



WEB COPY

CMA NO.1479 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19 / 11 / 2024

JUDGMENT DELIVERED ON : 4 / 06 / 2025

CORAM:

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

**CMA NO.1479 OF 2021
AND
CMP NOS.8440 AND 20490 OF 2021**

K.Selvamani

... Appellant /
Respondent

Vs.

Mageshwari

... Respondent /
Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the Judgment and Decree dated December 1, 2020 made in H.M.O.P No.50 of 2018 on the file of the learned Family Court Judge at Cuddalore.

For Appellant : Mr.A.Sikkandar
for Mr.R.Venkat Raman
for M/s.Tatva Legal Chennai

For Respondent : Mr.P.Paul Selvama Seetha



CMA NO.1479 OF 2021

J U D G M E N T

WEB COPY

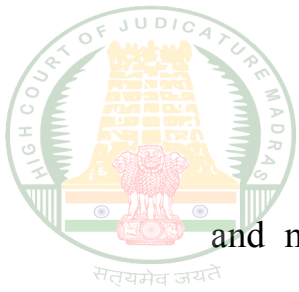
R.SAKTHIVEL, J.

Challenging the Judgment and Decree dated December 1, 2020 passed by the 'Family Court, Cuddalore' ['Family Court' for short], in H.M.O.P No.50 of 2018, the respondent therein / husband has preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Hindu Marriage Original Petition before the Family Court.

PETITIONER'S (WIFE) CASE

3. The petitioner and the respondent got married on September 10, 1992 according to Hindu rights and customs. After the marriage, they lived together until April 24, 2010. Out of their wedlock, they have two children, one born on September 17, 1993 and another on January 22, 2000. The respondent has an addiction to alcohol, gambling and other vices. He would often pick fights with the petitioner without any reason, use abusive language and cause mental and physical distress. He insulted the petitioner and her family in front of relatives and friends,

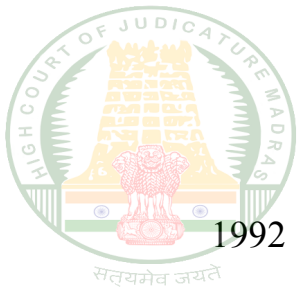


CMA NO.1479 OF 2021

and made false, degrading comments about her character. On several occasions, he strangled her, causing blood injuries. The respondent failed to provide for the family's basic needs. When the second son supported the petitioner against the respondent's abusive behaviour, the respondent had beaten both of them and threw them out of the house, telling them to "go and die". Despite knocking on the door for a long time, the respondent refused to let them back in. With no other choice, the petitioner moved to her parental home with her second son. The respondent has subjected the petitioner to unbearable mental and physical cruelty. Therefore, the petitioner sought for a decree of judicial separation, custody of their elder son and maintenance of Rs.10,000/- per month or a lump sum amount of Rs.20,00,000/- for herself and her children's higher education.

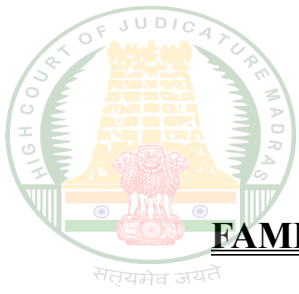
RESPONDENT'S (HUSBAND) CASE

4. The respondent filed counter statement denying the allegations made in the petition, asserting that the claims are not legally or factually sustainable. The marriage and the birth of their children were admitted. The respondent stated that after their marriage on September 10,



CMA NO.1479 OF 2021

1992 in Thiruvallur Manavala Nagar, they lived in Mambakkam village for one year, then in Kannadasan Nagar, Chennai, for five years and later in Korattur, Chennai for the children's education. The respondent claimed that the petitioner often fought with him, used abusive language, and humiliated him by siding with her family. Despite enduring this treatment for the sake of family, the petitioner did not change her behaviour. The respondent asserted that he bore all the children's educational expenses. He denied the allegations of abuse, addiction or throwing the petitioner out of the house. The respondent further described the petitioner as arrogant and self-centred and contended that she is unwilling to live harmoniously because he did not conform to her expectations. The respondent stated that he is willing to reconcile for the children's future, having visited them annually on January 22. However, the petitioner refused him access by locking the door. In 2008, the petitioner left the marital home and the respondent's efforts to reconcile failed. The petitioner is working as a teacher in a private school and earning a substantial amount as salary. Thus, he sought to dismiss the petition filed by the petitioner for judicial separation and other reliefs.



