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CMSA No. 16 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-08-2025

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMSA No. 16 of 2022

1. S.Bhavani

W/o.V.Karthikeyan, No.132/K1

Ganeshpuram, Madathukulam Taluk,

Tirupur District 642 113.

Appellant(s)

Vs

1. V.Karthikeyan

S/o.R.Veeraragavan, Flat No.7,

Sarveshwari Nagar, Iyyancheri,

Urapakkam, Chengalpattu Taluk,

Kancheepuram.

Respondent(s)

PRAYER

Civil Miscellaneous Second Appeal has been filed under Section 28(1) of Hindu Marriage Act, 1955, and under Section 100 of the Code of Civil Procedure, prays to set aside the Judgment and decree rendered in CMA.No.25 of 2018 dated 30.11.2021 on the file of the District Court at Chengalpattu reversing the well considered judgment and decree passed in H.M.O.P.No.150 of 2015, dated 25.04.2018 on the file of Subordinate Court at Tambaram by allowing the present Civil Miscellaneous Second Appeal.



For Appellant(s): Mr.S.Kanmani Annamalai

For Respondent(s): Mrs.Sharada Vivek

JUDGEMENT

The appellant has filed this appeal to set aside the Judgment and decree rendered in CMA.No.25 of 2018 dated 30.11.2021 on the file of the District Court at Chengalpattu reversing the well considered judgment and decree passed in H.M.O.P.No.150 of 2015, dated 25.04.2018 on the file of Subordinate Court at Tambaram.

2. Challenging the reversal order passed by the First Appellate Court / the learned District Judge, Chengalpattu, the respondent/wife has preferred the present Civil Miscellaneous Second Appeal.

3. Brief facts of the case: The respondent / husband filed a petition for divorce in H.M.O.P. No.150 of 2015 on the file of the Subordinate Court, Tambaram, on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act. The said petition was contested by the appellant / wife, who denied the allegations and prayed for reunion.



4. Both parties adduced evidence before the Trial Court. Upon consideration of the evidence, the learned Trial Judge dismissed the petition, holding that the petitioner / husband had failed to prove the alleged acts of cruelty. Aggrieved by the said order, the husband preferred an appeal in C.M.A. No.25 of 2018 before the learned District Judge, Chengalpattu.

5. The First Appellate Court, after reappreciating the evidence, allowed the appeal, holding that both parties had been living separately for more than fifteen years and that the possibility of reunion was remote. The Court further observed that the wife had not taken any steps for reunion and that the marriage had irretrievably broken down. Accordingly, divorce was granted. Aggrieved by the said findings, the wife has preferred the present CMSA.

6. The learned counsel for the appellant / wife submitted that the marriage between the appellant and the respondent was solemnized in the year 2006 as arranged by the elders. Thereafter, the appellant began her matrimonial life with the respondent at Tambaram. However, at the instigation of the respondent's



parents and sisters, he showed no interest in marital life and, on the contrary, made false allegations against her and left her at her parents' house within three months of the marriage.

7. Subsequently, the respondent refused to take her back. The appellant issued a notice for restitution of conjugal rights on 08.07.2006, but the respondent failed to respond and deserted her for more than three years. Thereafter, he filed H.M.O.P. No.33 of 2008 seeking divorce, which he later withdrew at the advice of the elders, and the parties resumed cohabitation. Later, the appellant conceived, but due to lack of proper care and food from the respondent, she suffered a miscarriage. Once again, misunderstandings arose, and she was driven out of the matrimonial home. Upon the advice of elders, they reunited, but the respondent again deserted her and filed H.M.O.P. No.382 of 2009.

8. The appellant then filed M.C. No.25 of 2009 seeking maintenance, which was allowed, directing the respondent to pay Rs.10,000 per month



towards maintenance and Rs.15,000 towards medical expenses (later modified to Rs.5,000). Subsequent petitions were also filed and withdrawn based on compromise. The respondent later took a separate residence and advised her to obtain a passport, asking her to stay temporarily at her parents' house for verification. Believing his words, she went to her parents' home, but the respondent vacated the house and absconded.

9. The learned counsel contended that the Trial Court had rightly considered the conduct of the respondent and dismissed his petition for divorce. However, the learned First Appellate Judge failed to properly appreciate the evidence and erroneously concluded that since the parties had been living separately for fifteen years, reunion was not possible and the marriage was irretrievably broken. Such a finding is a clear misappreciation of fact and law and hence perverse, liable to be set aside.

