



C.M.S.A.(MD)No.2 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.12.2023

PRONOUNCED ON : 19.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.2 of 2018

and

C.M.P.(MD)Nos.1473 and 1474 of 2018

Porkodi ... Appellant / Respondent / Respondent

Vs.

Anbazhagan ... Respondent / Appellant/ Petitioner

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act, 1955 read with U/S 100 of CPC, against the Judgment and Decree dated 18.09.2017 made in H.M.C.M.A.No.16 of 2015 on the file of the III Additional District Judge, Tirunelveli, reversing the Judgment and Decree dated 09.02.2015 made in H.M.O.P.No.60 of 2006 on the file of the Sub Court, Ambasamudiram.



WEB COPY



C.M.S.A.(MD)No.2 of 2018

For Appellant : Mr.P.Santhosh Kumar

For Respondent : Mr.H.Arumugam

JUDGMENT

This Civil Miscellaneous Second Appeal has been preferred against the Judgment and Decree dated 18.09.2017 made in H.M.C.M.A.No.16 of 2015 on the file of the III Additional District Judge, Tirunelveli, reversing the Judgment and Decree dated 09.02.2015 made in H.M.O.P.No.60 of 2006 on the file of the Sub Court, Ambasamudiram.

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

3. Case of the petitioner:

(i) The petitioner / husband and the respondent / wife are first cousins. The respondent's mother approached the petitioner's father with a marriage proposal for the two. However, both the petitioner and the respondent were not fully prepared for the marriage, and the respondent was allegedly forced into it. The marriage was held at A.V. R. M. V.



C.M.S.A.(MD)No.2 of 2018

Marriage Hall in Ambasamudiram on 18.10.2000. Thereafter, the petitioner and the respondent lived together at Papanasam as a joint family along with the respondent's in-laws. The husband, who is the petitioner, always fulfilled his duty as a spouse. However, the wife (the respondent) did not cooperate with him to perform their marital duties, nor did she fulfil her duties as a wife. She treated the marriage with malice. After a few months, the respondent conceived and then left for her mother's home with her belongings and 50 sovereigns of gold without informing her husband or her in-laws.

(ii) The respondent had a habit of going to her uncle's home without the petitioner's knowledge. The petitioner would then convince her to come back with him. However, at a later point in time, the respondent started ignoring the petitioner's advice and would leave for her uncle's home without any regard for his wishes. When questioned, she stated that she wanted to go to her uncle's home and wasn't interested in living with the petitioner. The respondent had also warned the petitioner that if he did not agree to live separately with her as a nuclear family, then he must live with the respondent at her uncle's home. Since the petitioner's father is an



C.M.S.A.(MD)No.2 of 2018

aged widow, the petitioner refused to accept the respondent's condition, so the respondent left her marital home with all her belongings and jewels without informing anyone.

(iii) Despite the petitioner's effort to convince her to come back, the respondent not only refused but also threatened to give false complaints against him. And she gave false complaints at the Vikramsinghapuram Police Station in Cr. No. 46/02. The petitioner tried to persuade the respondent to return to their matrimonial home, but she not only refused but also insulted and threatened him with false police complaints. The respondent later filed baseless complaints at Vikramsinghapuram Police Station (Cr. No. 46/02 u/s 448, 506(2) IPC), leading to the petitioner's arrest. Additionally, the respondent testified against the petitioner, resulting in a penalty of Rs. 1500/- and causing significant mental distress. This constitutes emotional abuse and cruelty towards the petitioner.

(iv) The petitioner had sent a legal notice to the respondent on 01.10.2002, asking her to live with him as his wife. However, the respondent chose not to respond to the notice, which indicates that she has



C.M.S.A.(MD)No.2 of 2018

no interest in living with him. As a result, the petitioner filed H.M.O.P 55 of 2002 in the Sub-Court, Ambasamudiram for Restitution of Conjugal Rights. During the proceedings, the respondent stated that she did not face any problems at her in-law's house and she was not willing to live with the petitioner. The respondent is living separately without any valid reason. H.M.O.P 55 of 2002 was later dismissed. Despite the same, the petitioner was in the hope that the respondent would come back and live with him, however, she did not do so. Hence, this petition for divorce.