CMA NO.1479 OF 2021

FAMILY COURT

WEB COPY

5. On the side of the petitioner, petitioner examined herself as P.W.1 and her elder son was examined as P.W.2 and Ex-P.1 to Ex-P.4 were marked. On the side of the respondent, respondent examined himself as R.W.1 and one Natarajan (Eschewed) was examined as R.W.2 and Ex-R.1 to Ex-R.12 were marked.

6. The Family Court, after analysing the oral and documentary evidence available on record, concluded that the allegations of physical abuse levelled against the respondent are not substantiated, at the same time, the respondent did not specifically deny the averments that he caused mental as well as physical cruelty to the petitioner. Further held that the petitioner failed to state the reason as to why she left her matrimonial house. Finally, it concluded that the respondent caused mental cruelty to the petitioner and drove her out of their matrimonial house on May 2010. It further held that the respondent was employed as an officer in Life Insurance Corporation of India and earned a sum of Rs.89,000/- per month. Accordingly, it allowed the petition in part by granting judicial separation and directed the respondent to pay a sum of Rs.10,000/- per month as maintenance from the date of petition and



CMA NO.1479 OF 2021

refused to grant custody of the elder children to the petitioner as he had attained age of majority as on the date of Judgment. It further concluded that any interim maintenance paid shall be adjusted against the monthly maintenance to be paid.

7. Feeling aggrieved, the respondent / husband has preferred this Civil Miscellaneous Appeal seeking to set aside the Judgment and Decree passed by the Family Court.

ARGUMENTS

8. The learned Counsel for the appellant / respondent / husband would submit that the petitioner / wife left the matrimonial home without any valid reason, amounting to desertion, and that the petitioner did not commit any act of cruelty. Further he submitted that the allegations of cruelty were not substantiated with sufficient evidence and therefore, judicial separation should not have been granted. Further, he claimed that the petitioner / wife, having previously worked as a Teacher in a Private School is capable of earning and has voluntarily resigned from her job. Hence, she is not entitled to maintenance and the Family Court erred in granting her Rs.10,000/- per month as maintenance.



CMA NO.1479 OF 2021

WEB COPY

Moreover, currently she is having her own income by running a school tuition. Accordingly, he sought to allow the appeal and set aside the order of judicial separation and maintenance.

9. Per contra, he learned Counsel for the respondent herein / petitioner / wife contended that the Family Court rightly granted judicial separation as cruelty by the husband was proved through sufficient evidence. He further contended that the respondent, being a retired Field Officer at Life Insurance Corporation of India, has a stable pension and financial resources to pay Rs.10,000 as maintenance. He further contended that though the petitioner was previously employed as a Teacher in a Private School, and she has now resigned and the burden of proving that she has sufficient independent income lies on the husband, which he failed to do. Considering the present cost of living, the maintenance ordered is meagre and there is no ground to interfere with the Family Court's Judgment and Decree. Accordingly, the learned Counsel sought to dismiss the appeal.



DISCUSSION

WEB COPY

10. This Court has considered the arguments advanced on either side and perused the materials available on record.

11. The points for consideration that arise in this matter is (i) Whether the petitioner has made out a case under Section 10 of the 'Hindu Marriage Act, 1955' ['H.M. Act' for short] for judicial separation, and (ii) Whether the petitioner is entitled to maintenance from the respondent and if the answer is affirmative, whether the quantum of the maintenance awarded by the Family Court is justifiable.

