



C.M.A.(MD) No.528 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.528 of 2024

B.Joseph Clarence Peeris.

... Appellant

Vs.

J.Mary Immagulate Rogerigo.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act to set aside the judgment and decree dated 08.11.2011 passed in I.D.O.P.No.12 of 1999 on the file of the Principal District Court, Tuticorin.

For Appellants : Mr.Ananth C.Rajesh

For Respondent : Mr.R.Chrishtopher Miranda

J U D G M E N T

The instant appeal has been filed by the husband aggrieved by the dismissal of the Divorce Petition filed on the ground of mental cruelty.

2. The appeal arises under the following circumstances:

The appellant and the respondent got married on 14.09.1989. The



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respondent became pregnant in the year 1990 and on 09.06.1990, the respondent left her matrimonial home. On 24.09.1990, a child was born to the appellant and the respondent. Thereafter, the appellant and the respondent, for some reasons have been living separately.

3. The appellant filed the Divorce Petition stating that without any valid excuse, the respondent left her matrimonial home on 09.06.1990 and she had subjected the appellant to mental cruelty by stating that she had no interest in the marriage; and that she was forced into the marriage by her parents; and that she left the matrimonial home, when she was pregnant; and that she had not informed the birth of the children to the appellant; though the appellant took several steps to reconcile with the respondent, the respondent refused and always scolded the appellant in filthy language; that the respondent accused him of having illicit intimacy with other women; and that the respondent did not take care of the child, which resulted in his death; and hence, there was no chance of re-conciliation and prayed for divorce.

4. The respondent herein filed a counter denying the averments and stating that the appellant had illicit intimacy with several women; that the



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conciliation talks held by the elders of the family and the catholic priest had ended in failure; and that the appellant had made false allegation of adultery against her with three persons; and that she is always willing to live with the appellant.

5. Before the Court below, the appellant examined himself as P.W.1 and marked Exs.P1 to P3. The respondent examined herself as R.W.1 and marked Exs.R1 to R10.

6. The Court below held that the appellant had failed to prove the allegations of cruelty and hence, he was not entitled to decree of divorce.

7. Though the notice has been served on the respondent, none has entered appearance.

8. The learned counsel for the appellant submitted that the appellant and the respondent have been living separately admittedly from 1990 and it would be a futile exercise to keep the marriage alive, when it is otherwise, dead and that long period of separation itself amounts to cruelty and hence, she prayed for allowing the appeal.



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9. This Court has carefully considered the submissions made by the learned counsel for the appellant and perused the records and the judgment of the Trial Court.

10. The point for consideration in the appeal is: *‘Whether the appellant is entitled to a decree of divorce?’*

11. Admittedly, the appellant and the respondent have been living separately from 1990. It is also seen from the evidence of both P.W.1 and R.W.1 that they did not get along well, ever since the date of marriage. The respondent has also made a number of allegations against the appellant with regard to his character. The various efforts taken by the elders of the family and a catholic priest, had ended in failure. The appellant had also cited several other incidents to establish that he had suffered mental cruelty.

12. The appellant had established the following to substantiate that he was subjected to cruelty:

a. Even though the father of the appellant suffered from cancer, the respondent did not show any care for him. On the other hand, prevented



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the appellant from being close to him and being of any help to his father.

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b.The respondent had insulted the appellant on several occasions and accused him of having illicit intimacy with many women, though there was no basis for the said accusation.

c.The appellant was not called for the baptism ceremony held for the child (since deceased).

d. Apart from the above incidents, there are several other incidents, which would suggest that the appellant had suffered mental cruelty.

13. Above all, this Court is of the view that the very fact that the appellant and the respondent have been living separately from 1990, would show that the marriage is dead. The fact that there is no representation for the respondent also confirms the lack of interest of the respondent in the marriage. The very long period of separation apart from the above incidents would also amount to mental cruelty as held by the Hon'ble Supreme Court in Samar Ghosh vs. Jaya Ghose reported in (2007) 4 SCC 511.

14. In the circumstances, this Court is of the view that the appellant would be entitled to divorce on the ground of mental cruelty and the point



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is answered accordingly. Hence, the marriage solemnized between the appellant and respondent according to the Christian rights and customs on 14.09.1989 is hereby dissolved by a decree of divorce.

15.In the result, this Civil Miscellaneous Appeal is allowed. No costs.

22.08.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1.The Principal District Court,
Tuticorin.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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