



C.M.A.(MD).No.610 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.12.2023

PRONOUNCED ON : 30.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

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Ananth ... Appellant

Vs.

Jenmarakkini ... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act, to set aside the order and decretal order passed in I.D.O.P.No.140 of 2012 dated 19.04.2018 on the file of the learned Principal District Judge, Thanjavur.

For Appellant : Mr.G.Karnan
For Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/petitioner/husband, challenging the order passed by the learned Principal District Judge, at Thanjavur in I.D.O.P.No.140 of 2012 dated



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19.04.2018.

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2.For the sake of convenience, the parties are addressed herein as per the rank in I.D.O.P.No.140 of 2012.

3.The brief facts leading to the filing of I.D.O.P.No.140 of 2012 is as follows:-

The petitioner is a differently abled person with disability in his right leg caused due to polio during his childhood. The petitioner fell in love with the respondent while he was pursuing 12th standard. Thereafter, on 10.03.1996, the petitioner married the respondent at Arputha Matha Temple, Melathuruthi, Thiruvaiyaru Taluk, the native place of the petitioner's mother according to the Christian rites and customs. After marriage, the petitioner commenced his matrimonial life with the respondent in his mother's house. Two daughters namely, Soundarya and Sneha were born out of this matrimony on 10.10.1997 and on 30.08.1999 respectively. The marriage which was held on 10.03.1996, was registered by the petitioner and respondent on 29.05.2001. The matrimonial life was hale, healthy and happy for first more than six years



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and on 14.07.2002 another girl child namely Monisa was born to the couple.

4.From the year 2005, the respondent on the guise of physical inability refused to have sexual intercourse with the petitioner. Whenever the petitioner approached the respondent with passion, the respondent arrogantly indicating the petitioner's disability, strangled the neck of the petitioner. Very often she offended the petitioner by biting him and repudiating him by hurting him with her nails. However, the petitioner for the sake of the three girl children patiently adjusted to the cruel behavior of the respondent and kept all the difficulties within himself. Very often the respondent went to the extent of throwing almost all the articles at home even abusing and attacking the petitioner to the extent of causing blood injury. Finally in the month of February 2009, the respondent along with two daughters namely, Sneha and Monisa left her matrimonial home and started living with her mother in her paternal mother home at Arputha Matha Temple street. Despite several request made by the petitioner and her mother to the respondent to resume matrimonial relation, the said request was negated by the respondent



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arrogantly. That apart she also indulged in instigating the rowdy elements of the village to attack the petitioner causing injuries. To the culmination of all, she went to the extent of engaging rowdy elements threatening the petitioner that he should not reside near her maternal home. Fearing the respondent, the petitioner has vacated his own house and started residing at Thirukattupalli with his mother and elder daughter.

5.Left with no other opinion, finally the petitioner gave a complaint before the All Women Police Station. However, the respondent appeared before the police with her henchmen and gave a statement in writing elaborating her non willingness in resuming matrimonial ties with the petitioner. On the direction of the Officers of All Women Police Station, the petitioner has been paying Rs.2,500/- to the respondent vide money order or account transfer. Though the petitioner made arrangements for the respondent and her daughters to live in a house by taking the same for lease, the respondent refused to live in said accommodation. In spite of the petitioner's several requests for restitution of conjugal rights, the respondent did not turn up. Hence, lastly on 10.05.2005, the petitioner caused an advocate notice on the respondent.



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However, the respondent had sent a reply notice but did not turn up for living together with the petitioner. Under such circumstances, the petitioner had filed I.D.O.P.No.140 of 2012 seeking dissolution of marriage between the petitioner and the respondent dated 10.03.1996 and the registration dated 29.05.2001.

6.The respondent had filed a counter refuting the allegations made by the petitioner in his divorce petition and pleaded that she has prepared to live with the petitioner by all means in all times. However, it is only the petitioner with ill motive, has filed the petition for divorce with false allegations, intending to demean and defame the respondent.

7.The learned trial Court has framed one issue. The petitioner was examined as P.W.1 and two documents Ex.P1 and Ex.P2 were marked on the side of the petitioner. The respondent was examined as R.W.1 on the side of the respondent and no document was marked. On the basis of the oral and documentary evidence and on the basis of the arguments put forth by the respective parties, the learned Trial Court has observed that the petitioner himself in his cross examination has admitted that the



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respondent had written several letters to him requesting him to live with him. That apart, the learned Trial Court has also recorded that the respondent wife keeping in mind the future of the three girl children and their education has categorically submitted in both her pleadings and her examination in chief that despite the petitioner igniting several problems between them in her matrimonial home by picking up unnecessary quarrels, considering the future of three children, she always intends to live with the petitioner and all the contentions put forth by the petitioner husband in his petition for divorce are baseless. The learned Trial Court had categorically held that the petitioner has miserably failed to prove either through oral and documentary evidence or sufficient witness to substantiate the various allegations put forth by him in his petition. In view of the same, the learned trial Court dismissed the petition.

8.Assailing the said judgment, the appellant/petitioner/husband has preferred this Civil Miscellaneous Appeal.

9.Heard Mr.G.Karnan, learned counsel appearing for the appellant and perused the entire materials available on record.



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10.The learned counsel for the appellant/petitioner vehemently submitted that despite the marriage between the petitioner and the respondent being a love marriage, after child birth, the respondent had developed inimical attitude towards petitioner and had failed to take the matrimonial life peacefully towards happiness. The respondent wife has continuously indulged in unforeseen cruelty activities subjecting the petitioner to physical and mental abuse and finally voluntarily left the matrimonial home in the month of February 2009. Even after that, the petitioner husband had taken himalayan efforts for re-union but the same was negated by the respondent wife.

11.In view of the same, the marriage has become futile and broken down irretrievably and hence, it is evident that the marriage between the petitioner and respondent should be dissolved and pressed for allowing the appeal.

12.However, there is no representation for the respondent.



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13.Having heard the arguments of the learned counsel for the appellant, I careful perused the materials available on record. Each and every allegations made by the petitioner as against the respondent has been denied by her in her counter. That apart, as observed by the learned Trial Court both in her counter and in examination in chief and cross examination, she had categorically deposed her evidence expressing her willingness to re-join her husband by all means for the sake of children's future, education and well being.

14.In view of the same, I am not inclined to interfere with the order passed by the learned trial Court. Accordingly, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

30.01.2024

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



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To

- 1.The Principal District Judge, Thanjavur.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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