



CM.S.A (MD)No30 and 34 of 2016

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Dated: 20.03.2024

CORAM:

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

CM.S.A (MD)No.30 and 34 of 2016

and

C.M.P(MD) Nos.8622 and 9375 of 2016

CMSA(MD) No. 30 of 2016

Seenivasan

..Appellant/Respondent/Petitioner

Vs.

Mangathai

.. Respondent/Petitioner/Respondent

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 23.06.2016 made in HMCMA No. 2 of 2015 on the file of the learned Additional District Judge, Virudhunagar reversing the judgment and decree dated 05.02.2015 made in HMOP No.52 of 2013 on the file of the learned Subordinate Judge at Virudhunagar.

For Appellant : Mr. S.Srinivasa Raghavan

For Respondent : Mr.Vijayarathinam

CMSA(MD) No. 34 of 2016

Mangathai

..Appellant/Appellant/Petitioner

Vs.

Seenivasan

.. Respondent/Respondent/Respondent



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Prayer : This Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act and Section 100 of Civil Procedure Code against the fair and decretal order dated 23.06.2016 made in HMCMA No. 3 of 2015 on the file of the Additional District Judge, Virudhunagar confirming the judgment and decree dated 05.02.2015 made in HMOP No. 69 of 2014 on the file of the Subordinate Judge, Virudhunagar.

For Appellant : Mr. M.Vijayarathinam

For Respondent : Mr. S.Srinivasa Raghavan

COMMON JUDGMENT

These Civil Miscellaneous second Appeals have been filed as against the common order passed in HMCMA Nos. 2 and 3 of 2015. HMCMA No.2 of 2015 has been arising out of HMOP No. 52 of 2013, wherein the appellant herein has filed petition for divorce and the same was allowed. HMCMA No. 3 of 2015 has been arising out of HMOP No. 69 of 2014 wherein the respondent herein has filed petition for restitution of conjugal rights and the same was dismissed through common order. As against the common order, the respondent in HMOP No. 52 of 2013 and the petitioner in HMOP No.69 of 2014 filed separate appeals before the learned Additional District Judge, Virudhunagar. The appeal in HMCMA No.02 of 2015 was allowed by reversing the judgment of HMOP No.52 of 2013. Appeal in HMCMA No. 03 of 2015 was dismissed by confirming the



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order of the trial Court. As against the dismissal order passed in HMCMA No.02 of 2015 the husband/respondent has filed the appeal. As against the dismissal order in HMCMA No.03 of 2015 the wife has preferred 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 Trial Court.

3. The brief facts of the case in CMSA No.30 of 2016 are as follows:

The marriage between the petitioner and the respondent was solemnized on 08.09.2011 as per hindu rites and customs. Both the spouses are teachers working in different Districts. After marriage , they lived as husband and wife for two days and thereafter, the respondent started to give torture to the petitioner demanding him to get transfer where she was working . The mother and sister of the petitioner are depending upon him. The distance between the place of school of the respondent and the school of the petitioner is about 50kms thereby, he is unable to honour the demand of the respondent. Due to which, the respondent left the matrimonial home and she refused to live along with the petitioner. When the



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petitioner suggested to shift the residence at Chithurajapuram which is middle place between the working place for both the parties, she refused. All the efforts taken by the petitioner through villagers ended in vain and therefore, the petitioner issued notice dated 01.03.2012 calling upon the respondent to live with him and after receipt of notice, the wife also issued reply notice dated 20.03.2012. In spite of notice issued by the petitioner, the respondent/wife did not come forward to live with the petitioner. The petitioner filed HMOP No. 86 of 2012 for restitution of conjugal rights. During the pendency of the said petition, compromise was arrived at between the parties through lok adalt dated 22.08.2012 and both the parties agreed to live together. Even after the said compromise, the respondent has not chosen to live with the petitioner. When the petitioner demanded his wife to live with him, she insulted and also threatened to lodge false dowry harassment case. The respondent has no intention to resume the matrimonial life with the petitioner and only to take revenge as against the petitioner and his family members she refused to live with him. Therefore, the petitioner filed petition for granting divorce.



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4. The case of the appellant in CMSA(MD) No.34 of 2016 are as follows:

The marriage between the parties are admitted. Whenever the respondent come to the house of the petitioner at every week end his mother and sister insulted her. That apart, the petitioner demanded the salary of the respondent and also scolded that, she is impotent. Therefore, the respondent attempted to commit suicide but she was rescued by her sister. At the instigation of his mother and sister, the petitioner started torturing the respondent, she could live with her husband if she only pays a sum of Rs.1 lakh as dowry and she also paid a sum of Rs. 1,00,000/- through her brother. Again the petitioner demanded Rs.3,00,000/- and 25 sovereigns of gold jewels. Therefore, due to the said torture, she warned her husband and family members that she would lodge criminal complaint against them. Immediately the petitioner issued notice dated 01.03.2013 with false allegations. The respondent had lodged complaint before the All Women Police Station, Sivakasi, therefore, the petitioner filed HMOP No.86 of 2012 on the file of the Sub Court, Sivakasi for restitution of conjugal rights and the same was settled before the lok adalat. Thereafter, they lived together. Even then on 24.10.2012, the petitioner and his family members again



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demanded a car and 20 sovereigns of gold jewels and cash of Rs.3,00,000/-, thereby she lodged complaint before the All Women Police Station, Sivakasi on 24.10.2012, thereby the petitioner filed HMOP No. 52 of 2013 for divorce. The respondent also filed petition under domestic violence act as against the petitioner and his mother and sister before the Judicial Magistrate, Sivakasi. Even now, the respondent is ready and willing to live with the petitioner.