4. Case of the respondent:

(i) The petitioner demanded the respondent to pledge her jewels and hand over the money, which she refused. During this time, the respondent became pregnant, prompting her mother to take her to the hospital. Upon learning about the pregnancy, the petitioner, through phone calls, pressured her to undergo an abortion, attempting various methods to terminate the pregnancy. Feeling threatened and helpless, the respondent filed a police complaint against him. The respondent gave birth to a girl named Padma on 16.03.2002. The petitioner continued his threats, stating that if she returned to him, he would harm both the mother and daughter, even



C.M.S.A.(MD)No.2 of 2018

mentioning discarding them in a septic tank. Despite these threats, the respondent held onto hope, expecting the petitioner to change. However, her hopes were further shattered when she received a legal notice from the petitioner containing false allegations. Fearing that responding to the legal notice would escalate the issue, the respondent decided to pursue a compromise through her foster father, Murugan. Despite these efforts, the petitioner filed H.M.O.P 55 of 2002. Despite her foster father's attempts to mediate and find a compromise, attempting to make the respondent live with the petitioner and his father, the petitioner remained unyielding, refusing any resolution stating that he filed this petition for Restitution only because of the criminal case lodged against him, and that he would not live with the respondent if she comes along with the child.

(ii) Consequently, with no alternative available, the respondent contested the cases of H.M.O.P 55 of 2002 and C.C.No.57 of 2000. The allegations against the petitioner were substantiated and H.M.O.P.No.55 of 2002 was dismissed on merits. This intensified his anger and frustration towards the respondent and their child. As a result of this escalation, the petitioner initiated this divorce petition. Adding to the complexity, the



C.M.S.A.(MD)No.2 of 2018

petitioner sought to evade providing maintenance to the respondent and the child by challenging the maintenance order before the Madurai Bench of the Madras High Court. Additionally, the petitioner filed false complaints against the respondent and her foster mother, Mrs. Vanadevi. These baseless allegations were later identified as such by the police, who issued a warning to the petitioner.

(iii) Further exacerbating the situation, the petitioner filed a false criminal case (No. 369 of 2011) before the Criminal Judicial Magistrate in Ambasamudram. After a thorough trial, both the respondent and her foster mother were acquitted based on merit. Undeterred, the petitioner pursued legal action by filing O.S.No. 217/2008 in the District Munsiff Court against the respondent's foster mother. Despite ongoing trial proceedings, the petitioner's animosity persisted. In a disturbing turn of events, the petitioner filed a criminal case against the respondent, falsely alleging her involvement in a plot to harm him with hired goons. The respondent, out on bail on condition and was required to appear before the Vikramsinghapuram Police Station for signature daily.



C.M.S.A.(MD)No.2 of 2018

WEB COPY

(iv) The petitioner is unlawfully living with one Mrs. Devi and her 8-year-old daughter in his residence for a continuous period of 4 years.

This unwarranted action was a primary factor behind the respondent's hesitation to live with him. Therefore, the petitioner's assertion that the respondent deserted him without any justifiable reason is entirely unfounded. It is crucial to emphasize that the respondent's inability to cohabit with the petitioner stems from his own behaviour. The petitioner's oral testimony against the respondent is totally unfounded, and his claim of making genuine efforts to reconcile and live together is patently false. The petitioner's actions and misconduct have created an environment that rendered it impossible for the respondent to reside with him.

(v) The respondent denies the petitioner's claims that in 2001, Balasubramanian, MLA Murugan, Vanadevi, Kumarasamy Pandian, Thangapandian, Muthusamy Pandian, Seeli Konar, and Kanan Naidu tried to mediate and reconcile their differences. The respondent states that this incident never took place. Additionally, Paramasivan did not attend the court proceedings because he did not want to give a false deposition. The respondent also believes that another witness, Arunachalam, who is



C.M.S.A.(MD)No.2 of 2018

unrelated to their family, has provided false testimony, and this would be revealed through his deposition.

(vi) It has been falsely alleged by the petitioner that the respondent was willing to grant a divorce during the trial of HMOP 55/02. The petitioner possesses assets amounting to approximately 100 crores, despite which neither the respondent nor the petitioner's daughter is maintained by the petitioner. The respondent is facing inconvenience as her belongings, including her jewelry, are with the petitioner. The respondent is currently dependent on her mother and sister for the care of her daughter and is in a state of poverty. In this situation, the petitioner has filed for a divorce.