10. The appeal is, therefore, admitted on the following Substantial Questions of Law.



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(A) Whether the first appellate Court below is right in allowing the CMA No.25 of 2018 by observing no petition for restitution of conjugal relationship filed by wife, on contra when the decree and judgement dated 19.03.2020 made in HMOP No.117 of 2018 passed by the Family Court, Chengalpattu for such relief is very much remaining in force?

(B) Whether the first appellate court below is right in allowing the first appeal in CMA.No.25 of 2018, by observing that the marriage is irretrievably broken, where there is lack of material evidence to that effect?”

11. The learned counsel for the respondent / husband submitted that from the date of marriage, the appellant / wife showed no interest in matrimonial life, and the marriage was not consummated even on the nuptial night. Influenced by her parents, she frequently ill-treated the respondent and, on one occasion, attempted suicide by consuming tablets.

12. Thereafter, she left for her parents' house without any valid reason. The respondent issued a notice for restitution of conjugal rights, but she did not respond and continued to live separately. After two years, he filed H.M.O.P.



No.33 of 2008 seeking divorce. On the intervention of elders, they reunited, and the appellant became pregnant; however, she was unwilling to continue the pregnancy and got it terminated. Her attitude remained unchanged.

13. Later, in 2009, the respondent filed another petition for divorce, which was dismissed based on a joint compromise memo filed by both parties. Subsequently, she again demanded money from him, and the marriage continued to remain unconsummated. Hence, he filed the present petition for divorce on the ground of cruelty.

14. The learned counsel submitted that though the Trial Court failed to appreciate the evidence properly, the learned First Appellate Court rightly concluded that the parties have been living separately for more than fifteen years, that the marriage has irretrievably broken down, and that there is no possibility of reunion. The respondent / wife also did not take any steps for restitution of conjugal rights. Therefore, the First Appellate Court rightly granted divorce, and the same requires no interference.



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15. On considering the submissions made by both sides, the facts reveal that on 02.03.2006, the appellant and the respondent got married at Palani as per Hindu rites and customs. Their marriage was an arranged one, and thereafter they began their matrimonial life at Perungulathur, Tambaram, Chennai. This fact is undisputed.

16. According to the respondent / husband, the appellant was not interested in the consummation of marriage and had expressed that she was compelled by her parents to marry him. It is further alleged that, in order to threaten him, she consumed tablets and attempted to commit suicide. Subsequently, she went to her parents' house on account of her grandfather's demise, and thereafter, he issued a legal notice during the year 2006. Since she did not return to the matrimonial home, he filed a petition for divorce in H.M.O.P. No. 382 of 2009.

17. On the other hand, the appellant / wife denied all the allegations. She



contended that she was interested in leading a marital life, but the respondent, under the instigation of his parents and sisters, was not willing to live with her.

He continuously evaded cohabitation. On one occasion, when she was feeling tired, the respondent gave her some tablets, which she consumed, after which she felt dizzy. However, he falsely portrayed the incident as a suicide attempt and forcibly sent her to her parents' house during her grandfather's funeral.

18. The appellant further stated that her in-laws came to her native place to attend the funeral ceremony but refused to take her back to the matrimonial home. Though the respondent denied these allegations, he failed to adduce any evidence in support of his version, nor did he examine his parents or sisters to substantiate his case.

19. Furthermore, the respondent / husband stated that after the advice of the elders, they were reunited. This fact is not disputed. After some period of separation, they resumed their matrimonial life. However, once again, differences arose between them. The parents of the respondent interfered and



caused trouble in the family, which led to the appellant being forcibly sent out of the matrimonial home. Later, her parents and relatives took her back to Tambaram.

20. During their period of reunion, the appellant conceived, but due to lack of proper nutrition and care, she suffered a miscarriage. There is no medical evidence to prove that she voluntarily aborted the child. Therefore, the allegations made by the respondent against the appellant / wife are not sustainable, and the Trial Court rightly rejected such contentions.

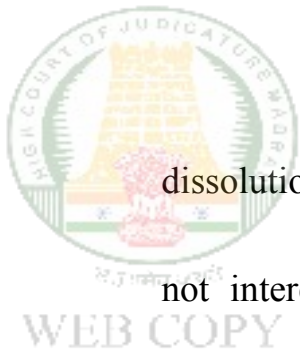
21. From the above facts and circumstances, it is evident that the marriage was consummated, and the appellant had conceived but unfortunately suffered a miscarriage. Thereafter, due to the ill advice of his family members, the respondent deserted her once again. The record also shows that, upon receiving a call from the police based on her complaint, the respondent filed another petition for divorce, which was later withdrawn in the year 2014, and they resumed cohabitation.



