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C.M.A.No.2542 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2025

CORAM:

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**
and
THE HONOURABLE MR. JUSTICE **M.JOTHIRAMAN**

C.M.A.No.2542 of 2016

V.Ramalingam

.. Appellant

Vs.

R.Chitradevi

.. Respondent

PRAYER: Civil Miscellaneous Appeal Suit is filed under Section 19 of Family Court Act, 1984, to set aside the Judgment and Decree dated 18.03.2016 in H.M.O.P.No.13 of 2008 on the file of the Principal Family Court, Coimbatore.

For Appellant : Mr.K.N.Natarajan

For Respondent : Mr.R.Veeramani

JUDGMENT

The appellant is the petitioner in H.M.O.P.No.13 of 2008 filed under Section 13(1)(i-a) of Hindu Marriage Act, seeking dissolution of



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marriage on the ground of cruelty.

2. The respondent herein contested the matter contending that it was the petitioner/husband who had subjected her to cruelty and was living an adulterous life, which ultimately led his conviction by the trial Court. He was sentenced to 18 months imprisonment, which was later modified to one year by the appellate Court.

3. It is further contended that the respondent/wife had filed a petition in M.C.No.11 of 1997 before the Judicial Magistrate, seeking maintenance of Rs.2,500/- per month. Though, the Judicial Magistrate allowed the petition and granted maintenance, the petitioner failed to comply, allegedly on the false assurance that he would reunite with his wife during the trial proceedings.

4. Both parties mounted the witness box and marked documents in support of their respective case.



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5. After considering the evidence, the Family Court, Coimbatore, found that the marriage solemnized on 23.02.1994 had experienced considerable distress and hardship. This included the filing of a criminal complaint under Section 498 A of the IPC, which culminated in the conviction of the petitioner/appellant herein.

6. Taking note of the said facts, the trial Court dismissed the divorce petition stating that the long separation and irretrievable breakdown of the marriage cannot be considered valid grounds for divorce, especially when such separation and cruelty were due to the conduct of the petitioner. The Court further observed that the petitioner cannot be permitted to take advantage of his own wrong.

7. Being aggrieved by the dismissal of the divorce petition, the present Civil Miscellaneous Appeal has been filed by the appellant. It is contended that after the dismissal of the divorce petition by the trial Court, the respondent has not come forward to reunite with the appellant.

8. The learned counsel appearing for the appellant would submit that there is no issue for them and the original petition for divorce was



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instituted in the year 2008, which came to be dismissed on 18.03.2016.

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The present appeal has been pending for the past eight years. Considering these cumulative facts and circumstances, the marriage has irretrievably broken down and has reached a stage of no return. It is therefore, contended that the marital bond, which exists only on paper, should not be continued and the appellant ought to be granted divorce in order to move on with his life and choice.

9. It is further submitted that after the dismissal of the divorce petition, the respondent instituted H.M.O.P.No.867 of 2016, before the Principal Family Court, Coimbatore, under Section 9 of Hindu Marriage Act, seeking restitution of conjugal rights. The appellant contends that this petition was an afterthought and no effort was made by the respondent to reunite. The change in circumstances, it is argued, warrants interference by this Court and a decree of divorce ought to be granted. Accordingly, it is prayed that the appeal be allowed.

10. Per contra, the learned counsel appearing for the respondent would submit that the act of cruelty committed by the appellant have been

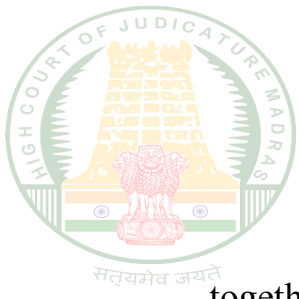


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proved through court of law, resulting in his conviction under Section 498 A of IPC. No doubt, after dismissal of the divorce petition, the respondent subsequently filed a petition for restitution of conjugal rights in H.M.O.P.No.867 of 2016, later the conduct of the appellant found to be incorrigible, the respondent thought fit not to pursue the restitution of conjugal rights. It is also submitted that the respondent has, to date, not received any maintenance, despite the order passed by the Judicial Magistrate in the maintenance proceedings. Further, he would submit that pending appeal, the appellant has married another lady by name Ajitha and given birth to a female child.

11. On perusal of the records, this Court finds that certain photographs were forwarded to the Registry by the respondent herein through post. These include joint photographs of the appellant and the respondent taken subsequent to the filing of the present appeal. On the reverse of one of the photographs, there is an endorsement jointly made by both the appellant and the respondent, stating that they have buried all their differences and joined together and expressed their desire to live



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together peacefully in the future.

12. The respondent, Mrs.Chitradevi, is present before this Court today. The postal cover, along with photographs and the endorsement was shown to her. She confirms that the endorsement was made during the pendency of the maintenance proceedings and she had forwarded the photographs to the Registry accompanied by a covering letter dated 01.07.2023, which has also been perused by this Court.

13. This Court is of the view that the appellant, who seeks dissolution of marriage on the ground of cruelty, has not substantiated the allegations with evidence. On the other hand, the respondent herein who had earlier filed a petition for restitution of conjugal rights following the dismissal of the divorce petition, had not taken any steps to pursue the remedy. It is also brought to the attention of this Court that there are specific allegations against the appellant, stating that he has entered into a second marriage with another lady while the first marriage in subsistence.



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14. On considering all these facts, even though there has been a long period of separation between the parties, there is no element to conclude that such separation has been continuous and uninterrupted, so as to constitute a ground for divorce. In the said circumstances, the Appeal is bound to be dismissed for want of proof that the appellant was subjected to cruelty.

15. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs.

[Dr.G.J., J.] & [M.J.R., J.]

19.09.2025

Index : Yes/No

Internet : Yes/No

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To

The Principal Family Court, Coimbatore.

Dr.G.JAYACHANDRAN., J.

and

M.JOTHIRAMAN., J.



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