



C.M.A(MD).No.291 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:28.10.2024

CORAM:

**THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN**

C.M.A(MD) No.291 of 2024

S.Aravindkumar

... Respondent/Appellant

Vs.

Naveena

... Petitioner/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the judgment and decree dated 20.07.2023 on the file of the Family Court, Srivilliputhur in H.M.O.P.No.94 of 2022 and allow the Counter claim for dissolution of marriage, with costs.

For Appellant : Mr.V.Kamala Kumar

For Respondent : Ms.V.Sebastinal Preethi



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JUDGMENT

WEB COPY [Order of the Court was made by **K.K.RAMAKRISHNAN, J.**]

The husband filed this civil miscellaneous appeal challenging the degree of restitution of conjugal rights in favour of the respondent in H.M.O.P.No.94 of 2022 and dismissing his counter claim namely divorce on the ground of desertion.

2.The appellant married the respondent on 13.06.2019. At the time of marriage, the appellant was working as a Branch Manager, Indian Bank in the Vasudevanallur Branch. They were living separately in a residence. Subsequently, he was transferred to Chidambaram. On 04.07.2019, he has taken the respondent/wife to Chidambaram and in that place, the respondent/wife insisted to register the marriage. But, there was some dispute relating to the registration of the marriage. Thereafter, the mother of the appellant came there to the said residence, on 20.08.2019 and when the appellant was absent, the mother of the appellant started causing cruelty continuously to the respondent/wife and in the end, she opened the gas cylinder and left the respondent/wife in the said place and locked the door



from outside. After smelling the gas, she fortunately escaped from the gas mishap. Hence, there was some ill feeling and discord. On 10.09.2010, the appellant has driven out the respondent/wife from the matrimonial home. Thereafter, the respondent made a request to the Superintendent of Police to help in reuniting them. In the mean time, a child was born on 17.05.2000. In spite of the information, the appellant/husband and the family members never visited the child. Thereafter, the appellant/husband sent a notice dated 17.03.2020 seeking mutual divorce. Subsequently, a requisition was made to the legal service authorities attached with a Virudhunagar District Court to reunite them. In the said circumstances, she filed a petition seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act.

3.The appellant/husband filed a counter denying the allegation and specifically pleaded that the conduct of the respondent/wife before the date of marriage and after the date of the marriage, was unbearable and it was abnormal and it was humiliating and hence, he has taken a decision to live separately from the company of wife. The appellant/husband specifically pleaded that there was no truth in the allegation that his mother had opened the gas and locked in the respondent/wife in his house and hence, the



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allegation is false and there was no cordial relationship between him and the respondent/wife and hence, she herself invited the trouble and further allegation that she was driven out the matrimonial home on 10.09.2019 is not correct. On 08.09.2019, she made a repeated calls to somebody's phone number for hours together and the same was questioned. In this process, she removed the “*Thali*” and thrown the same on the face of the appellant/husband and she left the matrimonial home. Hence, he seeks for the dismissal of restitution of conjugal rights petition. Further, she has separated herself from the company of him without any reasonable cause from 08.10.2018 to 2019 and hence, he seeks for the divorce on the grounds of desertion.

4.The learned Trial Judge after recording the evidence of P.W.1/ wife in the restitution petition and her husband and perusing all the documents filed by both sides, dismissed the divorce petition and allowed the restitution petition. The learned trial judge specifically observed that in the interest of the child and since there is no serious dispute between the parties, he is inclined to order the restitution of conjugal rights and dismiss the divorce petition. Challenging the same, the appellant/husband filed this Civil Miscellaneous Appeal.