22. It also came to light that the appellant discovered the respondent's profile on a matrimonial website, indicating that he was searching for another woman. Though the respondent claimed that his friends had created the profile without his knowledge, such an explanation is not acceptable. If that were true, he could have examined at least one of those friends to substantiate his claim, but no such evidence was produced. Hence, there is a strong possibility that the respondent himself created the matrimonial profile.

23. The facts further reveal that the respondent instructed the appellant to apply for a passport and asked her to stay at her parents' house for verification purposes. Believing his words, she went to her native place, but during that time, he vacated the matrimonial home and shifted to another place without informing her. Later, with the help of her relatives, she traced him and filed a maintenance petition, wherein the Court directed the respondent to pay Rs.10,000/- per month as maintenance, which he failed to comply with properly.

24. Subsequently, the respondent once again filed a petition seeking



dissolution of marriage on the ground of cruelty, alleging that the appellant was not interested in consummating the marriage and that she had voluntarily deserted him. However, as discussed above, the conduct of the respondent / husband clearly shows that, under the influence of his parents and sisters, he avoided living with the appellant and continuously intended to drive her out of the matrimonial home. The appellant / wife, on the contrary, was willing to live with him and made repeated efforts to resume cohabitation. Despite facing several hardships, she persisted in seeking reconciliation. On multiple occasions, the elders intervened and helped them compromise and live together, and it is admitted that the marriage was consummated and she had conceived, though the pregnancy ended in miscarriage.

25. When the matter was taken up before this Court, the appellant / wife openly broke down in the Court hall. The respondent / husband contended that the marriage was not consummated, which was categorically denied by the appellant / wife. She stated in open Court that the marriage had indeed been consummated and that the respondent used to mock her by saying that he



wanted to verify his potency before marrying another woman. This statement was not denied by the respondent, who appeared in person.

26. From the demeanor and conduct of the respondent, it is evident that he had subjected the appellant / wife to continuous mental torture. The appellant, without any source of income, has been struggling for years and is still standing before this Court seeking justice. Therefore, the conduct and attitude of the respondent clearly establish that he was the cause of cruelty towards the appellant, and his intention throughout was to obtain a divorce from her.

27. The reason assigned by the respondent / husband for seeking divorce, namely that the appellant / wife attempted to commit suicide and was not interested in matrimonial life, is neither true nor valid. It appears that, in order to evade payment of maintenance, the respondent proposed reunion with the appellant and thereafter again failed to maintain her properly. Hence, the grounds alleged for divorce are not sustainable in law.



28. However, without properly considering the facts and circumstances of the case, the learned First Appellate Judge erroneously held that the marriage between the parties had irretrievably broken down due to long separation. Such a finding is illegal, erroneous, and unsustainable, and therefore liable to be set aside. Accordingly, Substantial Question of Law A and B are answered in favour of the appellant.

29. Though the First Appellate Court observed that the parties were living separately for a long period, the records clearly reveal that they had reunited on several occasions and lived together as husband and wife. On some occasions, the respondent, with an ill motive, sent her out of the matrimonial home, and later, upon the advice of the elders, they again reunited. Therefore, the observation of continuous separation is incorrect.

30. There is no fault on the part of the appellant / wife for not filing a petition for restitution of conjugal rights, as the evidence shows that she was



always willing to resume marital life. The learned First Appellate Judge, however, failed to appreciate these facts and made certain unwarranted observations, which require interference by this Court.

31. It is also evident that, to avoid payment of maintenance, the respondent entered into a compromise and lived with the appellant for some time and again deserted her. This conduct clearly shows that while the appellant was interested in continuing the marital relationship, the respondent, under the influence of his parents and sisters, persistently refused to take her back. Therefore, the grounds raised by the respondent seeking dissolution of marriage are not legally sustainable.

32. Therefore, the findings of the First Appellate Court are set aside, and the findings of the Trial Court are confirmed. Accordingly, the Civil Miscellaneous Second Appeal stands allowed.

33. Until the parties reunion, the respondent / husband is directed to pay



a sum of Rs.10,000/- (Rupees Ten Thousand only) per month as maintenance to the appellant / wife, on or before the first week of every English calendar month. In the event of default, the appellant is entitled to initiate appropriate execution proceedings for recovery of the said amount in the manner known to law.

34. If the appellant has no other source of income, the District Legal Services Authority, Tirupur, or any District Legal Service Authority where she is residing is directed to extend necessary legal assistance to her to recover maintenance from the respondent / husband. No costs.

07-08-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

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- 1.The District Judge at Chengalpattu.
- 2.The Subordinate Judge at Tambaram.
- 3.The District Legal Services Authority,
Tirupur.
- 4.The Section Officer,
VR-Section, High Court of Madras.



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