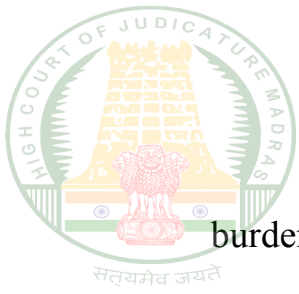
12. Though the learned Counsel for the appellant / respondent / husband argued with regard to judicial separation, there is no whisper about it in the memorandum of grounds of appeal. Be that as it may, the respondent in his counter has stated that in 2008, the petitioner left the matrimonial house and since then she is residing separately along with her younger son. The respondent did not take any steps to bring back the petitioner into the matrimonial house. The aforesaid fact would substantiate that the respondent is residing separately for more than two years before the presentation of the petition for judicial separation. The petitioner (P.W.1) in her evidence has stated that the respondent is a



CMA NO.1479 OF 2021

spendthrift and has the habit of consuming alcohol, and he used to beat her and inflicted blood injuries. Evidence of P.W.2 who is none other than their own son, corroborates the evidence of P.W.1. The combined reading of the depositions of the P.W.1 and P.W.2 clearly indicate that the respondent acted in a cruel manner towards the petitioner. Further the respondent in his evidence deposed that up to the year 2006 they had lived as husband and wife under a strained relationship. Reason stated by the petitioner are sufficient and satisfactory to conclude that the petitioner was subjected to cruelty by the respondent. Thus, it is clear that the petitioner was subjected to cruelty and that is why she left her matrimonial home. Hence, the petitioner has made out a case under Section 10 of H.M. Act. Point No.(i) is answered accordingly.

13. It is settled law that the Hindu husband bears moral as well as legal obligation to maintain his wife. The obligation to maintain wife is personal in character and arises from the very existence of the relationship between the parties [See *Muniammal -vs- Raja alias Kolandai Gounder*, reported in *AIR 1978 Mad 103*]. Hence, the respondent cannot easily wriggle out of the aforesaid obligation. The petitioner has stated that she is unable to maintain herself. Hence, the



CMA NO.1479 OF 2021

burden shifts to the respondent to prove that she is having sufficient wherewithal or income for maintaining herself. In this case, the respondent has not discharged the said burden. Hence, the petitioner is entitled to live separately from her husband without forfeiting her right to claim maintenance.

14. Admittedly, the respondent had been working as an officer in the Life Insurance Corporation of India and had been earning a sum of Rs.89,000/- per month. It is learnt that the respondent retired from service in the year 2021. It is also learnt that he had an age old mother as dependent. Though the respondent has stated that the petitioner is having sufficient income by way of running a school tuition now, the said fact has not been established through sufficient evidence. In such a scenario, the law is well settled that the husband is duty bound to maintain his wife as per his social status. Considering the employment of the respondent and the cost of living prevailing as on the date of petition, the petitioner would require a minimum of Rs.10,000/- per month to maintain herself. Needless to mention that maintenance includes residence, clothing, medical expenses *etc.* Rs.10,000/- as maintenance appears to be reasonable in the considered opinion of this Court.

Page No.10 of 13



CMA NO.1479 OF 2021

15. The respondent referring to various fee payments and loan receipts, would contend that he took care of all the educational expenses of his children and that he is still repaying the loans making it impossible for him to pay maintenance to the petitioner. He would further contend that his both sons are now major and earning, and that they're taking care of their mother. As stated *supra*, the respondent is duty bound to maintain his children as well as his wife under law. He cannot wriggle out of his legal obligation citing the above reasons. Point No.(ii) is answered accordingly.

16. On the date of presentation of petition itself, the elder son became a major. Hence, the Family Court was right in its finding that the petitioner is not entitled to his custody.

CONCLUSION

17. Resultantly, this Court finds no merit in the Civil Miscellaneous Appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated December 1, 2020 made in H.M.O.P.No.50 of 2018 by the learned Family Court Judge at Cuddalore is confirmed. In view of the facts and circumstances of this case, the



CMA NO.1479 OF 2021

parties shall bear their own costs. Consequently, connected Civil

WEB COPY Miscellaneous Petitions are closed.

[J.N.B., J.]

[R.S.V., J.]

4 / 06 / 2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
TK

To

The Family Court Judge
Family Court
Cuddalore.



WEB COPY



CMA NO.1479 OF 2021

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
CMA NO.1479 OF 2021

04 / 06 / 2025

Page No.13 of 13