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CMSA No. 28 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-08-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMSA No. 28 of 2022

K.Krithika

D/o.M.Karthikeyan

Appellant(s)

Vs

S.Madhavan

S/o.Sathiyamoorthy

Respondent(s)

PRAYER

Civil Miscellaneous Second Appeal has been filed under Section 100 of the Code of Civil Procedure r/w 13(1)(i-a) of Hindu Marriage Act, prays to set aside the Order and Decretal order dated 08.11.2021, passed in CMA No.20 of 2018 on the file of the Principal District Judge, Tiruvallur, reversing the order and decretal order dated 26.04.2018, passed in HMOP.No.429 of 2013, on the file of Sub-Judge, Poonamallee.

For Appellant(s): Mr.P.B.Ramanujam

For Respondent(s): Mr.D.Murugan

JUDGEMENT

The appellant has filed this appeal to set aside the Order and Decretal



order dated 08.11.2021, passed in CMA No.20 of 2018 on the file of the Principal District Judge, Tiruvallur, reversing the order and decretal order dated 26.04.2018, passed in HMOP.No.429 of 2013, on the file of the Sub-Judge, Poonamallee.

2. Challenging the reversal findings of the First Appellate Court, the wife has preferred this Civil Miscellaneous Second Appeal. Before the Trial Court, the appellant/wife filed a petition for divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, seeking dissolution of the marriage solemnized between herself and the respondent on 01.07.2009. Along with the petition, she also filed I.A.No.46 of 2015 under Section 27 of Hindu Marriage Act, seeking return of the articles listed in the petition.

3. For the sake of convenience, the parties are referred to as husband and wife.

4. Before the Trial Court, both parties adduced oral and documentary evidence. On considering the materials on record, the learned Trial Judge held



that the conduct of the respondent established that he had caused cruelty to the appellant/wife, and accordingly granted a decree of divorce. Except for a few items, the gold and silver articles were directed to be returned by allowing I.A.No.46 of 2015. Aggrieved by the said findings, the husband preferred CMA No.20 of 2018 before the learned Principal District Judge, Tiruvallur. The First Appellate Court analysed the entire facts and evidence and ultimately concluded that the husband had always intended to continue the matrimonial life, whereas the allegations of cruelty levelled by the wife had not been proved. Accordingly, the CMA was allowed. Challenging the same, the present appeal has been filed.

5. The learned counsel for the appellant submits that the First Appellate Court failed to properly appreciate the oral and documentary evidence and did not adopt the correct judicial approach while deciding the points for consideration. It is further submitted that the Appellate Court failed to note that the respondent/husband, even prior to the filing of the divorce petition, had expressed his intention to dissolve the marriage as early as 2012, which itself indicates that he was never inclined to continue the marital relationship. He



further contended that the learned Appellate Judge failed to take cognizance of the omissions and commissions on the part of the respondent, which clearly show that he never intended re-union, and that his communication with the appellant was only to fill up the lacunae and create an impression as if he intended to live with her. Even during the pendency of the case for five years, the respondent had not taken any steps for re-union by filing appropriate applications. Without considering these aspects, the learned First Appellate Judge erroneously accepted the respondent's evidence and allowed the appeal, which is illegal and liable to be set aside.

6. This Court admits this Civil Miscellaneous Second appeal on the following substantial questions of law:

“(A) Whether or not the respondent leaving the appellant wife alone at the matrimonial home for days together without informing her about his whereabouts or the period of his travel, the purpose of his travel amounts to mental cruelty, when the appellant is totally dependant on the respondent?”

(B) Whether not the Appellate Court failed to make note of several



instances pointing to mental cruelty meted on the appellant by the respondent husband?

(C) Whether not the learned Appellate Court ought not to have set aside the decree for divorce when a spouse's willingness to resume the marital life is a dubious claim?"

7. The learned counsel for the respondent submits that at the time of marriage, the appellant was employed in a private company, and deputed to various places. At the time of marriage, he was posted at Uttarakhand and was staying in the company guest house. Therefore, it was not possible for him to set up a family immediately after the marriage. Hence, the option was given to the appellant/wife to stay either at her parents' house at Valasaravakkam or at Vellore. Whenever the respondent visited the place on official duty, he used to visit the appellant at her parents' house. However, the appellant was not inclined to attend his phone calls, and even the SMS sent by him on 03.09.2013 was not responded to. It is further contended that the appellant made false allegations of illegal intimacy with another girl, and also accused him of consuming alcohol



and non-vegetarian food, and not maintaining her properly. Those allegations were proved by the available material, and therefore, the Trial Court rightly held that the alleged acts of cruelty on the part of the respondent were not proved. The Appellate Court also rightly held that the respondent always intended to live with the appellant, whereas the appellant alone evaded re-union. Thus, the First Appellate Court rightly allowed the appeal. Hence, he prays that the present appeal be dismissed as devoid of merits.

8. The point for consideration is whether the findings of the First Appellate Court regarding the respondent's intention to continue the marital relationship require interference.

