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CMA NO.2877 OF 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 09 / 12 / 2024

JUDGMENT DELIVERED ON : 04 / 06 / 2025

CORAM :

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.2877 OF 2015

AND

MP NO.1 OF 2015

S.Shanhmuga Kalaivani

... Appellant / Respondent

Vs.

S. Ganesan

... Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 read with Section 28 of Hindu Marriage Act, 1955 praying to set aside the fair order and decree dated November 04, 2015 made in H.M.O.P.No.696 of 2012 on the file of the Additional Family Court, Coimbatore.

For Appellant : Mr.L.Mouli

For Respondent : M/s. R.Sumithra Chakkaravarthy



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J U D G M E N T

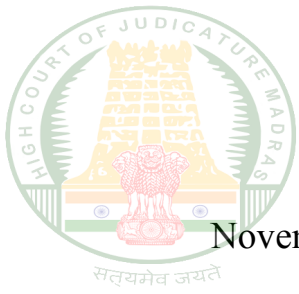
WEB CO **R.SAKTHIVEL, J.**

Feeling aggrieved by the Judgment and Decree dated November 4, 2015 made in H.M.O.P. No.696 of 2012 by 'the Additional Family Court, Coimbatore' ['Family Court' for short], the respondent therein who is the wife, has preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Petition.

PETITIONER'S (HUSBAND) CASE

3. The case of the petitioner is that the marriage between him and the respondent was solemnized on August 20, 2010 as per Hindu rites and customs. At the time of marriage, the petitioner was working as an Assistant Engineer at 'Tamil Nadu State Transport Corporation' ['TNSTC' for short]. The respondent was working as a teacher in a private school at Palani. After their marriage, the couple were living at Alandhurai, Coimbatore District in a Joint Family. Before marriage, the petitioner was given the respondent's Horoscope which showed her date of birth as



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November 4, 1971. However, after marriage, the petitioner learnt from her

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Secondary School Cumulative Record that her actual date of birth is June

1, 1967. The contention of the petitioner is that the respondent's side fraudulently suppressed her real age to conduct the marriage. Further, the respondent suppressed her respiratory conditions. The respondent without any reason would quarrel with the petitioner's parents and verbally abuse the petitioner. Further, she would frequently leave for her parental home without any intimation. Further, the respondent would talk ill about her sexual life with the petitioner in front of the family members. Further, without any intimation, the respondent frequently brought her relatives home every time she returned from her parental house. Out of the two years of their living together in the marriage, the respondent for about one year stayed at her parental house. Further, the respondent threatened for separate living. The acts and conduct of the respondent caused mental agony to the petitioner. Hence, it is not possible for the petitioner to live along with the respondent. Accordingly, he seeks divorce under Sections 13 (1) (i-a) and 13 (1) (i-b) of 'Hindu Marriage Act, 1955' ['H.M. Act' for short].



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RESPONDENT'S (WIFE) CASE

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4. The respondent filed a counter denying all the allegations made in the petition. She averred that at the time of marriage, the petitioner earned Rs.60,000/- monthly as Assistant Engineer at TNSSTC. The respondent's marriage was arranged and conducted by her grandparents and relatives, as her parents had passed away. She is qualified with M.Sc., B.Ed., & M.Phil and was working as a teacher in a private school. As requested by the petitioner, she quit her job and became a house wife. They were leading a happy marital life for the first 1 ¼ years of their marriage. Thereafter, at the instigation of the petitioner's sisters, the petitioner began raising false allegations against the respondent, verbally and physically abusing her, driving her out of her matrimonial house, avoiding sexual relationship with the respondent and engaged in other acts of cruelty. The respondent's brother passed away on May 28, 2011. Thereafter, the abuse and cruelty towards the respondent by the petitioner increased. The respondent's date of birth as stated in her Secondary School Cumulative Record is the true one and the petitioner is well aware of the same before the marriage. The petitioner had mentioned that age is not a barrier. The respondent is healthy and not suffering from any medical condition as alleged by the petitioner; she only suffers from



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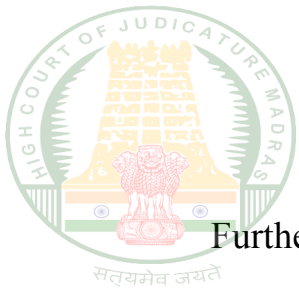
dust allergy. It is the petitioner's sisters who were abusive and quarrelsome towards the respondent. All the *seervarsai* items, jewels, and other silver utensils are still with the petitioner as he had refused to return them. Despite these issues, the respondent desires to live along with the petitioner without any conditions and also ready to be a dutiful wife. There is no necessity to dissolve their marriage. Accordingly, she prayed to dismiss the Original Petition.