5. The learned Trial Court had framed three issues. The petitioner and two other witnesses were examined as P.W-1, P.W-2 and P.W-3 on the side of the petitioner and six documents were marked as Ex.P-1 to Ex.P-6. The respondent was examined as respondent side witness and two documents were marked as Ex.R-1 and Ex.R-2.



C.M.S.A.(MD)No.2 of 2018

WEB COPY

6. On the basis of the pleadings of both the parties, evidence deposed by the witnesses of the respective parties and the documents marked and the arguments put forth by the respective parties, the learned Trial Court proceeded to decide on each and every issue framed. The first issue is whether the respondent deserted the petitioner without any valid reason. It was contended by the petitioner that the respondent became pregnant within three months of marriage. Despite the petitioner's father insisting that they would take care of her very well, the respondent left for her parents home for better care. It was contended by the petitioner from the very instance of marriage that the respondent was not inclined to lead a happy married life in the joint family set up of the petitioner and she insisted her husband continuously for a separate nuclear family set up. However, the said allegation was denied by the respondent by stating that once she was diagnosed to be pregnant by one doctor Lakshmi at Vikramasingapuram, she immediately informed the same to the petitioner over phone. On being informed of her pregnancy, the petitioner was compelling the respondent to abort the child. Hence, the respondent was constrained to remain in her parents house fearing abortion by the



C.M.S.A.(MD)No.2 of 2018

compulsion of the petitioner and his family members. While so, when she was nine months of pregnant on 11.02.2002, the petitioner arrived at the respondent's maternal home with a sickle and he threatened the petitioner that he will chop her to death. Following which, left with no other option, the respondent lodged a complaint as against him at Vikramasingapuram Police Station.

7. Though the respondent had deposed all these incidents in her evidence no elaborate reason has been substantiated by her for the reason behind the petitioner's demand for abortion and his behaviour of threatening her with the sickle to death. The petitioner contended that the respondent never cooperated for a happy married life by permitting him to consummate the marriage after three months of the matrimony. The respondent when a specific question was put to her during cross examination admitted that after 20.07.2011 there was no consummation between the petitioner and the respondent. However, it was argued by the Counsel for the respondent that the reason for the separation and the circumstance preventing cohabitation between the petitioner and the respondent could not be attributed to the respondent, but the same has to



C.M.S.A.(MD)No.2 of 2018

be attributed only to the petitioner's violent behaviour. Even after the birth of the girl child on 16.03.2002 neither the petitioner nor his family members took efforts to visit the child.

8. Despite the respondent contending that her daughter was named as Padma after the petitioner's grandmother in view of initiating a re-conciliation, the petitioner continued to threaten the respondent that if she made up her mind to return back to his home along with the daughter he would not even hesitate to chop the mother and child and dispose them in the septic tank and declare that she had eloped. When the respondent was living with a fond hope that the petitioner will learn the nuances of marriage voluntarily and extend his invitation to the respondent and the child to take back them to her matrimonial home and arrange a happy married life among themselves. On 01.10.2002 incorporated with foisted allegations, the petitioner had issued a legal notice to the respondent. The arrogance of the petitioner had culminated to such extent that the respondent and her child always lived in an annoyed situation that at any time the petitioner would cause unforeseen harm to themselves and such situation created a reasonable apprehension in her mind that it would not



C.M.S.A.(MD)No.2 of 2018

be safe for her and her child to live with the petitioner anymore. Under such circumstances, the petitioner filed H.M.O.P.No.55 of 2002 before the Subordinate Judges Court, at Ambasamudiram seeking restitution of conjugal rights with the respondent. However, on merits after elaborate trial, the learned Subordinate Judges Court had dismissed the said petition for restitution of conjugal rights filed by the petitioner.