9. On considering the submissions on both sides, it is evident that the appellant and respondent were married on 01.07.2009. At the time of marriage, the respondent was employed as a technical staff in an MNC, and was posted at Uttarakhand on deputation. Subsequently, he was transferred to Ahmedabad



from 01.06.2010. The evidence also reveals that immediately after the marriage, the respondent did not take the wife to the matrimonial home. On the other hand, he contends that he had already informed the parents of the appellant, even at the time of arranging the marriage, that due to his deputation, he would not be able to take her immediately to the place where he was posted.

10. According to the wife, her family was never informed and the respondent was not inclined to take her to the place where he was residing. On the contrary, he instructed her to stay at her parents' house until he arranged a residence at his workplace. Admittedly, within ten days of the marriage, he left for Uttarakhand. However, he avoided taking the wife along with him, though his co-workers were residing with their families at Uttarakhand.

11. During the evidence, the respondent/husband stated that whenever he came to Chennai on official visits, he used to visit his in-laws' house where the wife was residing. It is an admitted fact that nearly six months later, he was transferred to Ahmedabad in 2010. Even then, he was not inclined to take the



wife along with him. Consequently, the wife's parents and relatives accompanied her to Ahmedabad on 11.08.2010, where the respondent had taken a house on lease. Thereafter, the wife came to Chennai to attend examinations and again she was not taken back.

12. Subsequently, in 2011, the respondent/husband came to Chennai on a long official tour and stayed at the wife's parents' house for about six months. Thereafter, in 2013, he rejoined duty at Ahmedabad. Again, the wife went to Ahmedabad and stayed with him, but since he returned to Chennai on official tour, she was constrained to return to Chennai as well. All these events occurred between 2009 and 2012.

13. After the marriage, the respondent, as the husband, was bound to look after his wife with love and care and to arrange a proper residence. However, the respondent never provided any such comfort or security. His own evidence clearly shows that whenever he visited Chennai on official work, he met the



wife only at her parents' house, which demonstrates that he had no real intention of arranging a matrimonial home or providing love and care.

14. The petitioner/wife joined an MBA course as the respondent's conduct did not give her any sense of security. Instead of understanding her circumstances, the respondent misinterpreted the same and alleged that she suppressed her studies at the instigation of her father. It was also submitted that she left the matrimonial home at Allahabad, however, his own evidence shows that both were residing at Allahabad and during his official trip to Chennai he left the matrimonial home, and she followed him. Therefore, the reasoning of the learned First Appellate Judge that the wife's continuation of her studies amounted to improper conduct is unsustainable.

15. As per the appellant/wife, the respondent never showed love or affection after the marriage. She stated that he always evaded her and preferred to meet her only at her parents' house. She further contended that the marriage was not properly consummated, and he showed no real interest in cohabitation,



nor did he express any intention to live happily with her.

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16. The respondent submitted details of his official tours and a bank loan borrowed for constructing a house at Valasaravakkam. The First Appellate Court placed reliance on these documents, though they are irrelevant to the core issue in dispute.

17. Matrimonial life requires love and affection. However, the conduct of the respondent shows that he never demonstrated such commitment. His occasional visits during official trips do not indicate an intention to sustain the matrimonial relationship. Further, as early as 2012, he expressed his intention to end the marriage.

18. The learned counsel for the respondent pointed out that he used to send messages, but they were not replied to by the wife. However, those messages pertain to the year 2018, whereas the marriage began in 2009. For nearly four years, he did not make any concrete arrangements to set up a



matrimonial home. During this period, the wife was compelled to shuttle between Ahmedabad and Chennai. Meanwhile, she continued her studies. The respondent's conduct clearly proves that he never intended to live with her with love and affection, and he took advantage of his frequent stays at Chennai on official tours. The Court below failed to properly appreciate these facts and erroneously held that the husband intended to live with the wife. Such a finding is illegal and liable to be set aside. The Trial Court rightly appreciated the facts and evidence and granted a decree of divorce on the ground of cruelty, which is sustainable.

19. The appellant's evidence also discloses that whenever she stayed with the respondent, he left her insecure without giving proper information, compelling her to stay at her parents' house, which also amounts to cruelty.

20. Accordingly, Questions of Law A and C are answered in favour of the appellant as discussed above. The First Appellate Court failed to appreciate the various instances of mental cruelty faced by the appellant/wife. The respondent



never extended love or affection towards the wife. Immediately after the marriage, she was not taken to Uttarakhand, after nearly one year, she was taken to Ahamadabad though adequate facilities were available at Uttarakhand, where he was deputed at the time of marriage. During official trips, he merely visited her at Chennai, showing that he was only pretending to be affectionate. In reality, he did not intend to live with her. However, the learned First Appellate Judge failed to consider the respondent's conduct properly. Hence, the findings of the First Appellate Court are liable to be set aside. Accordingly, Question of Law B is answered.

21. With regard to the return of articles, the order of the Trial Court requires no interference. There is no contrary evidence on the side of the respondent to disprove the said claim.

22. Therefore, the Civil Miscellaneous Second Appeal is allowed, and the findings of the First Appellate Court are set aside. The order regarding return of



articles is confirmed. Liberty is granted to the appellant to execute the order in the manner known to law within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to 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 Principal District Judge,
Tiruvallur.

2.The Sub-Judge, Poonamallee.

3.The Section Officer,
VR-Section, High Court of Madras.



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