5.Before the trial Court in both petitions joint trial was conducted and on the side of the petitioner/husband he examined PW.1 to P.W.3 and marked documents Ex.P.1 to P4. On the side of respondent/wife R.W.1 Was examined and documents Ex.R.1 to R4 were marked.

6. The trial Court after analyzing the evidence adduced on both sides allowed the petition filed by the husband and granted divorce and dismissed the petition filed by the wife for restitution of conjugal rights through common order dated 05.02.2015. As against the said order passed the wife/respondent in HMOP No.52 of 2013 and the petitioner in HMOP No.69 of 2014 has preferred the appeal in HMCMA No.02 of 2015 and 3 of 2015. The first appellate court reversed the judgment in HMOP NO.52 of 2013 and dismissed the



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HMOP No,69 of 2015 and dismissed the appeal in HMCMA No.3 of 2015 by confirming the order of the trial Court.

7. As against the order passed by the first appellate Court, the petitioner/husband in HMOP No.52 of 2013 and the petitioner/wife in HMOP No. 69 of 2014 have preferred these Civil Miscellaneous Second Appeals on various grounds.

8.The learned counsel appearing for the appellant in CMSA(MD) No.30 of 2016 and respondent in CMSA(MD) No. 34 of 2016 would contend that the marriage between the petitioner and the respondent took place on 08.09.2011 as per hindu rites and customs and thereafter, they lived as husband and wife and thereafter, the respondent/wife left the matrimonial home and she caused cruelty to the petitioner by insulting him and his family member. Further, she threatened to commit suicide and when she demanded the petitioner to leave his old age mother and unmarried sister but the same was refused, thereby in order to take revenge, the respondent refused to live with him and he also filed HMOP No. 86 of 2012 on the file of Sub Court, Sivakasi for restitution of conjugal rights. In that case, as per the compromise before the lok adalat, the case was settled and the respondent assured to live with



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the petitioner . Even after the order passed before the lok adalat, the respondent refused to live with him and thereafter, he filed the present petition seeking divorce. Through his evidence, he proved his case and the Sub Court, Sivakasi after analyzing the evidence, correctly allowed the petition and granted divorce and dismissed the petition filed by the respondent but the first appellate court without considering the evidence adduced on either side and without considering that there is a reasonable ground to dissolve the marriage, simply dismissed the appeal filed by the petitioner by allowing the appeal. Therefore, the order passed by the first appellate court is liable to be set aside by allowing this appeal. The learned counsel appearing for the appellant has relied judgment of the Hon'ble Apex Court in the case of **Naveen Kohli vs. Neelu Kohli** reported in **2006 4 SCC 558**, judgment of this Court in the case of **S.Venkatesan .vs. V.Dhanalakshmi and others in CMA No.2379 of 2017** and the case of **Jerome Paulraj .vs. Alexix Amala Jencey in CMA(MD) No.848 of 2015**.

9. The learned counsel appearing for the appellant in CMSA(MD) No. 34 of 2016 and respondent in CMSA(MD)No. 30 of 2016 would contend that, after marriage, the petitioner and the respondent only lived for seven days as husband and wife and



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thereafter, due to the torture made by the husband, the respondent/wife left the matrimonial home and thereafter, she lived with her parents. Thereafter, the petitioner had filed petition for restitution of conjugal rights and the same was settled through lok adalat and even after that, the respondent ill-treated and caused cruelty thereby she gave complaint as against the petitioner/husband and his family members . Thereafter, the appellant/husband filed HMOP No. 52 of 2013 seeking divorce. The respondent even now is ready to live with the petitioner and she also filed petition for restitution of conjugal rights . The trial Court dismissed the application filed by the petitioner. The first appellate court also erroneously dismissed the petition.. The trial Court granted divorce erroneously. In the first appellate Court, the order of the trial Court was reversed and the petition filed by the appellant was dismissed. Therefore, the first appellate court correctly dismissed the divorce petition but erroneously dismissed the petition filed for restitution of conjugal rights. Therefore, the order passed by the trial Court as well as the first appellate Court in respect of conjugal rights is liable to be allowed and the order passed in respect of divorce by the first appellate court has to be confirmed.



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10. Heard both sides and perused the records. Upon hearing both sides the substantial question of law in

CMSA(MD) No. 30 of 2016

1) Whether the wilful disobedience and scant regard shown by the respondent/wife to the compromise decree already passed in the original petition filed for restitution of conjugal rights would amount to a ground for dissolution of marriage under the Hindu Marriage Act?