9. Since P.W-2 did not submit himself for cross examination, the learned Trial Court proceeded to struck off the evidence of P.W.-2, the learned Trial Court also discarded the evidence of P.W-3 by recording the examination-in-chief of the said P.W-3 who admitted that he is unaware of the details of the proof affidavit which has been filed on behalf of him. However, he admitted his signature in the said proof affidavit. Hence, the learned Trial Court proceeded to conclude that with the sole evidence of the petitioner as P.W-1 the facts and circumstances propounded by the petitioner would not be sufficient enough to come to the conclusion that the respondent herself had voluntarily left her matrimonial home exclusively for the reasons attributable to her. Recording such findings, the learned Trial Court proceeded to decide the first issue in favour of the



C.M.S.A.(MD)No.2 of 2018

respondent. As far as the second issue as to whether the petitioner was subjected to violence/cruelty by the respondent in the shared matrimonial home. The learned Trial Court proceeded to decide on the veracity of the various allegations putforth by the petitioner and the respondent against each other.

10. The first of it was that the petitioner had categorically contended that the respondent lodged a complaint as against him and his family members which culminated in the registration of the criminal case and final report was filed on the basis of which, the learned Judicial Magistrate Court at Ambasamudiram calendar case in C.C.No.157 of 2000 proceeded as against the petitioner, in which he was implicated as accused on the complaint of the respondent. Finally, the said case concluded as against the petitioner wherein the learned Judicial Magistrate Court sentenced him to fine for an amount of Rs.1,500 (Rupees One Thousand Five Hundred only). On lodging a complaint as against the petitioner, he was also arrested and was remanded to Judicial custody for three days and later he was enlarged on bail. On that basis, the petitioner contended that his wife instead of living with him, created a situation within eight months of



C.M.S.A.(MD)No.2 of 2018

marriage life for the petitioner to live with the jailmates. However, the learned Trial Court proceeded to conclude that since the Judicial Magistrate after elaborate trial had concluded and convicted the petitioner by sentencing him to fine the reasons which culminated in the registration of a criminal case as against him could not be negated as false.

11. The learned Trial Court has also taken into account the complaint which has been lodged by the petitioner's brother one Rajash Kannan as against the respondent and one Iyappan for which the First Information Report has been registered as against the respondent and others by the Vikramasingapuram Police Station for the offences under Section 120(b), 323, 324 and 307 I.P.C. The learned Trial Court had promptly recorded that both the petitioner and the respondent have within eight months of marriage lodged complaints and counter complaints against each other before various police stations and had created a situation of unrest and disharmony among themselves resulting in arrest of the petitioner and arrest of the respondent's mother respectively. Both the parties voluntarily had indulged in creating circumstances which would add to the disgust augmenting prevailing discontentment and disharmony among themselves.



C.M.S.A.(MD)No.2 of 2018

Though the petitioner had filed a petition for restitution of conjugal rights in H.M.O.P.No.55 of 2002, the learned Trial Court after an elaborate trial and argument proceeded to dismiss the said petition for restitution of conjugal rights on merits, thereafter, the petitioner had never preferred an appeal as against the same and had taken diligent steps for restituting his conjugal rights with the respondent.

12. On that basis, the learned trial Court proceeded to conclude that the petitioner had within eight months of marriage created a situation in their matrimonial home creating fear and uncertainty on the mind of the respondent which culminated to such extent that in due course of time she had developed a reasonable apprehension in her mind that it would not be safe for herself and her daughter to live with the petitioner. However, in due course of time, the petitioner's continuous attitude towards the respondent had not developed an impression in the mind of the respondent to believe that it would be conducive for her to live safely along with the petitioner and on that basis, the learned Trial Court proceeded to conclude the second issue in favour of the respondent as against the petitioner. As far as the third issue framed by the learned Trial Court as to whether the



C.M.S.A.(MD)No.2 of 2018

petition for divorce is maintainable. The learned Trial Court having decided the first two issues in favour of the respondent proceeded to conclude that both the petitioner and the respondent were immature and had spoiled their life voluntarily by lodging criminal complaints against each other by quarrelling continuously like little children and finally concluded that the petitioner's petition for divorce could not be allowed for the reason that he miserably failed to prove that the respondent had voluntarily deserted her matrimonial home and also he failed to prove that it was the respondent who had inflicted cruelty on the petitioner.

13. That apart, the learned Trial Court also observed that the petitioner has miserably failed to prove that the entire odd sequences in their life is attributable to the irresponsible and cruel conduct of the respondent. With such observations, the learned Trail Court had dismissed the petition for divorce.