5.The learned counsel appearing for the appellant/husband apart from the detailed written submission made the following submissions;

5.1.The conduct of the wife that she has not informed the birth of the child is to be considered as a material circumstance. Further, there was no marital relationship between the appellant/husband and respondent/wife and hence, he took a plea disputing the paternity of the child. The same is bona fide. The mother has failed to inform about the birth of the child and hence, she deprived father's affection to the child. Further, in the residence at Chidambaram, she and the family members assembled in the street and abused the appellant/husband and the same was not properly considered by the learned trial Judge. Apart from that, the disgusting allegation against his mother more particularly that his mother has illicit relationship with somebody amounts to cruelty and the same was not properly considered by the learned trial Judge and apparently the learned trial Judge committed error in recording a finding that the mother was not examined.

5.2.The learned counsel further submitted that the offer of the wife is not *bonafide* and genuine and hence, she is not having true intention for



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reunion. When the appellant asked to rectify the reprehensive conduct which led to matrimonial disharmony and broken the matrimonial tie, she voluntarily left the matrimonial home alleging that he had driven her out which is not correct and hence he seeks for the allowing this appeal by granting the divorce and dismiss the petition for restitution of conjugal rights.

6.The learned counsel appearing for the wife submitted that the incident pleaded by the wife is proved through evidence. Apart from that, the husband failed to discharge the burden cast upon him. Further, she submitted that necessary ingredients to get divorce on the ground of desertion are neither pleaded nor proved. Hence, he seeks for dismissal of this appeal.

6.1.The learned counsel appearing for the wife further submitted that the learned trial judge correctly appreciated the facts and circumstances of the case and has rightly dismissed the petition. More particularly, in the interest and welfare of the child. The learned trial judge also considered all the facts and also took into consideration of the denial of the paternity when



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he himself admitted the relationship with the respondent for two months. In the said circumstances, the argument of the learned counsel for the husband cannot be accepted and hence, she seeks for dismissal.

7.This Court considered the submission made on either side and also perused the records.

8.From the records, this Court framed the following points for determination;

8.1.whether the wife is entitled to the restitution of conjugal rights?

8.2.Whether the appellant is entitled to get divorce decree on the ground of desertion?

9.Discussion on the ground of Desertion:

Desertion is defined as follows in the “*Rayden on Divorce*”

“Desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one



spouse does not necessarily make that spouse the deserting party.”

9.1. Therefore, desertion requires proper pleadings. In this case, husband has not filed separate divorce petition and he had filed counter and seeks divorce on the ground of desertion. He merely repudiated the allegation made by wife in the counter by way of counter claim. He never pleaded that wife has deserted him with intention of bringing cohabitation permanently to an end without reasonable cause. He could not establish that without any fault upon him, she left the matrimonial home and living separately. He has not established that he sincerely and honestly tried for the resumption of marital ties. The material portion of the pleadings is as follows:

தொடர்ந்து மனுதாரருடன் குடும்ப வாழ்க்கை நடத்த எதிர் மனுதாரர் மேற்படி காரணங்களினால் முன் வர தயாராக இல்லை. தொடர்ந்து கடந்த மூன்று வருடங்களுக்கு மேலாக 08.09.2019 ல் இருந்து எதிர்மனுதாரர் இந்நிர் மனுதாரரை பிரிந்து தனியாக வாழ்ந்து வருகிறார். எனவே இந்நிர் எதிர்மனுதாரர் இந்த எதிர் உரையுடன் எதிர்கோருரிமை மூலமாக விவாகரத்து வழங்க கோரி சமூக நீதிமன்றத்தில் பரிகாரம் கோரியுள்ளார்.



In the considerable opinion of this Court, this pleading is not proper and sufficient to grant divorce on the ground of desertion.

9.2.To prove the offence of desertion, it is the duty of the husband to prove that she abandoned the matrimonial life without reasonable cause and without consent for a continuous period of two years before filing the petition. The Hon'ble Supreme Court in the case of ***Bipinchandra Jaisinghbai Shah v. Prabhavati***, reported in ***AIR 1957 SC 176***:

For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively.



