



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.01.2024

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

C.M.A(MD)No.803 of 2018

S.Ananthavalli

... Appellant/Petitioner

Vs.

Balachandran

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984, to allow the appeal by setting aside the fair and decreetal order dated 09.07.2018 made in H.M.O.P.No.982 of 2015 passed by the Family Court, Madurai, Madurai District.

For Appellant : M/s.S.Palani Velayutham
For Respondent : M/s.J.Bharathan



J U D G M E N T

WEB COPY

The appellant herein is the wife has filed a divorce petition under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, before the Family Court, Madurai, on the ground of cruelty and desertion. The said petition was dismissed. Against which, the present appeal has been filed.

2.The brief facts of the case in the civil miscellaneous appeal are as follows:

The marriage was solemnized between the appellant and the respondent on 12.06.1995. At the time of marriage, the appellant was working as a Teacher in Madurai Mangayarkarasi Middle School, Madurai. The respondent is a Telephonic Mechanic in BSNL. They have a female child, presently 27 years old. The parties got separated for a period of four years prior to the filing of H.M.O.P. Thereafter, the petition for divorce was filed by the appellant/wife.

3.The admitted facts is that the appellant/petitioner and her daughter are living in the house, which alleged to have been purchased by the respondent in the name of his wife, appellant herein. The daughter is a graduate.



4. According to the appellant, she had been subjected to cruelty by the respondent and therefore, she has driven him out from the matrimonial home and now she seeks for divorce.

5. The trial Court, on considering the admission made by the appellant/petitioner, has held that there is no material to show that the appellant was subjected to either cruelty or desertion by the respondents.

6. When a specific allegation is made regarding cruelty, there must be an incidence and evidence to that effect which will substantiate the case of the appellant/petitioner. However, in this case, except four documents and testimony of the appellant/petitioner, there is no material to show that the appellant/petitioner was subjected to cruelty by the respondent. Hence, the grounds for divorce as contemplated under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, fails.

7. Likewise, the desertion, as pointed out by the trial Court, the petitioner/appellant, who was driven out the respondent from the matrimonial home and not otherwise. Therefore, the ground of desertion is also not proved



by the petitioner/appellant. When there is no material to dissolve the marriage either on the ground of desertion or on the ground of cruelty, which is caused the spouse are living separately and there is no different between them divorce cannot be granted. If the parties are intend to dissolve the marriage, they should come out with correct reasons and materials.

8.In this case, this Court finds that the appellant had sought for divorce without adequate reasons. Hence, the order of the Family Court is confirmed and the Civil Miscellaneous Appeal stands dismissed. No costs.

(G.J.,J.) (C.K.,J.)
04.01.2024

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

Ns

To

1.The Family Court,

Madurai,

Madurai District.

2.The Vernacular Section,

The Section Officer,

Madurai Bench of Madras High Court,

Madurai.