



C.M.A(MD)No.245 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.245 of 2023

S.Balaji

... Appellant / Petitioner

Vs.

K.Aarthi

... Respondent / Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 28 of Hindu Marriage Act, 1955, against the order dated 28.02.2022, passed in H.M.O.P.No.2 of 2017, on the file of the Principal District Judge, Madurai.

For Appellant : Mr.K.P.Narayana kumar

For Respondent : Mr.M.Arjun Varman

JUDGMENT

The present appeal is preferred by the husband against the judgment and decree declining divorce.



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2. The petition is filed to dissolve the marriage solemnized on (*)03/06/2011 by the husband under Sections 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act. The grounds for divorce in on cruelty and desertion. The Trial Court had held that the petitioner / husband had not proved the same and hence, dismissed the petition. Aggrieved over the same, the present Civil Miscellaneous Appeal is filed.

3. As far as the allegations of cruelty and ill-treatment alleged against the respondent / wife is concerned, the Trial Court had held that the petitioner / husband had not proved the same. The Trial Court further held that except the mere allegation of plain scolding there are no materials on the side of the petitioner / husband to prove the allegation of cruelty. After perusing the judgment of the Trial Court, this Court is of the considered opinion that the Trial Court had passed a well-reasoned order, as far as cruelty is concerned.

4. As far as the allegations of desertion against the respondent / wife is concerned, the Trial Court has held that the respondent / wife was brought by the father of the petitioner / husband from Dubai who had left the respondent / wife in her parent's place. Therefore, the Trial Court has held the allegation of desertion also as not proved.



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5. Since both the grounds were held not proved and the Trial Court has dismissed the divorce petition through a well-reasoned judgment, this Court is not inclined to interfere with the impugned judgment. However, this Court tried the possibility of reunion. It is seen that the marriage was solemnized on (*)03/06/2011 and it has been more than 13 years. After marriage, both the appellant herein / husband and the respondent / wife have hardly lived together for only three months, thereafter, they are living separately for the past 13 years. There was no possibility of reunion and the marriage has become unworkable. Therefore, for this reason, the Court is allowing the appeal. The marriage dated (*)03/06/2011 between the appellant herein / husband and the respondent / wife is dissolved.

6. However, the respondent / wife is entitled to get maintenance. The appellant herein / husband has agreed to pay Rs.25,00,000/- to the respondent / wife in two installments through demand drafts which is permanent alimony for wife. The respondent / wife may purchase a house so that both the respondent / wife and her son would live in the said house. The first installment of Rs.20,00,000/- shall be paid in the month of April, 2024 and the second installment of Rs.5,00,000/- shall be paid on or before 30.05.2024. The appellant further agreed to send the household articles and other articles of the respondent within a period of fifteen days.



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7. The appellant / husband further agreed to pay Rs.5,000/- as monthly maintenance to his son and the same is payable in Canara Bank in Account No. 110170777089 with IFSC Code No.CNRB0003419. The appellant / husband had also agreed to pay the tuition fees to the school and the same shall be paid directly to the school.

8. It is submitted that there are two deposits in the name of the respondent / wife and the same is matured, hence, the money ought to be withdrawn. Hence the appellant / husband prayed to direct the respondent / wife to cooperate to withdraw the said amount. Therefore, this Court is directing the respondent / wife to cooperate to withdraw the matured amount in two deposits, one before LIC in Policy No.756755449 and another in DBS Bank in Fixed Deposit Account No.07211210000439350007.

9. The appellant / husband is given visitation rights to visit the child on "Second Sunday" of every month from 09.00 am to 05.00 pm. For one or two occasions, the respondent may accompany the child, subsequently the appellant shall take the child independently to any public place.



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10. With the above said observations, the Civil Miscellaneous Appeal is allowed in above terms. No costs.

Sd/-

Assistant Registrar (RTI)

(*)Corrected as per order of this Court dated 31/07/2024 made in CMA(MD)No.245 of 2023

Sd/-

Assistant Registrar (RTI)

// True Copy //

/08/2024

Sub Assistant Registrar(CS)

Tmg

To

(*)To be substituted the order which already despatched on 23/04/2024

1.The Principal District Judge,
Madurai.

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

<https://www.mhc.tn.gov.in/judis>



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+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR.No.39503 dated
01/08/2024)
+1CC to M/s.S.Rajasekar, Advocate(SR.No.39710 dated 01/08/2024)

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RE/23.04.2024 / 6P/ 5C
MGJ/16/08/2024 6P/ 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023