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9.3.The Hon'ble Supreme Court similarly in the case of ***Savitri Pandey Vs. Prem Chandra Pandey***, reported in ***AIR 2002 SC 591***, has observed that desertion for the purpose of seeking divorce under the “Act” means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. To constitute desertion total repudiation and withdrawal from the matrimonial obligation would have to be established.

9.4.In this case, husband examined himself as R.W.1. He deposed that on 08.09.2019, the respondent picked up a quarrel with him and abused his mother and removed the Mangal Suthra and thrown it on his face and went away with her parents and brother. In chief examination, he stated that the respondent has not informed about the birth of the child but in cross examination he deposed that he heard the birth of the child in the hospital and thereafter, he and his mother never went to the house of the respondent to see the child and he has seen the child only in the Court. Further, in his cross examination he deposed that he never brought and gave any dress and eatables to the child. He never filed any petition before the Court to see the child. He also deposed that he has filed this counter claim only after the



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filing of the restitution petition.

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10. The wife not only filed the petition under Section 9 seeking relief of restitution of conjugal rights and pleaded specific incidents to prove that she was not leaving the matrimonial home without any reasonable cause and she is eager to reunite. The marriage between the appellant and the respondent took place on 13.06.2019 and they were living in Vasudevanallur and thereafter, the appellant was transferred to Chidambaram on 04.07.2019 and he has taken the respondent to the transferred place. The respondent requested the appellant to register the marriage, but he stated that there was no necessity to register the same and hence there was some dispute relating to registration of the marriage. At that time, the mother-in-law of the respondent has interfered in the matrimonial life of the appellant and respondent and she insisted to pay more dowry and she scolded the respondent. The said case of the wife, has not been denied by the husband in the manner known to law. When there are allegation against the mother-in-law and the mother-in-law was also in the company of the appellant, it is the duty of the husband to disprove the said allegation against the wife. Apart from that, in this case the evidence of



the wife is that the mother of the appellant opened the gas and locked the wife inside and fortunately the respondent smelled the same and escaped from the impending fire mishap. The evidence of P.W.1 namely the wife/respondent is cogent and trustworthy and there is no reason to disbelieve the testimony of P.W.1 by any means. Therefore, the wife left the matrimonial home because of the conduct of the appellant. In her petition dated 17.05.2022 given to the District Secretary, District Legal Aid counsel attached with Virudhunagar District Court she stated that he has not taken any steps for re-union and he, without even seeing the child led his life lavishly and hence, she seeks for reunion with him.

11.Her specific case is that, apart from the above incidents, the mother of the appellant on the ill-advice of one Avadaiappan who was co-worker of his mother caused disturbance to the matrimonial life. She belongs to the respectable family and tolerated every hardships happened in the matrimonial home and did not report to the law enforcing authority in order to save the marriage. Only after two years from the date of birth of child, she made the representation to the legal-aid Secretary to unite her with him.



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12.The evidence of P.W.1, is trustworthy and the same was corroborated by the evidence of P.W.2. Even though P.W.2 was a hear say witness but he cogently deposed about the information received from P.W. 1. He also deposed that on 07.10.2019 he and the father of P.W.1 went to the residence of the appellant and the appellant and his mother without even taking her inside the house, refused to entertain her request to live with her. He also deposed that they told that the time of the pregnancy was not auspicious and propitious and hence, he refused to hear the pregnancy of P.W.1. Therefore, it cannot said that the respondent/wife left without reasonable cause.

