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CMSA No. 52 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 31-07-2025**

CORAM

**THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI**

**CMSA No. 52 of 2024**

**AND**

**CMP NO. 17632 OF 2024**

1. Selvaganesan @ Madhavan  
S/o. Venkatasubramanian @  
G.V.S.Mani, No. 22, Kalidoss Nagar,  
Tenkasi District.

Appellant(s)

Vs

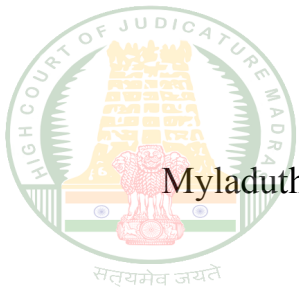
1. Subalakshmi  
W/o. Selvaganesan, D/o. Guru  
Subramanian, No. 358-1, Rasi Nagar  
Vellalagaram, Senthangudi,  
Mayiladuthurai District.

Respondent(s)

**CMSA No. 52 of 2024**

**PRAYER**

To allow the above Civil Miscellaneous Second Appeal and set aside the Decree and Judgment dated 30.10.2023 made in CMA No.1 of 2022 by the Honble District Judge, Myladuthurai in reversing the Decree and Judgment dated 27.10.2021 made in HMOP 233 of 2020 filed by the Respondent wife for restitution of Conjugal Rights on the file of the Honble Sub Court,



Myladuthurai.

CMSA No. 52 of 2024



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**CMSA No. 52 of 2024**

For Appellant(s): Mr.H.Manojin

For Respondent(s): Mr.R.Shivakumar For M/s. K.M.  
Vijayan Associates

**JUDGEMENT**

This civil miscellaneous appeal has been filed to set aside the Decree and Judgment dated 30.10.2023 made in CMA No.1 of 2022 by the District Judge, Myladuthurai in reversing the Decree and Judgment dated 27.10.2021 made in HMOP 233 of 2020 filed by the Respondent wife for restitution of Conjugal Rights.

2. For the sake of convenience appellant and respondent is referred as husband and wife.

3. The husband filed HMOP No. 233 of 2020 on the file of the Sub Court, Myladuthurai, for divorce on the ground of desertion, the wife contested the case. On hearing both sides, the learned judge granted divorce stating that the



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wife deserted the husband for more than 8 years. Challenging the judgement passed by the Sub Judge, Mayiladuthurai, wife filed an appeal before the District Judge, Myladuthurai, in CMA No. 1 of 20222, wherein the first appellate judge held that as per section Section 13(1)(b ) of Hindu Marriage Act, the marriage be dissolved by a decree on the ground that the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. But, the husband filed the petition without completing two years from the date of marriage and also though the husband seeking divorce under the ground of cruelty in his petition, but he filed the petition under section 13(1)(a) of Hindu Marriage Act, under the ground of desertion. Therefore, for the above reasons, the first appellate judge set aside the judgement passed by the sub Judge, Myladuthurai.

4. Both the husband and wife appeared before this Court along with their respective counsels. The fact reveals that on 04.09.202013 marriage was solemnized and within a 15 days from the date of marriage both were got separated. Thereafter, husband filed petition for divorce before the sub Court Myladuthurai under Section 13(1)(b) of Hindu Marriage Act, under desertion.



According to the husband, after marriage she left with her brother and thereafter the panchayat was held between the family member but she was not inclined to live with the husband and also marriage was not consummated and also matter was not compromised. Further, she filed petition for restitution of conjugal rights in HMOP NO. 198 of 2016, on the file of the same Court but the same was dismissed. Against which she filed appeal and the same was allowed.

5. Challenging the judgement passed by the first appellate Court, husband filed this appeal.

6. The fact reveals that within 13 days from the date of marriage they got separated. Admittedly, there is no child the marriage, therefore the marriage was not consummated and also there is no proof produced that the marriage was consummated. As on date, the marriage was not consummated and for more than 15 years they live separately, therefore the marriage between the husband and wife is strained. However, this Court enquired both the husband and wife. Though the wife willing for reunion, the husband not inclined for reunion stating that harassment made by the family members of the wife, he does not want to live with her. As there is no possibility for reunion, therefore, the



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marriage between the parties is irretrievably broken down. Though the trial judge has allowed the petition, the first appellate judge allowed the appeal on the technical ground that the husband seeking divorce under the ground of cruelty in the petition, but he filed the petition under Section 13(1)(b) of Hindu Marriage Act, instead of Section 13(1)(a) of the Act. Therefore on technically appeal was allowed. **When there is no possibility for reunion too much technicalities need not be marriage** . Further, husband has proved that within 18 days from the date of marriage they got separated and also there is no possibility for reunion. Hence, the marriage is irretrievably broken down, this Court is inclined to grant divorce to the husband and the also marriage not been consummated which amounts to cruelty, therefore husband is entitled to get divorce though section not mentioned in the petition. Above all the relationship between the husband and wife is strained and irretrievably broken down. As discussed above, this Court is inclined to grant divorce. Accordingly, the marriage between the husband/appellant and wife/respondent is ordered to be dissolved.



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7. Further, the facts reveal that as per the order of the Court, as on date, the husband paying Rs.10,000/- as maintenance without any default, till date the husband has paid Rs.14,00,000/-. The maintenance case is pending before the Judicial Magistrate, Myladuthurai, M.C No. 10 of 2010, now the wife seeking enhancement of maintenance. The husband is Sidha doctor, who stated that he joined the service after 2004 hence he is not eligible for pension. Further, this Court suggested the wife whether she want any permanent alimony but she is not inclined to receive permanent alimony, however, she ready to receive monthly maintenance. Therefore, this Court is inclined to enhance the maintenance from Rs.10,000/- to Rs.15,000/-. The husband is directed to pay Rs.15,000/- as maintenance to wife till his superannuation. Further, the husband is directed to pay Rs.5,00,000/- as permanent alimony to the wife. Accordingly, this Civil Miscellaneous Appeal is allowed. No Costs. Pending petition(s), if any, is/are closed.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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**T.V.THAMILSELVI J.**  
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