



C.M.S.A.(MD).No.4 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.11.2024

Delivered On : 08.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.4 of 2015

Kannan ... Appellant

Vs.

Veeralakshmi ... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 100 of C.P.C., r/w. Section 28 of Hindu Marriage Act, to set aside the judgment and decree passed dated 05.03.2014 made in H.M.C.M.A.No.6 of 2007 on the file of the District Court, Sivagangai reversing the judgment and decree dated 10.10.2006 made in H.M.O.P.No.13 of 2006 on the file of the Subordinate Court, Devakottai.

For Appellant	: Mr.J.Anand Kumar
For Respondent	: No Appearance

JUDGMENT

The Civil Miscellaneous Second Appeal has been filed to set aside



C.M.S.A.(MD).No.4 of 2015

the judgment and decree passed in H.M.C.M.A.No.6 of 2017 on the file of the learned District Judge, Sivangai dated 05.03.2014 reversing the order passed in H.M.O.P.No.13 of 2006 on the file of the learned Sub Judge, Devakottai, dated 10.10.2006.

2.For the sake of convenience, the parties are addressed herein as per the rank in H.M.O.P.No.13 of 2006. The petitioner is the husband and the respondent is the wife.

3.The case of the petitioner in H.M.O.P.No.13 of 2006 is as follows:-

3.1.The marriage between the petitioner and the respondent was solemnized on 26.01.2004 in the presence of friends and relatives. After marriage, they lived together as husband and wife for some time at Karaikudi in the petitioner's residence. From the beginning, the respondent wife is not interested in the matrimonial life. She continuously refused to have sexual intercourse with the petitioner. She failed to be a dutiful wife and she treated the petitioner disrespectfully. That apart she had always shown her disinclination towards



C.M.S.A.(MD).No.4 of 2015

consummation in matrimonial life. The respondent wife suffered health issues and she had to undergo appendicitis operation. The petitioner himself took care of her for undergoing medical treatment and appendicitis surgery, which was conducted on her at Devaki Hospital. Even after that the respondent wife very often went to her parent's house on the guise of taking rest and continuously refused to live with the petitioner. Every time the petitioner brought her back to the matrimonial home only after holding conciliation talks and panchayat, by bringing in well wishers into the scene for the purpose of counselling the respondent wife. Even then the respondent always showed her disinclination in living a happy married life with the petitioner refusing to lead a happy married life with the petitioner husband. She very often expressed her disinclination towards petitioner husband and declared that she wanted to become a nun. She never did any duty which is expected of from a wife and she went to the extent of threatening the petitioner that she would commit suicide. That apart she insisted the petitioner to go and live separately from his mother Kalyani and his elder maternal aunt Muthulakshmi. She always used to abuse his mother Kalyani and elder maternal aunt Muthulakshmi in filthy language. The respondent wife



C.M.S.A.(MD).No.4 of 2015

went to the extent of threatening him that she would implicate the petitioner in dowry case. The respondent was continuously living with her parents and she refused to live with her husband. She continuously subjected the petitioner to untold mental agony and the petitioner was suffering in the hands of the respondent wife.

3.2.The petitioner was working as a Driver and the respondent always expressed her dissatisfaction over the income of the Driver. She very often threatened the petitioner that she is interested in going back to Singapore where she worked before marriage. She refused to accept the petitioner and without informing the petitioner, she very often left the matrimonial home and went to her parents' house. The petitioner gave a petition before the Karaikudi All Women Police Station in Petition No. 195 of 2005. However, the respondent wife did not turn up. Under such circumstances, the petitioner had sent a legal notice on 28.01.2006 through his advocate calling upon the respondent wife to reconstitute her matrimony. However, receiving the notice dated 30.01.2006, the respondent failed to send any reply notice. Very often the petitioner was threatened by the respondent through one Thiru.K.R.Pandiyan, the owner



C.M.S.A.(MD).No.4 of 2015

of the bus company, at Pattukottai. She also demanded an amount of Rs. 1,00,000/- to Rs.2,00,000/- through K.R.Pandiyan for the purpose of going back to Singapore. Under such circumstances, left with no other option, the petitioner had decided to file this petition. In the meanwhile, the respondent had given a false complaint on 17.02.2016 before Karaikudi All Women Police Station as against the petitioner and his family members. Hence, this petition for divorce under Section 13(1)(i-a) of the Hindu Marriage Act.

4.1.The respondent wife has filed a counter refuting each and every allegation putforth by the petitioner in his petition for divorce. The respondent claimed that at the time of marriage, the petitioner was given 20 sovereigns of gold, a watch, minor chain bracelet and amount of Rs. 20,000/- for the purpose of purchasing a two wheeler on the demand of the petitioner and his mother. All the allegations of the petitioner that the respondent did not lead a peaceful matrimonial life with the petitioner is totally untrue.

