



C.M.A(MD)No.844 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:28.10.2024

CORAM
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Kiran Ravi

: Appellant

Vs.

Geethu

: Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 19(1) of the Family Court Act, 1984, to set aside the judgment and decree passed in H.M.O.P.No.11 of 2022, dated 20.07.2023, by the Family Court, Tirunelveli.

For Appellant : Mr.D.Venkatesh

For Respondents : Mr.S.Muthukrishnan

J U D G M E N T

The appellant/husband filed this civil miscellaneous appeal challenging the order passed by the learned Family Court, Tirunelveli, in H.M.O.P.No.11 of 2022, dated 20.07.2023, whereby the respondent/wife



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has filed a petition under Section 9 of the Hindu Marriage Act for the restitution of the conjugal rights.

2.The respondent filed the petition in H.M.O.P.No.11 of 2022 for the relief of restitution of conjugal rights with the following averments:-

2.1.The respondent married the appellant on 03.12.2017 as per Hindu Rites and Customs. After the marriage, both lived in the appellant's house situated in Kerala, as a joint family along with her father-in-law and mother-in-law. There she came to know that they were following Christianity. The appellant and his family members insisted her to follow Christianity. In such a situation she became pregnant and they attempted to abort also. They also continuously insisted her to follow Christianity and asked her to come to church. Therefore, on 30.07.2018, she made a complaint before the All women Police Station, Tirunelveli. The police officer intervened and asked the parties to for a compromise and hence, the respondent went to the appellant's house and the appellant did not trouble her till the birth of the child. On 21.09.2018, a male child was born to them. After that, they insisted her to convert to Christian religion. Therefore, there was some discord and hence, on 10.05.2019,



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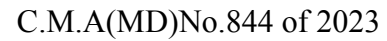
the respondent left the matrimonial home. Thereafter, she lived along with the child. Both the appellant and his family members never came to see the child. In the said circumstances, the appellant also filed a petition in H.M.O.P.No.468 of 2020 before the Family Court, Thiruvananthapuram, against the respondent for the relief of restitution of conjugal rights and the same was dismissed on 8.10.2021. Even after that the appellant refused to live with the respondent. Therefore, she filed a petition for the restitution of the conjugal rights.

3.The appellant filed a counter denying the allegation of attempt to convert her. He specifically denied the said fact and pleaded that he and his family members never insisted the respondent to profess Christianity. He also stated that they professed only Hindu religion. All the customary festivals were conducted as per Hindu rituals including the baby shower function. In the said circumstances, he also stated that the respondent made a complaint against him and his family members. Thereby, she caused cruelty to him and hence, he initially filed the restitution petition in the interest of the child and matrimonial life. Subsequently, after the intervention of the police officers also, she did not change her character



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and she insisted him for a separate residence. Since the appellant was living with his parents, he refused to arrange a separate residence and hence, she picked up quarrel with him and made false allegation against him. Even after the delivery, she was going on demanding separate residence and he arranged a rented house and they lived in the rented house from 08.02.2019 to 05.05.2019. At that time, the respondent did not discharge her duty as a dutiful wife and even she did not do household work. She never would cook she insisted to buy food from the hotel. Therefore, in the said circumstances, she herself voluntarily left the matrimonial home on 05.05.2019 and refused to come to the matrimonial home. Facts being so, she made a complaint against him and the counselling was given at the police station and she also agreed to live with him. Further, he specifically stated that the respondent has not even allowed the appellant to see the child and he saw the child only once on 10.05.2019 with the help of the police officers. She also insisted not to participate in the first birthday celebration of the child. Hence, he returned to his native place without seeing his child on the first birthday function and also without handing over the new dress, toys, sweets, etc., which he bought for the child. On 24.09.2018, she snatched away the kid



4. Before the trial Court, the wife/respondent examined herself as _____ and Exs.P1 to Ex.P8 were marked. On behalf of the _____ and/appellant, the husband was examined as R.W.1. and Exs.R.1 to _____ were marked.



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5.The learned Family Judge upon considering the evidence, allowed the restitution of conjugal rights petition, by the impugned order dated 20.07.2023. Challenging the same, the appellant filed this revision.