FAMILY COURT

5. In the trial, on the side of the petitioner, the petitioner was examined as P.W.1, one Mr.Ravichandran was examined as P.W.2 and Ex-P.1 to Ex-P.6 were marked. On the side of the respondent, the respondent was examined as R.W.1, one K.R.Sivanandham was examined as R.W.2 and no exhibit was marked.

5.1. Upon hearing both sides and considering the evidence available on record, the Family Court held that the respondent frequently went to her parental house and stayed there and thereby denied the petitioner of his matrimonial rights. Further held that the respondent brought her relatives along while returning to her matrimonial home.

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Further held that the respondent had suppressed her real age and thereby caused mental agony to the petitioner. Upon reaching the above findings, it concluded that the petitioner has proved his case under Section 13 (1) (i-a) of H.M. Act. It held that the Original Petition was presented within two years from the date of their marriage and hence, the ground of desertion under Section 13 (1) (i-b) of H.M. Act would not be made out. Accordingly, it dissolved the marriage between the couple.

6. Feeling aggrieved, the respondent / wife has preferred this Civil Miscellaneous Appeal praying to set aside the Judgment and Decree of the Family Court.

ARGUMENTS:

7. The learned Counsel for the appellant / respondent would argue that the Family Court's finding that the respondent suppressed her real age at the time of marriage is erroneous and baseless. The petitioner was informed of the respondent's real age at the time of marriage and he was well aware of the same. It is to be noted that both, the petitioner and the respondent, were aged about 43 years at the time of marriage. Further, the Family Court failed to consider the fact that P.W.2, who is the



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petitioner's brother-in-law [his sister's husband], is an interested witness and his evidence ought to have been rejected. The respondent is ready and willing for an unconditional reunion. The Family Court very much relied on Ex-P.5 - Horoscope and the same is inadmissible as it is a photocopy and the petitioner's claim that it was given by the respondent side was not proved. The respondent side did not give any Horoscope to the petitioner side. The petitioner has failed to prove his averments through credible evidence. The Family Court erroneously granted divorce without appreciating the facts and evidence in the right perspective. Accordingly, the learned Counsel would pray to set aside the Judgment and Decree of the Family Court.

8. Per contra, the learned Counsel for the respondent herein / petitioner would argue that the respondent in her counter has not denied Ex-P.5 - Horoscope. The respondent suppressed her real age at the time of marriage and thereby caused much mental agony to the petitioner. Further the respondent suppressed her medical conditions. The respondent unnecessarily quarrelled with other family members and thereby caused mental cruelty to the petitioner. The Family Court appreciated the evidence in the right perspective and rightly dissolved the marriage.

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Accordingly, the learned Counsel prayed to dismiss the Civil Miscellaneous Appeal.

DISCUSSION:

9. This Court has heard on either side and perused the materials available on record.

10. The points that arise for consideration in this Civil Miscellaneous Appeal are (i) Whether the respondent suppressed her real age at the time of marriage, (ii) Whether the respondent caused cruelty to the petitioner as alleged, (iii) Whether the Family Court's findings are to be interfered with.

11. As per Ex-P.4 - Driving License, the petitioner's age at the time of marriage was 43 years (date of birth is November 5, 1966). As per Ex-P.6 - Secondary School Cumulative Record, the respondent's age was 43 years at the time of marriage (date of birth is June 1, 1967). The case of the petitioner is that the respondent's family provided Ex-P.5 – Horoscope, where the date of birth of the respondent has been mentioned as November 4, 1971, in order to suppress her real age at the time of



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marriage. The petitioner had filed Ex-P.5 - Horoscope along with the Original Petition. The respondent did not specifically deny Ex-P.5 in her counter. Further no question was asked with regard to Ex-P.5 in P.W.1 / petitioner's cross-examination, though Ex-P.5 was marked with objection. Further, though objection was made, it was not specific. The respondent in her chief-affidavit also has not denied Ex-P.5 nor has stated anything with regard to it. P.W.2 has deposed in his evidence that Ex-P.5 - Horoscope was given to them by the respondent's aunt, and the said aspect has also not been denied by the respondent specifically. For the first time the respondent has stated in her cross-examination as R.W.1 that she never had a Horoscope and no Horoscope was given to the marriage broker. In view of the fact that there is no denial of Ex-P.5 until cross-examination of R.W.1, it is highly probable that the said statement made in her cross-examination is an afterthought. It is true that Ex-P.5 is a photocopy, however, in view of Section 14 of Family Courts Act, 1984 read with Section 21- C of H.M. Act, Ex-P.5 is admissible. Since Ex-P.5 has not been denied specifically by the respondent until her cross-examination, it is deemed to be proved. Hence, the Family Court's finding that the respondent suppressed her real age is justifiable. Suppression of



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real age, in the facts and circumstances of this case, amounts to mental cruelty. Point No.(i) is answered accordingly.

