suffering with Schizophrenia, which is incurable of unsound mind, whereas, the appellant has not examined any Medical Officer, who gave the treatment or advice. Further, he has not produced any document that she was



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suffering with the ailment of Schizophrenia. Once if the appellant seeks divorce on the ground of incurable disease of unsound mind, it is for him to prove the ground in the manner known to law. Whereas the appellant has not proved through oral or documentary evidence.

18. Further, from the reading of the cross examination of the respondent, this Court finds that there is no reason to believe that the allegation levelled by the appellant is true and the way in which, she replied to the cross objection itself shows that she is not a woman of suffering with Schizophrenia and when the appellant has filed the petition for divorce for specific ground, it is for him to prove the same. Whereas, in this case, from the reading of the petition filed by the appellant and the counter filed by the respondent before the Family Court and the reading of the oral and documentary evidences, this Court finds that the appellant has not proved his case that he is entitled to get a decree for divorce on any one of the grounds as sought for by him. This Court, as the first appellate Court, while re-appreciating the entire materials, finds that the appellant has not established any of the grounds raised.



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19. A reading of the entire materials, even the evidence of both the appellant and the respondent shows that as already stated that the relationship is admitted and the paternity of the children is admitted and the respondent is now residing in the orphanage and the appellant has also admitted that she is kept away from the matrimonial home. However, the appellant has not established that the respondent is acting as against the interest of the children and also she caused cruelty as against the appellant. Therefore, while re-appreciating the evidence, this Court finds that the appellant has not proved his case and no independent witness was examined and no sufficient document was produced. Therefore, this Court finds that the appellant, only in order to get the divorce from the respondent for flimsy ground, attempted to made certain allegations, however, the same have not been substantiated in the manner known to law. Therefore, under these circumstances, this Court finds that the Family Court has rightly appreciated both the oral and documentary evidences and disallowed the petition filed by the appellant.

20. As already discussed above, the marriage between the parties is not in dispute and the children born to them are also not in dispute and both were living



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for some time more than 3 years both in India and Dubai is also not in dispute.

However, whatever the allegations made by the appellant have not been proved by the appellant in the manner known to law. Mere allegation is not sufficient and the same have to be substantiated with oral and documentary evidence. Even otherwise, the same has to be established in the manner known to law. Though the words exchanged by the spouses within the four walls cannot be proved by examining independent witnesses, a conjoint reading of the entire petition filed by the appellant and the respondent's evidence, this Court finds that the appellant has not substantiated the allegation and even he has not made any attempt to prove the allegations and even the appellant has also admitted that he only dropped his wife to the orphanage and the evidence of the respondent shows that she cannot freely move from the orphanage and with much difficulties only, she came to the Court only for giving evidence. Therefore, this Court finds that the appellant has not proved that the respondent voluntarily left the matrimonial home without any valid reason. Further, this Court finds that the respondent is residing away from the matrimonial home only with valid reason under the compelled circumstances, for which also, the appellant is caused for the same. Even the ailment is concerned, the appellant has not established the same and he



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has not made any attempt to examine any of the doctors who alleged to have given the treatment or who gave advice or before whom, he took her for consultation. Though the appellant made the name of the doctors in the petition, he never attempted to examine those medical officers. Even otherwise, no documentary evidence was produced to show that the respondent is suffering from Schizophrenia and as already stated, a reading of the counter as well as the cross examination faced by her, we do not find that the respondent is suffering from Schizophrenia and therefore, the appellant has not proved the same either by examining the medical officer or by producing the medical records or at least from the orphanage, where the respondent has been keeping under the custody. A conjoint reading of the entire materials, this Court finds that the appellant has not proved any of the grounds for divorce as sought for. Therefore, under these circumstances, this Court do not find any reason to interfere with the findings of the Family Court. Accordingly, all the points are answered as against the appellant.

21. At the time of deciding the case, the Family Court directed the appellant to pay a sum of Rs.15,000/- per month as permanent alimony. Though the learned counsel for the appellant would submit that the appellant is not earning as



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mentioned in the judgment by the Family Court as Rs.2,25 lakhs and he is taking care of two children and providing good education by spending Rs.3,00,000/- each child per year and apart from that the other expenses and also maintaining the age old parents and therefore, the award of Rs.15,000/- for maintenance of the respondent is exorbitant, however, the appellant has not filed affidavit of assets and liabilities. As already stated, the relationship was admitted and the respondent is unemployed and she has been keeping in orphanage and she lost her parents even prior to the marriage and her brothers were only in abroad and therefore, under these circumstances, considering the facts and circumstances, this Court does not find any reason to interfere with the permanent alimony ordered by the Family Court. Hence, the appellant is directed to pay the entire arrears as ordered by the Family Court within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Judge, Family Court, is directed to pay the amount to the respondent within a period of four weeks. Further, the appellant is directed to pay the monthly alimony on or before 5th day of the every English Calender month. Failing to pay the said amount, the Judge, Family Court is directed to issue warrant against the appellant and take coercive steps to recover the arrears amount.



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22. With the above directions, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[P.V.,J.] [K.K.R.K.,J.]
06.09.2024

skn

NCC : Yes/No

Index : Yes / No

Internet : Yes

To

1.The Family Court, Kanyakumari at Nagercoil.

2.The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.



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