6.The learned counsel appearing for the appellant/husband submitted that the repeated complaints were made by the respondent/wife against the family members of the appellant and also no *bona fide* steps were taken by the respondent for reunion, even after dismissal of the petition for restitution of conjugal rights. Apart from that, she persistently made false allegations as if she was forced for conversion. With this allegation, he was unable to live with her and hence, he filed the divorce petition. The same is pending and the present petition has been filed as a counter blast to the same. In the said circumstances, he seeks to dismiss the petition filed by the respondent under Section 9 of the Hindu Marriage Act. The learned Family judge failed to consider the above sequence of events and erroneously allowed the application and directed the parties to live with her. In the said circumstances, he seeks to set aside the order passed by the learned Family Judge. Apart from that, he also submitted that in spite of the strained relationship, he also took the



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bona fide steps for reunion in the interest of the child by filing the restitution petition. Pending the same, she undertook to live with him but she did not live with him and she herself voluntarily left the matrimonial home without any fault upon him. In the said circumstances, allowing the petition without clubbing the divorce petition pending before the some other Court, amounts to the deprivation of fair opportunity to the appellant to meaningfully contest the divorce petition.

7.The learned counsel for the respondent contrary to the said argument stated that all the allegations made against the respondent is without substance. There is a persistent demand on the side of the appellant to convert the religion. Even though no material was adduced to prove the same, the fact remains that she was subjected to some harassment in the name of conversion of the religion. Hence, she left the matrimonial home and made the complaint. Pending the same, she was forced to live with him and hence, she went to the matrimonial home. Even after that she was not allowed to live with peacefully along with the child and there was a consistent demand of conversion. That apart, she specifically denied the occurrence that took place on 24.09.2019 and



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pleading of the appellant that when he came to the residence of the respondent on the date of the first birthday celebration of the child, the respondent and her family members obstructed him. She also stated that the appellant has not filed this petition with bona fide intention. Once the appellant filed the petition for restitution of conjugal rights, the incidents that took place before the filing of the petition all are condoned. In such circumstances, the same is not a ground for filing the divorce and also not a ground to deny the relief of the restitution. Hence, she seeks for the dismissal of this appeal and she specifically stated that the learned trial Judge considering the overall circumstances, rightly granted the relief of restitution of conjugal rights in the interest of the child and the marriage is still subsisting and there is a hope for the reunion and continuation of peaceful matrimonial life. In such circumstances, the learned trial judge's finding need not be interfered with.

8.This Court considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on records.



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9.The following point arise for consideration of this appeal:

9.1.Whether the Court below is correct in granting the relief of restitution of conjugal rights?

10.Admittedly, there is no dispute relating to the marriage that took place on 03.12.2017. The respondent's case is that she was subjected to harassment at the hands of the appellant and his family members to profess Christianity. Even though there is a pleading, this Court finds no material to substantiate that purpose and there was some allegations made against the respondent, all the allegations were made before filing the petition in H.M.O.P.No.468 of 2020. Thereafter, the respondent filed a petition in H.M.O.P.No.11 of 2022 for the relief of restitution of constable rights. In the said circumstances, whatever events happened between the spouse before the filing of the petition the same is condoned. In the said circumstances, the defence of the appellant that he was subjected to harassment by making the complaint and other things is not a material before this Court in deciding the restitution of conjugal rights



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petition. The appellant was not established that she has departed from the relationship with the respondent without any reasonable cause. In this case, this Court finds that both the parties have not made any serious allegations and no acrimonious charges made against each other. In the said circumstances, this Court finds no serious dispute pending between the parties and hence, the learned trial judge correctly considered the interest of the child and also the facts and appreciated of the material and demeanor of witness, and has clearly come to a conclusion that there is a possibility of reunion. The said finding is based on the demeanor of the witness. The learned trial Judge correctly appreciated the conduct of the parties and both regularly appeared before him and decided the fact that there would be a possibility of reunion and also taken into consideration of the welfare of the child.

11.In view of the above circumstances, no serious allegation was made against each other. The main allegation raised by the respondent against the appellant and his family members is relating to the conversion and same was also condoned. Now, the respondent has come forward with the specific undertaking that she is ready to live with the appellant



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for the welfare of child and also she has come forward with bona fide offer. This Court is inclined to accept the case of the respondent that she is entitled for the relief of the restitution of the conjugal rights. In result, this Court finds no merit in this appeal and there is no infirmity in the order of the learned trial Judge.

12. Accordingly, this civil miscellaneous appeal is dismissed confirming the judgment and decree passed in H.M.O.P.No.11 of 2022, dated 20.07.2023, by the Family Court, Tirunelveli. No costs.

**[V.B.S.J.,] [K.K.R.K.J.,]
28.10.2024**

NCC : Yes/No
Index : Yes/No
Internet : Yes /No
vsg/sbn

To

- 1.The Family Court,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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V.BHAVANI SUBBAROYAN.J.,

and

K.K.RAMAKRISHNAN.J.,

vsg/sbn

Pre-delivery order made in
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