12. The Family Court concluded that the respondent brought her relatives to her matrimonial home without any due intimation frequently, thereby causing inconvenience to the petitioner's family. No independent witness was examined by the petitioner and the said allegations remains unestablished. Even otherwise, merely bringing home relatives and friends frequently alone would not amount to cruelty. There has to be some additional disturbing element attached with such acts in order to cause mental cruelty under law.

13. Further the Family Court found that the respondent often stayed at her parental house and thus denied the petitioner of his matrimonial rights. The same is also not established through proper evidence. Even if this claim is assumed to be true, considering that the respondent lost her parents well before her marriage, her sole brother passed away on May 28, 2011, and her grandmother was unwell, it is only natural that she would have visited her parental home frequently. This does not amount to denial of matrimonial rights of the petitioner.



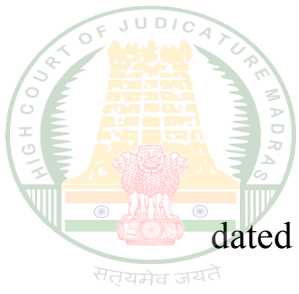
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14. Another allegation of the petitioner against the respondent is that the respondent suppressed her pre-existing respiratory issues. The petitioner has not produced any documents / medical records to substantiate the said allegations. The respondent has stated that she has only dust allergy and was taking medicines for the same. Merely because she is taking treatment / medicines for dust allergy, it cannot be assumed that the respondent has some pre-existing serious medical problems. Hence, this Court rejects the said averments made by the petitioner in this regard.

15. The petition was filed on June 26, 2012 i.e., within two years of their marriage. Hence, the ground of desertion under Section 13 (1) (i-b) is not available to the petitioner. The Family Court rightly dealt with the aspect.

16. In view of the foregoing narrative, this Court is not inclined to interfere with the final decision of the Family Court. Point Nos.(ii) and (iii) are answered accordingly.

17. It is to be noted that this Court vide Order dated February 26, 2019, referred the matter to mediation and as per the mediation report



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dated April 25, 2019, the petitioner / husband was not willing to participate in the mediation and hence, no agreement was reached in the situation. Considering the same as well as the facts and circumstances, this Court is of the view that, though divorce is granted to the couple, the petitioner bears legal and moral obligation to give maintenance to the respondent. At the time of marriage, the petitioner was working as an Assistant Engineer at TNSSTC and he has stated that he was earning a sum of Rs.48,000/- monthly as salary while the respondent has stated that he was earning Rs.60,000/- per month. At the time of his deposition as P.W.1, he was aged 47 years and serving as an Assistant Manager at TNSSTC. He had 13 more years of service. With the pay commission revision, this Court is of the considered opinion that as on today, he would earn not less than Rs.1,00,000/- per month. To be noted, no pay certificate or statement of asset of the petitioner was filed on either side. The respondent was working as a teacher in a private school and quit her job due to the marriage. Considering the cumulative circumstances, considering the stand taken by the respondent that she is willing to reunite with the petitioner, considering the short period of their living together in the marriage, considering the fact that they are issueless, and considering the



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petitioner's occupation and his earning capacity (present as well as future), this Court is of the view that awarding a lump sum amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) to the respondent as maintenance would be fair and reasonable. Though the respondent did not seek for maintenance and insists on reunion, in view of the above considerations, with a view to avoid multiplicity of proceedings as well as in the interest of justice, this Court holds that lump sum maintenance amount of Rs.20,00,000/- is much needed for the respondent.

18. As regards the return of articles including jewels, no issue was framed and both sides did not lead any evidence in this regard. However, petitioner contends that he had returned them already while the respondent contends that they are still with the petitioner. In these circumstances, this Court is of the view that the respondent is at liberty to initiate separate Suit if so desires or advised.

CONCLUSION:

19. Resultantly, the Civil Miscellaneous Appeal is party allowed in the following terms:

- (i) The marriage between the couple held on August 20, 2010 shall



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be dissolved by a Decree of divorce;

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- (ii) The petitioner shall pay a lump sum amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) as maintenance to the respondent within 5 months from the date of receipt of a copy of this Judgement, failing which the respondent is entitled to recover the said amount from the petitioner as per law;
- (iii) The respondent / wife is at liberty to initiate a separate Suit for return of articles;
- (iv) In view of the facts and circumstances of this case, the parties shall bear their own costs;
- (v) Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.]

[R.S.V., J.]

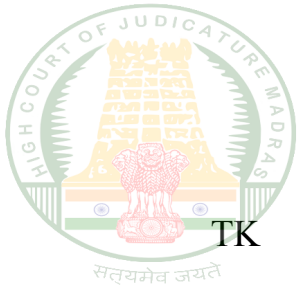
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Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

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To

1. The Additional Family Court, Coimbatore



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PRE-DELIVERY JUDGMENT MADE IN
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