



CM.S.A (MD)No.2 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19.03.2024

CORAM:

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

CM.S.A (MD)No.2 of 2014

M.Sivakumaran

..Appellant/Appellant/Petitioner

.vs.

P.Niranjana

..Respondent/Respondent/Petitioner

Prayer : This Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act and Section 100 of Civil Procedure Code, against the judgment and decree dated 05.07.2013 made in HMCMA No.88 of 2012 on the file of the learned Principal District Judge, Tiruchirapalli confirming the judgment and decree dated 20.01.2012 made in HMOP No,532 of 2011 on the file of the Principal Subordinate Judge, Tiruchirapalli.

For Appellant : Mr.T.Antony Arul Raj

For Respondent : M/s.J.Anandhavalli

JUDGMENT

This Civil Miscellaneous Second Appeal has been preferred as against the order passed in HMCMA No.88 of 2012 on the file of the Principal District Judge, Trichy.



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2. The appellant herein has filed petition before the Sub Court, Trichy in HMOP No.532 of 2011 seeking divorce on the ground of cruelty, desertion and Section 13(1)(A) of Hindu Marriage Act that the respondent herein has been suffering from mental disorder and there has been no restitution of conjugal rights between the parties for a period of one year after passing decree of restitution of conjugal rights in the proceedings.

3. The trial Court dismissed the petition with costs. As against the order passed by the trial court the petitioner herein has filed appeal before the District Court, Trichy and the first appellate Court also dismissed the petition by confirming the order of the trial Court. Therefore the present Civil Miscellaneous Second Appeal has been filed by the appellant/husband.

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



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5. The brief fact of the petition filed before the trial

Court are as follows:

The respondent is the legally wedded wife of the petitioner and their marriage took place on 22.05.2005. Both the petitioner and the respondent worked in the software company and thereafter both the petitioner and the respondent went to USA on 05.06.2005 and for about ten days they lived happily in USA.. The respondent has spent Rs.2,00,000 /- for purchase of luxury materials and her lavish. The respondent always used to speak with her parents over phone and has not shown interest towards the petitioner. She was behaving like a mentally affected persons. During 2005 and she told the petitioner that she wanted to go back to India and also she gone to the extent that she would give complaint for sexual harassment. On 20.09.2005 the petitioner sent the respondent to India with valuable articles. The respondent not even informed about her pregnancy. When the petitioner came down to India and visited the respondent she told that she was not interested in living with him and she used to shout in public places and behaved abnormally. The respondent treated the petitioner as all time money lending machine . The respondent has committed cruelty to the petitioner. The respondent delivered a male child on 28.03.2006. When the petitioner wanted to purchase a flat she



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refused to sign as co-applicant. The respondent left the matrimonial home and stayed with her parents. During January 2007 informed the petitioner and she deserted the petitioner. On enquiry the petitioner came to know that the mother of the respondent is mentally challenged person and the respondent attempted to commit suicide two times before marriage. The respondent tortured the petitioner to apply for divorce. The petitioner already filed HMOP No.1460 of 2007 before the Family Court, Chennai and the respondent filed HMOP No.214 of 2007 for restitution of conjugal rights before the Sub Court, Trichy and the same was allowed on 12.10.2007. Even after that they have not lived together. Thereafter the petitioner sent legal notice dated 07.08.2009 and the respondent has sent reply on 14.09.2009, hence the petitioner filed this petition seeking divorce.

6. The brief averments of the additional counter filed by the respondent are as follows:

The marriage between the parties are admitted . After marriage the petitioner and the respondent left to USA and the respondent became pregnant and she had returned to India for her safe delivery and treatment. At that time the petitioner sent the respondent alone to India. The petitioner has filed this petition with



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false and baseless allegation. The petitioner has not taken care of the family and he is always in business tour owing to his employment and the petitioner wanted sophisticated life without taking care of the family. The respondent already filed HMOP 214 of 2007 for restitution of conjugal rights and the same was allowed. The petitioner later filed HMOP No.1450/2007 before the Family Court, Chennai for restitution of conjugal rights and thereafter the same was withdrawn. The respondent is providing education to the child. The petitioner has not taken care of the child. After the order passed in HMOP No.214/2007 the respondent and the petitioner are living together and they have admitted the child in the school in the year 2009 the petitioner is not entitled for the relief of divorce.

7. Before the Trial Court, on the side of the petitioner, he has examined P.W.1 and P.W.2 and marked exhibits Ex.P.1 and P.20 and on the side of the respondent, R.W.1 was examined and exhibits Ex.R.1 to R.5 were marked.

8. After considering the evidences adduced on both sides the trial Court has dismissed the petition. As against the order passed by the trial Court the petitioner has preferred appeal in HMCMA No. 88 of 2012 on the file of the learned Principal District Judge,



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Tiruchirapalli and the first appellate court after hearing both sides dismissed the appeal filed by the petitioner by confirming the order of the trial Court. As against the order passed by the first appellate court, the present second appeal has been filed by the appellant.

9. During the pendency of appeal both parties have filed compromise memo and the said memo was not recorded since both the parties are consented for divorce without filing any proper application before the appropriate forum. Further both the parties represented that the petitioner and the respondent arrived at settlement for a sum of Rs.50,00,000/- towards permanent alimony and the respondent also in person appeared and admitted the receipt of Demand Draft for the said amount in D.D.No.501045 drawn in ICICI Bank Chennai, dated 14.03.2024. However since this Court has not recorded the compromise both the counsels have argued the matter on merits.

