



C.M.A.(MD).No.937 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.01.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

C.M.A.(MD).No.937 of 2017
and
C.M.P.(MD).No.9882 of 2017

Revathi

.. Appellant/Respondent

Vs.

Anburajan

.. Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19(1) of Family Courts Act, 1984 against the judgment and decree dated 18.09.2017 made in H.M.O.P.No.241 of 2016 on the file of Family Court, Madurai.

For Appellant : Mr.R.Ramanujam

for Mr.J.Karthikeyan

For Respondent : Mr.A.Prasanna Rajadurai



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JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

This Civil Miscellaneous Appeal is filed by the wife, who had lost her case before the Family Court in H.M.O.P.No.241 of 2016, which was initiated by the husband for divorce.

2. On 28.03.2007, the appellant married the respondent as per the Hindu rites and customs. The respondent/husband, after marriage, went to Singapore to pursue his avocation, leaving behind his wife. Thereafter, when he proposed her to join him in Singapore, the appellant delayed the chance of joining by quoting her studies. On 16.12.2007, she joined her husband at Singapore, but was very inquisitive about the salary and other perks earned by the respondent/husband. She was very suspicious about his character and also avoided sexual cohabitation with him. However, due to the marital life, the appellant got conceived and she was brought back to Madurai for delivery. In the month of May, 2008, they both came back to Madurai and lived for few days. Due to the ill advice of the parents of the



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appellant, she has taken away her jewels, dress and got separated. Alleging that since June 2008, the appellant is not living with the respondent inspite of repeated demand, a complaint was lodged by the appellant before the Police alleging dowry harassment. Citing these incidents as a cause of cruelty, divorce petition was filed by the respondent/husband before the Family Court, Madurai.

3. The criminal complaint lodged by the appellant was taken up on file by the learned Judicial Magistrate, Madurai in C.C.No.155 of 2011 and was transferred to Additional Mahila Court, Madurai, re-numbered as C.C.No.165 of 2014 and the same was dismissed after full trial. A maintenance petition was filed by the appellant/wife in M.C.No.62 of 2011 before the Family Court, Madurai and the respondent was directed to pay monthly maintenance of Rs.5000/- to the appellant and her child. Considering all these facts, the Family Court, Madurai has allowed the divorce petition by order dated 18.09.2017. Challenging the same, the appellant/wife had preferred the present Civil Miscellaneous Appeal.



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4. The appeal was presented on 20.10.2017. The respondent/husband had filed a caveat through his counsel on 20.09.2017 and had notice about the presentation of appeal by the wife challenging the decree of divorce. However, it is now submitted that the respondent has married another lady on 23.01.2020 and has also begotten a male child. Citing this as a reason, the appeal was strongly contested besides other facts, which have been found in favour of the respondent.

5. This Court, in order to ascertain the validity of the second marriage pending appeal, directed the learned counsels for the respective parties to place their arguments on this point first to test the same as per Section 15 of the Hindu Marriage Act. Accordingly, the facts were placed before this Court along with the rulings.

6. Heard the learned counsels on both sides on the point of validity of the second marriage as well as the validity and sustainability of the order passed by the Family Court, which is under challenge before this Court.



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7. The parties got married on 28.03.2007. Divorce petition was presented on 08.03.2016 by the respondent/husband under Section 13(1), (i-a) and (i-b) of the Hindu Marriage Act. The Family Court dissolved the marriage by order dated 18.09.2017 and the copy of the order was made ready on 10.10.2017. The appeal by the aggrieved wife was presented before this Court on 20.10.2017 well within the period of limitation. Even before the presentation of the appeal, the respondent/husband has preferred a caveat petition on 20.09.2017 in SR38322 Caveat Petition(MD)No.1716 of 2017, i.e., within two days from the date of order passed by the Family Court. While so, pending appeal in C.M.A.(MD).No.937 of 2017, the respondent has married another lady on 23.01.2020, which is illegal and void in the light of Section 15 of the Hindu Marriage Act, which reads as follows:

“15. Divorced persons when may marry again.—When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an



appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.”

8. This issue has been considered by the Hon'ble Supreme Court in the case of **Anurag Mittal Vs. Shaily Mishra Mittal reported in (2018) 9 SCC 691**, which explains the scope and ambit of Section 15 of the Hindu Marriage Act as below:

“27. Section 15 of the Act provides that it shall be lawful for either party to marry again after dissolution of a marriage if there is no right of appeal against the decree. A second marriage by either party shall be lawful only after dismissal of an appeal against the decree of divorce, if filed. If there is no right of appeal, the decree of divorce remains final and that either party to the marriage is free to marry again. In case an appeal is presented, any marriage before dismissal of the appeal shall not be lawful. The object of the provision is to provide protection to the person who has filed an appeal against the decree of dissolution of marriage and to ensure that the said appeal is not frustrated. The purpose of Section 15 of the Act is to avert complications that would arise due to a second marriage during the pendency of the appeal, in case the decree of dissolution of marriage is reversed. The protection



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that is afforded by Section 15 is primarily to a person who is contesting the decree of divorce.”

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Therefore, the second marriage alleged to have been solemnized between the respondent and another lady is not legally sustainable.