4.2.The submission of the petitioner that he had taken care of the



C.M.S.A.(MD).No.4 of 2015

respondent when she was unwell is also false. It is only the respondent's father, who admitted the respondent in the hospital for undergoing appendicitis operation and after surgery, the entire medical expenditure was borne by the respondent's father. Thereafter, after regaining her health condition, when the respondent wife went to her shared matrimonial home, the petitioner assaulted the respondent and forcibly took away the jewelry which she had been wearing and thereafter, chased her out of the shared matrimonial home on 25.10.2005. That apart the allegations made by the petitioner as against the respondent that she had inflicted cruelty as against his mother Kalyani and elder maternal aunt Muthulakshmi are completely false. It is only the said Kalyani and Muthulakshmi who actually indulged in cruelty as against the respondent wife subjecting her to untold domestic violence. Lastly on 25.10.2005, she was chased away from her shared matrimonial house after forcibly taking away her jewelry by the petitioner husband himself.

4.3.To add to the agony of the respondent, the petitioner is making use of his influence over the All Women Police Station at Devakottai in collusion with the Police Officers, called the respondent to the Police



C.M.S.A.(MD).No.4 of 2015

Station several times and threatened her. In response to the same, the respondent's father made a proposal of constructing a new house by purchasing a land exclusively for the petitioner and the respondent so as to lead a happy married life. However, the petitioner was not amenable for any kind of compromise or any kind of arrangement facilitated by the respondent and her family members and refused to live with the respondent categorically.

4.4. Thereafter, on 09.12.2005, the respondent wife gave a complaint before the All Women Police Station seeking restitution and protection from the petitioner and his family members. However, nothing worked and hence, she filed H.M.O.P.No.15 of 2006 before the learned Sub Judge, Pattukottai seeking restitution of conjugal rights. In view of the same, the respondent is always inclined to live with the petitioner and sought for dismissal of the petition for divorce filed by the petitioner husband.

5. The learned Trial Court has framed two issues. One witness was examined and six documents were marked on the side of the petitioner.



C.M.S.A.(MD).No.4 of 2015

One witness was examined and no document was marked on the side of the respondent. On the basis of the evidence deposed by the respective parties and the documents marked before the learned trial Court, the learned Trial Court relying upon the evidence of the parties, proceeded to conclude that the respondent wife had never been cordial with the petitioner from the first instance of the marriage to that extent that she never permitted the petitioner to have sexual intercourse with the respondent. The learned Trial Court has proceeded to observe that the respondent's family was economically strong and well placed than the petitioner's family. On the basis of the evidence of the respondent, the learned Trial Court observed that the respondent had been working in Singapore before marriage and obviously the respondent would not have been able to adjust with the standard of life of the petitioner, who was employed as a Driver. The learned Trial Court proceeded to observe that the respondent was not able to cope with the economic condition and standard of life afforded by the petitioner's husband. As a result of which, very often, he left for her maternal home and she subjected the petitioner with cruelty by refusing to have a happy married life with the petitioner. On that basis, the learned Trial Court allowed the petition filed by the



C.M.S.A.(MD).No.4 of 2015

petitioner for divorce on the ground of cruelty.

WEB COPY

6.1.Assailing the same, the respondent wife has filed an appeal in H.M.C.M.A.No.6 of 2007 before the learned District Judge, Sivagangai. The learned first Appellate Court has framed three issues. The petitioner filed a petition under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act for divorce. The learned Trial Court granted divorce under Section Section 13(1)(i-a) of the Act and refused to grant divorce under Section Section 13(1)(i-b) of the Hindu Marriage Act. On the basis of the evidence deposed by both the parties available on records and the arguments putforth by both the parties, the learned first Appellate Court observed that the petitioner has not examined any witness to substantiate the fact that the respondent indulged in cruel activity as against the petitioner and very often Panchayat was arranged and only after the same, the respondent was brought back to the matrimonial home. So it was observed by the first Appellate Court that the allegations of the refusal of the respondent to have sexual intercourse with the petitioner and that she was not at all interested in having sex with her husband and she failed to discharge her matrimonial duties to the petitioner was not



C.M.S.A.(MD).No.4 of 2015

properly proved by the petitioner by adducing appropriate evidence.

WEB COPY

6.2.The learned first Appellate Court proceeded to hold that cruelty is not confined to causing physical acts of cruelty. The Court must judge allegations and come to a conclusion that whether the particular allegation would amount to cruelty or not. Mental cruelty has to be inferred from the facts and circumstances of each and every case. The circumstances which makes the spouse impossible to live with the other spouse would amount to mental cruelty. It is true that the persistent resistance on the part of the wife to have sexual intercourse with the petitioner would amount to cruelty but the same has to be proved by the petitioner. It is true that ordinary wear and tear of the marriage would not amount to cruelty. The petitioner has not asked for divorce on the ground of cruelty. The petitioner only asked for divorce on the ground of desertion. However, the lower Court granted divorce on the ground of cruelty and refused to grant divorce on the ground of desertion, since the date of separation was only 25.10.2005 I.e. Just a few months from the date of filing of the divorce. They were not separated for more than 2 years before the filing of the divorce petition under Section 13(1)(i-a) of



C.M.S.A.(MD).No.4 of 2015

the Hindu Marriage Act.