10.The learned counsel appearing for the appellant would contend that the respondent is the legally wedded wife of the appellant and their marriage took place on 22.05.2005. Both are working in software company. The appellant was working in USA at the time of marriage and thereafter he had taken his wife to USA



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The respondent was adamant to go back to India. Therefore he sent her to India on 20.09.2005 and she delivered a male child. In January 2007 she went to her parents house without informing the petitioner and thereafter the respondent filed petition in HMOP No. 214 of 2007 on the file of the Sub Court, Trichy for restitution of conjugal rights and the same was allowed on 12.10.2007. Even after that the respondent and the petitioner were not lived as husband and wife. The respondent deserted the appellant and also caused cruelty to him. She also behaved in abnormal manner. Therefore he filed petition before the trial Court and before the trial Court he examined P.W.1 and P.W.2 and marked exhibits Ex.P.1 to P.20, but the trial Court failed to consider the evidence adduced on the side of the petitioner and erroneously dismissed the petition. The first appellate court also without considering the grounds raised by the appellant dismissed the appeal by confirming the order of the trial Court. The Courts below failed to consider that even after the order passed by the Sub Court, Trichy for restitution of conjugal rights through order dated 12.10.2007 in HMOP 214 of 2007 both parties are unable to reunion and the Courts below have failed to consider the desertion of the respondent, therefore the order passed by the trial Court as well as the appellate court are liable to be set aside and the appellant is entitled for the decree of divorce.



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11. The learned counsel appearing for the respondent would contend that the appellant has filed petition seeking divorce on the ground of cruelty, desertion and even after the order for restitution of conjugal rights. More than one year no possibility of reunion but the petitioner has not proved the grounds raised in the petition thereby the trial Court dismissed the petition. After the marriage both the parties lived at USA for some time, in the meantime the respondent got conceived, thereby the petitioner sent back her to India for delivery and then she delivered a male baby. The petitioner wanted a sophisticated life and frequently he was roaming due to his nature of work and not intended to live with the respondent and he only neglected the respondent. On the side of the respondent R.W.1 was examined and she deposed about the real facts and the trial court correctly dismissed the petition. The first appellate Court also after elaborate discussion correctly dismissed the appeal since the appellant has not proved the grounds raised in the petition for granting divorce. There is no substantial question of law involved in this case, thereby the appeal is liable to be dismissed.



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12. Heard both sides and perused the records. In this case there is no dispute in respect of relationship of the parties and marriage was also admitted by the parties. The appellant has filed petition before the Sub Court, Trichy for granting divorce on various grounds. The trial Court dismissed the petition. The first appellate court also dismissed the petitioner by confirming the order of the trial Court. At the time of admission this Court has framed the following substantial questions of law:

1) Whether the appellant's prayer for divorce should be granted in terms of Section 13(1-A) of Hindu Marriage Act, 1955 since there has been resumption of relationship between the parties for one year and upwards after the grant of order in favour of he respondent in HMOP No.214 of 2007 on 12.10.2008?

2) Whether the Courts below ought to have granted the decree of divorce on the ground of desertion in view of the admission made by the respondent/wife?

Substantial questions of law No.1

13. As far as first substantial question of law is concerned it is admitted fact that the respondent herein has filed petition before the Sub Court, Trichy in HMOP No. 214 of 2007 for restitution of conjugal rights and the same was allowed on 12.10.2007 and



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thereafter there is no restitution of conjugal rights between the parties for a period of more than one year. The appellant also filed petition for divorce on the said ground of Section 13(1-A) of Hindu Marriage Act stating that after the order passed by the Sub Court, Trichy there is no restitution of conjugal rights between the parties for a period of more than one year. The above said facts has been denied by the respondent. However there is no proof to show that after the order passed by the Sub Court, Trichy in HMOP No.214 of 2007 both the parties lived together as husband and wife. The respondent only in the counter stated that after the order passed by the Sub Court, Trichy in HMOP No. 214 of 2007 they lived as husband and wife but no evidence adduced by the respondent to prove the same and there is no evidence where they lived as husband and wife after the order passed by the Sub Court, Trichy. Per contra the appellant pleaded in the petition and also deposed that even after the order passed by the Sub Court, Trichy for restitution of conjugal rights the respondent failed to live with the petitioner. Whiles, the respondent has to prove that from which date onwards they lived as husband and wife and where they lived, but no evidence to prove the same. In view of the above discussions this Court is of the opinion that the petitioner proved his case. Therefore the appellant is entitled to divorce on the ground that



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there has no restitution of conjugal rights between the parties for a period of one year after passing decree for restitution of conjugal rights as per Section 13(1-A) of Hindu Marriage Act. Thus the substantial question of law is answered.

Substantial question of law No.2

14. The petitioner has filed petition for divorce on the ground of desertion. In order to prove the same on the side of the petitioner he has examined P.W.1 and P.W.2 and marked documents Ex.P.1 to P. 20. P.W.1 has categorically stated about the desertion but thereafter there is no proof that the respondent without any valid reason left from the matrimonial home and the respondent herself filed petition before the Court for restitution of conjugal rights and thereby the appellant has failed to prove the ground of desertion for grant of divorce. Thus the substantial question of law is answered.

15. In view of the above answers made to the substantial questions of law the appellant is entitled to divorce as per Section 13(1-A) of Hindu Marriage Act that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceedings to which they are parties.



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16. In view of the above discussions and the answers made in the substantial question of law this Civil Miscellaneous Second Appeal stands allowed and the order passed by the trial Court in HMOP No.532 of 2011 and the first appellate Court in HMCMA No. 88 of 2012 are set aside and the marriage between the petitioner and the respondent dated 22.05.2005 is dissolved. No costs.

19.03.2024

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

1. The Principal District Judge, Tiruchirapalli
2. The Principal Subordinate Judge, Tiruchirapalli
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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