9. Regarding the grounds raised in the appeal challenging the decree of divorce, this Court finds that the first allegation of cruelty against the appellant is that she did not co-operate for cohabitation, whereas, the birth of a boy child from wedlock is a proof that the said allegation is false.

10. The second point on which the Family Court dissolved the marriage is the criminal complaint initiated by the appellant, which later ended in acquittal. The Family Court, after extracting a piece of deposition out of context, had concluded that the appellant/wife herself had expressed her fear and danger to her life, if she joined the respondent/husband and that is the reason why she had lodged the criminal complaint. Further, the Family Court had concluded that the marriage has broke down irretrievably and since the parties are living separately for more than eight years, divorce has to be granted.



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11. On perusal of records, it is seen that the learned counsel for the respondent is the counsel, who has filed the caveat even before the order copy of the Family Court was made ready. The learned counsel, who represents the respondent, knowing well about the provisions of the Hindu Marriage Act, particularly Section 15, had not properly advised his client not to solemnize second marriage. Probably, the respondent may not have informed his counsel about the second marriage. Hence, we cannot find fault with the learned counsel. However, when the matter was taken up for consideration, the learned counsel for the respondent tried to convince this Court that there was no stay in the appeal and therefore, there is nothing wrong in solemnizing the second marriage. This Court is very unhappy with such a submission.

12. Further, the learned counsel also relied upon the judgment of the Hon'ble Supreme Court rendered in the case of ***Vinod Kumar Subbiah Vs. Saraswathi Palaniappan reported in (2015) 4 MLJ 374 (SC)***, wherein, the Hon'ble Supreme Court, taking note of the allegation that the wife used to frequently threaten her husband that she will lodge police complaint or she



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will commit suicide placing the blame on the husband and his family, had held that this tantamounts to cruelty. The facts of the present case does not go anywhere near the facts of the case cited supra. Hence, this Court is not inclined to look at the said judgment for any purpose.

13. Another judgment of the Hon'ble Supreme Court in the case of ***Narendra Vs. K.Meena reported in AIR 2016 SC 4599***, relied upon by the learned counsel for the respondent, is also similar to the case cited and referred above. 'Cruelty' is a very broad term and it also depends upon the person, who caused cruelty and who suffered cruelty. In *Narendra's* case, the wife was persistently pressurizing the husband to have a separate house and leave his parents. The persistent effort of the respondent/wife therein to leave the matrimonial home and get her husband separated from the parental home was held as a torture and cruelty. Again to repeat, in the case on hand, the respondent/husband was living in Singapore and the appellant/wife came to India for delivery and thereafter, the petition for divorce was filed on the ground of voluntary withdrawal from the marital home and refusal to have cohabitation. This Court is unable to correlate the facts of the case in



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hand for consideration and these two judgments relied upon by the learned counsel for the respondent.

14. The learned counsel for the respondent further submitted that since 2008, the parties are not living together and therefore, long separation has to be taken into account for granting divorce. For that purpose, he relies upon the judgment of the learned Single Judge of this Court in ***C.M.S.A.Nos.18 and 19 of 2013 dated 22.02.2021***. This Court is unable to understand as to how this judgment will have a binding effect on the Division Bench. The long separation is only due to the conduct of the respondent and he cannot take advantage of his own misconduct. Furthermore, the respondent/husband has stopped paying maintenance of Rs.5000/- since 2018 on the ground that the appellant/wife has preferred a petition for enhancement of maintenance. The cruel intention and mind of the respondent/husband could be easily seen from this conduct as the wife has sought for enhancement of maintenance, he has stopped paying a meager amount of Rs.5000/-, which was earlier ordered by the Family Court, coupled with the fact that the respondent solemnized another



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marriage when the appeal is pending, all makes this Court forced to observe that the respondent deserves to be penalized and prosecuted for solemnizing another marriage when the earlier marriage is in existence. It is left open to the appellant herein to work out her remedy in the manner known to law.

15. This Court on considering the evidences cumulatively finds that the conduct of the respondent/husband had forced the appellant/wife to leave his company and live separately. It is not a voluntary act, but an act of compulsion and force and also threat of life. Failure to prove the allegations in the criminal complaint *per se* cannot be a ground to infer that the wife has caused mental cruelty to the husband. It is a legal right and remedy available for the wife, who had been subjected to cruelty. Since under the criminal law, the proof of guilt to be beyond reasonable doubt, therefore, the acquittal ordered, it does not mean that the wife, who is alleged to have suffered cruelty, had caused cruelty to the husband. It all depends upon the facts of each case. In the present case, the allegations of suspicion, refusal to have cohabitation and voluntary withdrawal from the matrimonial relationship are all due to the contribution by the respondent/husband and



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he cannot take advantage of his own misconduct, coupled with the fact that his conduct of solemnizing another marriage knowingly when there is an appeal pending, also makes this Court to reverse the findings of the Family Court and allow the appeal.

16. Accordingly, the order passed by the Family Court, Madurai in H.M.O.P.No.241 of 2016 dated 18.09.2017, dissolving the marriage between the parties, is set aside and the Civil Miscellaneous Appeal is allowed. The learned counsel for the appellant states that since 2018, the maintenance has not been paid by the respondent. If it is so, it is for the appellant to work out her remedy in the manner known to law. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(G.J.,J.) (C.K.,J.)
12.01.2024

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

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1.The Family Court,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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