



C.M.A.(MD).No.801 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.01.2024

CORAM

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

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K.Chandran

.. Appellant/Petitioner

Vs.

Anbukarasi

.. Respondent/ Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, 1984 r/w Section 96 and Order XL1 Rule 1 of Civil Procedure Code, to set aside the impugned order and decree passed by the Family Court, Sivagangai in H.M.O.P.No.38 of 2017 dated 23.01.2018 by allowing this appeal.

For Appellant : Mr.K.K.Kannan

For Respondent : Mr.M.S.Jeyakarthick
for Mr.C.Rajagopal



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JUDGMENT

DR.G.JAYACHANDRAN,J.

and

C.KUMARAPPAN,J.

The present Civil Miscellaneous Appeal is filed by the husband, who failed in his attempt to get divorce on the ground of adultery and cruelty.

2. The brief facts of the case is that on 02.02.2009, the appellant and the respondent got married as per the Hindu rites and customs. At the time of marriage, the appellant was employed in a hotel at Chennai and soon after the marriage, he left the respondent at the native and gone to Chennai to earn his livelihood. He used to visit his family once in two months. After the birth of a child, there was matrimonial discord between the parties. It appears that the appellant has given a complaint against the respondent for having illicit intimacy with one Lingam. Thereafter, the appellant has filed a petition for divorce on the ground of adultery as well as cruelty. According to the appellant, the respondent has developed intimacy with one Lingam, which was witnessed by his mother and also even when he visited



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home, the respondent used to tease him pointing out his physical disability and never used to have cohabitation.

3. The Family Court, on considering the evidence let in by the parties, had dismissed the divorce petition on the ground that though in the petition, it is alleged that the respondent has committed adultery and cruelty, the petition is filed under Section 13(1)(i-a) and not 13(1)(i) of the Hindu Marriage Act. Further, it is stated that to prove the claim of adultery, the appellant has examined his mother as P.W.2, but her evidence does not inspire confidence to rely.

4. Being aggrieved by the dismissal of the divorce petition, the present Civil Miscellaneous Appeal is filed on the ground that the Family Court ought to have considered the evidence in total and ought not to have declined to look into the allegation of adultery when material was placed to show that the respondent was living an adulteress life.



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5. The learned counsel appearing for the appellant submitted that apart from cruelty and adultery, since 2015, the parties are living separately and a chance of re-union has become very remote and therefore, the marriage has to be dissolved. In support of his submissions, the judgment of the Kerala High Court was circulated and relied upon.

6. Contrarily, the learned counsel appearing for the respondent/wife submitted that the appellant is the respondent's own maternal uncle and after knowing his physical disability, she consented for marriage, lived with him happily and also begotten a female child. Only after entertaining an illicit relationship with a Muslim lady, the appellant wants to distant himself and dissolve their marriage for frivolous reasons. The Trial Court having considered the evidence, had rightly dismissed the divorce petition. Long separation is only due to the conduct of the appellant and there is no fault on the part of the respondent/wife. The learned counsel also submitted that even now the respondent is ready to join with the appellant and she has been living separately at the aid and help of her parents.



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7. It is submitted by the learned counsel for the respondent that the daughter of the appellant and the respondent, who is now 13 years old, is pursuing her X Standard and no adequate financial support is rendered by the appellant. However, taking note of the fact that already maintenance petition is filed and some amount has been fixed by the Court, the respondent shall work out her remedy regarding the maintenance in the said proceedings. Whereas, for consideration of the appeal, this Court finds that the appeal does not deserve to be entertained, since there is no material to substantiate the plea of cruelty as well as adultery. Hence, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

(G.J.,J.) (C.K.,J.)
24.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm



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To

1.The Family Court,
Sivagangai.

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



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