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C.M.A.(MD)No.227 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.227 of 2014

and

M.P(MD) No.1 of 2014

A.Babu

... Appellant/ Petitioner

Vs.

Malarselvi

...Respondent/Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 55 of Indian Divorce Act, 1869 to call for the records and set aside the judgment and decree dated 20.12.2023 in I.D.O.P.No.94 of 2011 on the file of the III Additional District Judge, Tiruchirapalli by allowing this Civil Miscellaneous Appeal.

For Appellant	: Mr.K.Sivabalan
For R1	: Mr.H.Lakshmi Sankar for Mr.T.V.Sivakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the judgment and decree dated 20.12.2023 in I.D.O.P.No.94 of 2011 on the file of the III Additional District Judge, Tiruchirapalli, wherein the appellant herein has filed a



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petition under Section 10(1)(viii) of Indian Divorce Act, to dissolve the marriage between the petitioner and the respondent that was solemnized on 26.01.1995. The trial Court has dismissed the petition. Being aggrieved by the order of the trial Court the petitioner has filed this appeal.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The brief facts in the petition filed before the trial Court are as follows:

The marriage between the petitioner and the respondent was solemnized on 26.01.1995 and due to wedlock they were blessed with a female child Benin Sujalin on 27.10.1995 and son Albert on 08.01.1998. Thereafter the respondent tried to keep away the petitioner and restrained him from meeting the children. The petitioner was again employed in Mannargudi but the respondent got settled at Tharapuarum. Since the petitioner got lower salary than the respondent she tried to keep him away. She also went to the extent of treating her mother -in-law in a cruel manner. After the year 1997 the petitioner and the respondent are living separately. The respondent not even informed the petitioner about the puberty function of her daughter. Thereafter the petitioner issued legal notice on 25.08.2005. Hence the petitioner prayed to



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order for dissolution of marriage between the petitioner and the respondent on 26.01.1995.

4. The brief contention of the counter filed by the respondent are as follows:

The relationship between the petitioner and the respondent are admitted. The petitioner has not come forward with true facts. Infact he filed I.D.O.P.No.58 of 2004 with same prayer and that was dismissed. Thereafter the petitioner filed CMA No.485 of 2010 with new grounds such as adultery which was also dismissed by the High Court. Again for the third time, this petition is filed. The petitioner has suppressed all these facts and filed this petition with false allegations. The respondent is always ready and willing to live with the petitioner. There is no desertion among the spouses as mentioned in the petition. Therefore the petition is liable to be dismissed.

5. Inorder to prove the case of the petitioner before the trial Court he has examined P.W.1 marked documents Exps.P.1 to P.4. On the side of the respondents R.W.1 and R.W.2 were examined and no documents were marked.

6. After hearing both sides and perusing the documents available on records, the trial Court has dismissed the petition with costs of Rs.2,00,000/.



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Aggrieved by the said order the present appeal has been filed on various grounds.

7. The learned counsel appearing for the appellant would contend that the petitioner had filed petition for divorce on the ground of desertion as well as cruelty and to prove his contention he was examined as P.W.1 and marked documents Ex.P.1 to Ex.P.4, but the trial Court has not considered the evidence of P.W.1. Taking into consideration the evidence of R.W.1 and R.W.2 erroneously dismissed the petition with costs of Rs.2,00,000/-. Therefore the order passed by the Trial Court is liable to be set aside by allowing this appeal and the marriage between the petitioner and the respondent has to be dissolved.

8. The learned counsel appearing for the respondent would contend that the petitioner has filed a petition in I.D.O.P No.58 of 2004 with some sought of allegations with same prayer and it was dismissed. Thereafter the petitioner has filed CMA No.485 of 2010 with new grounds and the same was also dismissed by the High Court. Now by suppressing the above said facts filed this petition with false allegations. There is no grounds to allow this application and the trial Court after taking into consideration the evidence adduced by both



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parties correctly dismissed the application with cost, therefore the appeal is liable to be dismissed.

9. This Court after hearing both sides and upon perusing the documents including the order of the trial Court, the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?

10. The appellant herein has filed petition before the trial Court for dissolving the marriage between the petitioner and the respondent that was solemnized on 26.01.1995 on the ground of desertion as well as cruelty. Before the trial Court on the side of the petitioner they have examined P.W.1 and marked four documents and the respondent has examined R.W.1 and R.W.2 but no documents were marked. The trial Court after taking into consideration all the evidences adduced on either sides dismissed the appeal holding that there is no desertion committed by the respondent and the petitioner was not allowed to live with the respondent. Further the petitioner has suppressed previous petition filed by the petitioner and the same was dismissed, thereby dismissed the petition and awarded a sum of Rs.2,00,000/- towards costs.



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11. This Court has also perused the records and on careful perusal of evidences adduced on both sides, the petitioner himself admitted that he is not ready and willing to live with the respondent and his evidence is not sufficient to prove the grounds of desertion and cruelty. Further the petitioner has not filed any petition to restitution of conjugal rights and also not filed any application before this Court and take steps to take care of the children born to him. Further there is no evidence to attract the ground of desertion as well as cruelty. Further the mother of the petitioner was also examined as R.W.2 and she also supported the respondent and based on available evidence the trial Court has dismissed the application and there is no ground to dissolve the marriage, thereby the trial Court has declined to entertain the petition and dismissed the same. Therefore the order passed by the trial Court is in order and no warrants for interference.

12. So far as awarding costs of Rs.2,00,000/- is concerned the trial Court has awarded a sum of Rs.2,00,000/- and the same is too high. Considering the relationship between the parties and considering the facts and circumstances of the case this Court is inclined to modify the order with regard to compensation of Rs.2,00,000/- alone. The respondent has not filed any application for maintenance either for herself or for the minor children and thereby awarding



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costs of Rs.2,00,000/- is too high and not acceptable. Hence this Court is inclined to modify the order with regard to awarding compensation of Rs.2,00,000/-. On perusal of records it is observed that the petitioner has already filed petition for divorce and the same was dismissed and this is second round of litigation and thereby it is appropriate to award a sum of Rs.50,000/- towards costs to the respondent.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the order of the trial Court in I.D.O.P.No.58 of 2004 in respect of divorce is confirmed and the order in respect of imposing cost is modified to the effect that petitioner has to pay a sum of Rs.50,000/- as costs to the respondent for litigation expenses. Consequently connected miscellaneous petition is closed.

23.01.2024

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

1. The III Additional District Judge, Tiruchirapalli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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