13.In this case, the wife has rightly not initiated any criminal proceedings against the husband and his in-laws. She was all along waiting for the reunion. Further, even though she was subjected to cruelty, the same has not been translated into criminal case and other domestic violence proceedings. It shows that the wife's conduct is more *bona fide* and also her offer for reunion is *bona fide* and also there is all fairness in her offer made by way of filing a petition for the restitution of conjugal rights. The wife



also clearly stated that even after the husband sent a notice on 17.3.2020 seeking the mutual divorce petition, she kept quiet and she did not lodge any complaint against the husband to break the matrimonial harmony. In the said circumstances, she has fairly approached with the correct facts and also the same was appreciated by the learned trial judge. In the said circumstances, merely because, she has not made any complaint about the intolerable cruelty in the matrimonial home cannot be taken otherwise as held by the Hon'ble Supreme Court in the case of ***Achin Gupta Vs. State of Haryana and another*** reported in ***2024 SCC Online SC 759***:

32.Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, bring about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is approaching the Police, as if the Police is the panacea of all evil. No sooner the matter reaches the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The only reason why we are saying so is that



instead of handling the whole issue delicately, the initiation of criminal proceedings would bring nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends.....

Therefore, this Court finds no merit in the contention of the appellant that he has established grounds to get divorce on the ground of desertion.

14. It appears that the husband just to make a plea of divorce as a formality without proper pleading with narration of the events to constitute the cause of action for granting relief of divorce on the ground of desertion, has made counter claim for divorce.

15. Another fact is that even though divorce petition was dismissed, he has failed to file a separate appeal. Considering the matrimonial dispute,



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this Court has not considered the said technical plea. Any way the husband failed to prove the ingredients of the desertion.

16.From the evidence of the husband, it is clear that there was no matrimonial discord on the account of grave dispute between them. In the said circumstances, the learned trial judge correctly granted restitution of conjugal rights in the interest and welfare of the child and dismissed the divorce petition sought on the ground of the desertion.

17. In this case, one of the finding of the learned trial judge is that the dispute between both the parties is ordinary one and the same was not serious in nature leading to the matrimonial disharmony. This Court perused the entire materials and also in view of the discussion on evidence of D.W. 1, P.W.1, P.W.2 and under the circumstances, the said finding of the learned trial Judge is correct and the same need not be interfered with. In similar situation, the Hon'ble Supreme Court in the case of *Achin Gupta Vs. State of Haryana and another reported in 2024 SCC Online SC 759* also observed as follows:



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Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage.

18.The learned trial judge also has correctly considered the welfare of the child and declined to grant divorce by observing that the dispute between the appellant and the respondent are not very serious and grave



one. The same was petty quarrel. Due to marriage, God has blessed them with a beautiful child. Therefore, in the interest of institution of marriage, the learned trial Judge was declined to grant divorce. The said discussion of the learned trial Judge was in accordance with law and the same is fortified by the Hon'ble Supreme Court in the case of ***Achin Gupta Vs. State of Haryana and another*** reported in ***2024 SCC Online SC 759*** has held as follows:

In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned.

19.Conclusion:

The marriage is a heavenly union of two souls, two families and sometimes two diverse cultures. There would be some couple, meeting each other before their marriage and sort out all their major issues that loomed large and would make the marriage proposal work. Then they enter into a



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blissful marriage. They are also blessed with a child. Now their marriage is on the rocks, not because of any major issues, or astronomical issues, but of the trivial issues. Instead of sitting together and clearing the air, they are not only spoiling their life, but the life of innocent lamb, the divine gift namely the child. In marriage, often you have to lose an argument in order to win your spouse. The worst pain in life is when some one “you know” turns into some one “you knew”. The couple should think twice before parting, for the sake of their child. If the child is deprived of the love of a parent, there is always a danger of the child drifting away from the mainstream. The child needs not only feeding, but a decent standard of living and it has to be protected in every way. The couple should consider to save the marriage and not to break the marriage for the future of their child. They should burry the hatchet and start a new life, otherwise the Court has to find out a way and pass an order to protect the child. How many childless couples are longing to beget a child. The fighting couple should rise above hate and come to terms.



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20. Accordingly, this Civil Miscellaneous Petition stands dismissed.

There shall be no order as to 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 Judge,
Family Court,
Srivilliputhur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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AND
K.K.RAMAKRISHNAN, J.

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