14. Assailing the same, the petitioner / husband has preferred H.M.C.M.A.16 of 2015 before the 3rd Additional District Judges Court at Tirunelveli. However, the learned First Appellate Court had elaborately



C.M.S.A.(MD)No.2 of 2018

considered the pleadings of both the parties, the documentary evidence and deposition of the various witnesses and on the basis of the arguments of the both the parties proceeded to deal with the First Appeal. The learned First Appellate observed that from the date of separation of the respondent from her matrimonial home, the petitioner with intention to rejoin with her had filed H.M.O.P.No.55 of 2002 before the Subordinate Judges Court at Ambasamudiram. Though the petitioner never maintained the respondent and his daughter it could be seen from the materials available on record that the respondent also never claimed any maintenance from the petitioner at any point of time and she has not even filed any case for said purpose. However, the petitioner had extended maintenance of Rs.15000/- (Rupees Fifteen Thousand only) per month to the respondent and child after the various litigations reached the High Court of Madras. The said payment of maintenance on the direction of this Court is also not denied by the respondent.

15. The learned First Appellate Court further observed that the respondent having separated from her husband within eight months of marriage and left to her maternal home for delivery, even after the child



C.M.S.A.(MD)No.2 of 2018

birth had never taken any diligent steps to rejoin with the petitioner.

Observing this petition for divorce was filed by the petitioner on 13.11.2006 after the completion of two years from the date of order and decretal order in H.M.O.P.No.55 of 2002 which was passed by the aforesaid Court on 08.03.2004, recording the same, the learned First Appellate Court proceeded to observe that the respondent even after the dismissal of the petition for restitution of conjugal rights never took any steps or even tried for any conciliation with her husband thereafter. The First Appellate Court further observed that the petitioner only after the completion of two years after the dismissal of the petition for restitution of conjugal rights as filed the petition for divorce.

16. That apart, both the parties have continuously during the pendency of the H.M.O.P.No.60 of 2006, that is, the petition for divorce rather taking efforts for reconciliation had continuously indulged in lodging complaints and counter complaints against each other aggravating the already existing matrimonial problems between them. Such complaints and counter complaints further escalated the existing heartburn between the couple and the learned First appellate Court categorically held that the



C.M.S.A.(MD)No.2 of 2018

respondent's animus deserendi could be understood by the respondent's continuous attitude of remaining separated from her husband and from her attitude of not taking any diligent steps to rejoin with her husband and on that basis proceeded to set aside the order passed by the learned Trial Court in H.M.O.P.No.60 of 2002 thereby allowing the H.M.C.M.A in favour of the husband.

17. Assailing the same, the respondent wife has filed this C.M.S.A.No.2 of 2018 before this Court. Though the petitioner and the respondent are first cousins, the marriage between them was arranged by the elders of both the families, when they were not fully prepared for the marriage. Both the petitioner and the respondent commenced their matrimonial life at Papanasam as a joint family along with the petitioner's parents and siblings. It is found that the respondent suffered adjustment problems in the joint family set up and she got pregnant within eight months of marriage and she had left to her maternal home for delivery. But even by that time itself all was not well between the petitioner and the respondent. When the respondent was in her maternal home for her delivery when she was pregnant the petitioner indulged in violent



C.M.S.A.(MD)No.2 of 2018

behaviour with the respondent and her family members which culminated in lodging criminal complaints as against the petitioner in Crime No.46 of 2002 under Section 448, 506 (ii) IPC by the Vikramasingapuram Police Station. Later, the said crime was taken cognizance by the Judicial Magistrate Court at Ambasamudiram and Calendar case No. 57 of 2000 was proceeded as against the petitioner in which the learned Judicial Magistrate Court had convicted the petitioner by sentencing him to Rs. 1500/- (Rupees One Thousand Five Hundred only) fine.