WEB COPY

6.3.The learned first Appellate Court further observed that the petitioner had undergone surgery for appendicitis. The respondent also gave police complaint on 09.12.2005 only for living together with the petitioner and not to punish the petitioner and that apart, she has expressed her indulgence to live with the petitioner by filing H.M.O.P.No.15 of 2006 seeking restitution of conjugal rights expressing her willingness to live with the petitioner. The petitioner had not examined any other witness other than himself to prove the allegations setforth by him in his petition for divorce. The petitioner never any attempt to reconcile the matter and the learned Trial Court failed to consider the facts and circumstances of the case, which had happened inside the walls of the house. The sole evidence of the petitioner cannot be accepted without any evidence to support his allegations. In view of the same, the learned first Appellate Court proceeded to set aside the order and decreetal order passed by the learned Trial Court in H.M.O.P.No.13 of 2006 dated 10.10.2006.



C.M.S.A.(MD).No.4 of 2015

7.Assailing the same, the appellant husband has filed the Civil Miscellaneous Second Appeal on the following substantial question of law:-

“(i)Whether the first appellate Court is right in reversing the well considered judgment of the lower appellate Court without giving any reasons of upsetting the same?

(ii)Whether the first appellate Court is right in allowing the appeal of the respondent when it categorically comes to the conclusion that the respondent has desired the appellant?

(iii)Whether the first appellate Court is right in allowing the appeal in the ground that question of cruelty was not pleaded?

(iv)Whether the first appellate Court is right in not shifting the burden to the respondent when appellant has proved the factum of desertion and cruelty as per Section 102 of Evidence Act?”

8.The petition for divorce has been filed by the petitioner husband under Section 13(1)(i-a) of the Hindu Marriage Act seeking divorce on the ground of cruelty. However, the learned Trial Court proceeded to consider the entire case on the guise that the petitioner has filed the petition for divorce on two grounds namely cruelty and desertion and



C.M.S.A.(MD).No.4 of 2015

proceeded to grant divorce on the ground of cruelty and dismissed the case as far as desertion is concerned. However, the learned first Appellate Court reversed the order passed by the learned Trial Court on the basis of facts and circumstances of the case holding that the petitioner miserably failed to prove the allegations, which he had set forth in his petition for divorce. The aspect of cruelty differs from person to person depending upon the upbringing, level of sensitivity, education, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and the value system of respective parties. What is explained as cruelty in one case may not amount to cruelty in another case. Hence, in matrimonial matters, especially the petition for divorce, which is sought under the ground of cruelty, each case has to be considered in its own facts and circumstances.

9.In the instant case, the allegations made by the petitioner husband as against the respondent wife is that from the very first instance of marriage, the respondent had been reluctant to commence a happy married life with the petitioner. That apart, the respondent continuously refuted to lead a happy married life and co-operate a happy



C.M.S.A.(MD).No.4 of 2015

consummation with the petitioner. Consistently the respondent continued to refuse to have sexual intercourse with the petitioner husband. That apart the allegations of misbehavior and cruelty as inflicted by the respondent wife on the mother of the petitioner and his elder maternal aunt has also been raised.

10.The other allegation of the petitioner is that the respondent left her matrimonial home to her maternal home very often on the guise of taking rest and even when she was unfell it was the petitioner who took care of the respondent who duly admitted her in a hospital for the conduct of appendicitis surgery. The respondent also threatened the petitioner through one K.R.Pandiyan demanding more money to the extent of Rs.1,00,000/- to Rs.2,00,000/- for the purpose of going to Singapore for employment. That apart the petitioner also made allegation that the respondent often threatened that she would leave for Singapore where she lived before her marriage for two years. However, none of the allegations were properly proved before the learned Trial Court by adducing proper evidence. He did not resort to examine his mother and his elder maternal aunt. That apart he made an allegation that the



C.M.S.A.(MD).No.4 of 2015

respondent gave a false complaint before Karaikudi All Women Police Station. Despite the petitioner's continuous request for reconciliation the respondent refused to live with the petitioner. However, deposing evidence as against the petitioner's contention, the respondent categorically deposed that it was only the petitioner, who chased her away from her shared matrimonial home on 25.10.2005, it was her father who took care of her at the time when surgery was conducted on her. Even the respondent's father's proposal for constructing a separate house for the petitioner and respondent to live happily separately was also not heeded to by the petitioner.

11.By filing a counter affidavit and also by her evidence and also by her conduct of filing H.M.O.P.No.15 of 2006 on the file of the Sub Court, Pattukottai, for restitution of conjugal rights, the respondent has clearly proved her intention to live with the petitioner. However, the petitioner husband failed to prove each and every allegations set forth in his petition for divorce as against the respondent by adducing proper oral and documentary evidence. Hence, fully concurring with the judgment and decree passed by the learned first Appellate Court, I hereby



C.M.S.A.(MD).No.4 of 2015

confirmed the judgment and decree passed by the learned first Appellate Court.

12. Accordingly, the Civil Miscellaneous Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

08.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The District Judge, Sivagangai.
2. The Sub Judge, Devakottai.
3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.S.A.(MD).No.4 of 2015

L.VICTORIA GOWRI, J.

Mrn

C.M.S.A.(MD)No.4 of 2015

08.03.2024