CMSA(MD) No. 34 of 2016

1) Whether the lower appellate Court right in confirming the decree of the trial Court for restitution of conjugal rights when specifically reversed the decree for divorce.

Substantial Question of Law in CMSA(MD) No.30 of 2016

11. In this case there is no dispute in respect of relationship of parties and there no children born to the petitioner and the respondent after marriage. According to the petitioner/husband in CMSA(MD) No.30 of 2016, after marriage they only lived for two days as husband and wife but according to the respondent they lived as husband and wife for seven days. Thereafter, within short span of time, there was misunderstanding between the parties. The main contention of the appellant in CMSA(MD) No. 30 of 2016 is that,



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after marriage the respondent insulted him and caused cruelty. Thereafter, he filed petition in HMOP No. 86 of 2012 for restitution of conjugal rights and both the parties agreed for reunion and thereby award was passed in lok adalt. Even after that, the respondent refused to live with him thereby filed this petition for divorce. The petitioner has filed this petition seeking divorce on the ground of cruelty. Now the question is whether the refusal for reunion even after the award passed by the lok adalat amounts to cruelty or not.

12. It is admitted that already petition was filed in HMOP No. 86 of 2012 for restitution of conjugal rights and compromise was recorded and as per the compromise both the petitioner and the respondent willing for reunion. According to the petitioner/appellant, the respondent/wife even after the order passed by the lok adalat, she was not willing for reunion and she refused to live with him , thereby it amounts to cruelty. Though the wife filed petition for restitution of conjugal rights stating that she is ready to live with the petitioner, husband there is no evidence that after the decree for restitution of conjugal rights passed before the lok adalat, both lived together as husband and wife.



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13. Even according to the respondent, she admitted that she gave complaint as against her husband and his family members before the All Women Police Station, Sivakasi and it shows that if the respondent is ready to live with the petitioner she would not have given complaint against her husband and his family members. Therefore the conduct of the respondent wife shows that she is unwilling to live with the petitioner. However, there is no evidence that after the decree passed by the lok adalat both of them lived as husband and wife and the petitioner also issued notice and same was replied by the respondent. In the reply notice, she has not expressed her willingness to live with the petitioner, therefore, from the available evidence it is clear that even after the order passed by the lok adalat, the respondent is not ready to live with the petitioner and therefore, it amounts to mental cruelty, thereby the petitioner is entitled to divorce. In this context the learned counsel appearing for the appellant/petitioner in CMSA(MD) No.30 of 2016 has relied the following judgments :

- 1) Naveen Kohli vs. Neelu Kohli reported in 2006 4 SCC 558,
- 2) S.Venkatesan .vs. V.Dhanalakshmi and others in CMA No. 2379 of 2017
- 3) Jerome Paulraj .vs. Alexix Amala Jencey in CMA(MD) No.848 of 2015.



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14. On careful perusal of the above judgments it is clear that if the marital relationship has reached the stage beyond repair and there is a break down of the marriage and the prolonged separation is a sort of mental cruelty, which is sufficient to dissolve the marriage. In the case on hand also the parties are living separately for more than twelve years, thereby the prolonged separation has caused mental cruelty to the appellant/husband. In view of the said judgments and as discussed above it is clear that the respondent/wife caused mental cruelty to the husband/appellant. Thus the substantial question of law is answered .

15. As far as substantial question of law in CMSA (MD) No.34 of 2016 is concerned, this Court already decided in previous points that the respondent was not ready to live with the petitioner and that no steps was taken to reunion even after the decree passed by the lok adalat for restitution of conjugal rights. Further, the trial Court dismissed the petition filed by the petitioner /wife and the same was challenged through appeal and the first appellate Court also confirmed the judgment by dismissing the appeal. However the same first appellate court dismissed the appeal filed by the husband and set aside the divorce granted by the trial Court. The first appellate Court dismissed the appeal filed by the petitioner for



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restitution of conjugal rights on the ground that the wife failed to prove her case and declined to grant divorce is on the ground that the petitioner/husband failed to prove the cruelty. Therefore, the order of the first appellate Court is right in confirming the decree of the trial Court for restitution of conjugal rights even though it reversed the decree for divorce. Thus, the substantial question of law is answered.

16. In view of the above discussions, the appellant in CMSA(MD) No.30 of 2016 is entitled to decree for divorce and the appeal is liable to be allowed by setting aside the decree and judgment of the first appellate Court and by restoring the order of the trial Court. The appellant in CMSA(MD) NO.34 of 2016 is not entitled to any relief through this appeal and the appeal is liable to be dismissed.

17. In the result:

1)CMSA(MD) No.30 of 2016 is allowed and the fair and decreetal order passed by the first appellate Court in HMCMA No. 02 of 2015 are set aside and the order passed by the trial Court in HMOP No.52 of 2013 is restored and divorce granted to appellant is confirmed.



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2)CMSA(MD)No. 34 of 2016 stands dismissed by confirming the order of the trial Court and the first appellate Court. No costs. Consequently connected miscellaneous petitions are closed.

20.03.2024

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

1. The Additional District Judge, Virudhunagar
2. The Subordinate Judge, Virudhunagar.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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