18. At the time of registration of the said crime, the petitioner was also arrested and remanded to judicial custody for three days, he was later enlarged on bail. To counter the same, the petitioner has filed a petition for restitution of conjugal rights in H.M.O.P.No.55 of 2002 before the Subordinate Judges Court at Ambasamudiram. He also lodged a criminal complaint as against the respondent and her foster mother before the Vikramasingapuram Police Station. However, on enquiry, the Inspector of Police has advised the petitioner to live with the respondent. Thereafter, the petitioner had filed an application before the jurisdictional Judicial Magistrate and obtained an order of FIR direction on the basis of which, a



C.M.S.A.(MD)No.2 of 2018

criminal case was further registered as against the respondent and her mother which culminated in the criminal case of C.C.No.369 of 2009 before the learned Judicial Magistrate Court at Ambasamudiram. In which after a full fledged trial, the respondent and her foster mother were acquitted as innocent.

19. From the materials available on record, it can be found that the respondent further lodged a criminal complaint against the petitioner for which Crime No.33 of 2011 under Section 406, 506(ii) read with Section 4 of Prevention of Harassment against Women Act also came to registered as against the petitioner by the jurisdictional police. From the facts and circumstances of this case, it could be understood that after the marriage between the petitioner and the respondent on 18.10.2000, the respondent became pregnant within eight months of marriage and had left to her maternal home for delivery. Thereafter, the petitioner had indulged in violent behaviour on 11.02.2002 by visiting the respondent in her maternal home which resulted in the lodging of a criminal complaint against the petitioner. Following which, the criminal case was registered against him which led to his arrest and which culminated in a criminal case which



C.M.S.A.(MD)No.2 of 2018

ended in conviction.

WEB COPY

20. It would also seen that both the parties have continuously lodged complaints and counter complaints as against each other which culminated in criminal cases before the jurisdictional Judicial Magistrate Court. Under such circumstance, the petitioner had filed a petition for restitution of conjugal rights before the learned Subordinate Judges court at Ambasamudiram in H.M.O.P.No.55 of 2002 which was dismissed after elaborate trial on 08.03.2004. Even thereafter neither the petitioner nor the respondent had taken diligent steps for reunion however they continued mud-slinging against each other, accusing and abusing each other. Thereafter, on 13.11.2006 after the passage of two years from the date of dismissal of petition for restitution of conjugal rights, the petitioner had filed this petition for divorce under section 13 (1) (i-a) of the Hindu Marriage Act. Though the learned Trial Court has proceeded to conclude the petition for divorce in favour of the respondent dismissing the same by observing that the reason for the separation could not be attributed to the respondent because the petitioner had not created a situation so as to regain the respondents confidence that she could be able to lead a happy



C.M.S.A.(MD)No.2 of 2018

matrimonial life with the petitioner by rejoining with him along with her daughter.

21. Recording that the petitioner himself has created a situation in her life to such an extent the respondent who had left to her maternal home for delivery never turned up back to her matrimonial home because of the petitioner's continuous recklessness and arrogance and the respondent had in due course of time developed an impression in herself and reasonable apprehension in her mind that it would not be safe for her and her child to live with the petitioner any more and on that basis attributing the entire sequence of disharmony which prevailed between the petitioner and the respondent, the learned Trial Court dismissed the petition for divorce. However, the learned First Appellate Court had observed that the respondent had the traits of animus deserendi from the day she left for her maternal home. Thereafter, she had never diligently taken any efforts to rejoin with the petitioner, instead she indulge in lodging criminal complaints as against the petitioner whenever he resorted to unjust behaviour and created situations of unrest among themselves. That apart, the First Appellate Court having recorded the fact that the petitioner had



C.M.S.A.(MD)No.2 of 2018

taken diligent steps for restitution by filing the petition for restitution of conjugal rights in H.M.O.P.55 of 2002, though the same was dismissed on 08.03.2004, he had filed this petition for divorce only after the passage of two years from the date of dismissal of the petition for restitution of conjugal rights. During the interregnum period of 08.03.2004 and 13.11.2006 neither the petitioner nor the respondent had taken diligent steps for rejoining and lead a happy matrimonial life.

22. Hence, strongly based on the animus deserendi which could be attributable to the respondent the First Appellate Court proceeded to set aside the decretal order and order passed by the learned Trial Court and allowed the H.M.C.M.A in favour of the petitioner thereby dissolving the marriage between the petitioner and the respondent which was held on 18.10.2000. Though the observation of the learned Trial Court that the respondent's decision to remain in her maternal home had stemmed up from the continuous arrogance and indifference shown by the petitioner towards the respondent could not be negated it could be understood that when the petitioner had filed a petition for restitution of conjugal rights by filing H.M.O.P.No.55 of 2002 before the Subordinate Judges Court at



C.M.S.A.(MD)No.2 of 2018

Ambasamudiram, it can be found that the respondent had actively contested the same by substantiating her plea that it would not be conducive and safe for her and her child to live with the petitioner.

23. It is only on the basis of her evidence after a full fledged trial the learned Subordinate Judges Court proceeded to dismiss the said H.M.O.P.No.55 of 2002 on 08.03.2004. Hence, no doubt the First Appellate Court's observation that the traits of animus deserendi could be found in the respondent's mind right from the date on which the petition for restitution of conjugal rights has been filed by her husband. Though the petitioner's behaviour of arrogance and recklessness had developed animosity and inimical attitude in the mind of the respondent it could also be seen that the respondent had never taken conscious steps towards conciliation with her husband rather she also in a tit for tat style had indulged in lodging complaints as against the petitioner. The petitioner and the respondent had involved in lodging multiple complaints against each other which culminated in criminal cases before the learned Judicial Magistrate Court at Ambasamudiram.



C.M.S.A.(MD)No.2 of 2018

24. Though the dismissal of the petition for restitution of conjugal rights on 08.03.2004 since the respondent had deserted the petitioner for a continuous period of more than two years even after the dismissal of the petition for restitution of conjugal rights on 08.03.2004 on the completion of two years from the date of dismissal of the petition for restitution of conjugal rights, the petitioner filed this petition for divorce on 13.11.2006. Having actively contested the petition for restitution of conjugal rights filed by the husband in H.M.O.P.No.55 of 2002 before the learned Subordinate Judges Court at Ambasamudiram, it could be found that the respondent has also actively contested this H.M.O.P.No.60 of 2006 insisting for dismissal of the same. Thus, it could be found that she is neither prepared to live with the petitioner nor ready to allow him to seek the matrimonial relief of divorce by dissolving the marriage which was held between them. Thus, the respondent had approbated and reprobated by contesting both the H.M.O.P.Nos. 55 of 2002 and H.M.O.P.No60 of 2006. In the ultimate analysis it could be found that the marriage between the petitioner and the respondent has disrupted beyond the hope of salvage.



C.M.S.A.(MD)No.2 of 2018

25. Both the petitioner and the respondent have caused by their respective conduct of cruelty, there by abusing mutually and by lodging criminal complaints and counter complaints against each other which culminated in the registration of several criminal cases as against each other. Dissolution of marriage will relieve both sides from pain, anxiety and animosity. Though the respondent wife has insisted that she is continuously ready to go back to her husband, by passage of time their matrimonial life has culminated to such point that the same could not be saved anymore by all means. Observing that the matrimonial mistakes have to be attributed equally both on the petitioner as well as the respondent for their continuous inimical and enmity which they have developed as against each other, even if the decree of divorce as granted by the learned First Appellate Court is set aside there could not be fresh avenue or scope of reconciliation between the petitioner / husband and the respondent / wife.

26. Perhaps, in desperation both the petitioner and the respondent while filing complaints and counter complaints it could be found that the respondent / wife actively contested the petition for restitution of conjugal rights filed by the petitioner husband and also the petition for divorce filed



C.M.S.A.(MD)No.2 of 2018

by the petitioner as against the respondent. Thus, by contesting both the cases for restitution of conjugal rights and also the petition for divorce she has approbated and reprobated her stand which could clearly prove her vindictive mind against her husband. That apart, the vindictive mind of the petitioner should also be taken into account. In total the matrimony is beyond repair. In view of the same, fully concurring with the judgment and decree setting aside the H.M.O.P.No.60 of 2006 passed by the learned First Appellate Court in H.M.C.M.A.No.16 of 2015, I am not inclined to interfere with the said judgment.

27. Accordingly, this Civil Miscellaneous Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml



C.M.S.A.(MD)No.2 of 2018

To

WEB COPY

- 1.The Sub Court,
Ambasamudiram.
- 2.The Additional District Judge,
Tirunelveli.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.S.A.(MD)No.2 of 2018

L.VICTORIA GOWRI, J.,

Sml

C.M.S.A.(MD)No.2 of 2018

19.03.2024