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C.M.A.No.2120 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.2120 of 2018

Oumadevy ... Appellant

Vs.

R. Thirugnanasambandam ... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of Family Court, 1984, against the judgment and decree dated 04.04.2018 passed in HMOP.No.47 of 2013 by the Family Court at Puducherry.

For Appellant : Mr.H.Adaikala Arockiaraj

For Respondent : Mr.D.Senthil Kumar

JUDGMENT

(The judgment of the Court was delivered by J.Nisha Banu,J.)

This appeal has been filed by the appellant/wife challenging the judgment and decree dated 04.04.2018 passed in HMOP.No.47 of 2013 by the learned Judge of Family Court at Puducherry, in which, the



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petition filed by the respondent/husband seeking divorce was granted on the ground of cruelty and desertion.

2. The case of the petitioner/husband in the O.P. before the Family Court is as follows:

i) The petitioner and the respondent got married on 25.04.2008 at Sri Arulmigu Subramania Swamy Thirukoil, Mailam as per Hindu rites and customs. The petitioner is a native of Tindivanam Taluk, Melpettai village and the respondent belong to Puducherry. After marriage, they lived at Melpettai, two kilometers from Tindivanam. The petitioner is a School Teacher at National Higher Secondary School, Tindivanam, a Government Aided School.

ii) Since the respondent/wife wanted to do post graduation, she stayed in her parent's house in Pondicherry, for which, the petitioner consented. The petitioner stayed with her at Pondicherry and attended his job at Tindivanam by plying over to Tindivanam on all working days. A female child was born to them on 12.01.2010. After the birth of the child, the respondent expressed objection to reside at Melpettai village and wanted to reside at Tindivanam. The petitioner arranged a rental house at



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Tindivanam. However, the respondent refused to reside in Tindivanam and claimed that she would only reside in Pondicherry.

iii) The petitioner is having permanent employment at Tindivanam. However, the petitioner stayed at Puducherry in a rented house. Most of the time, the respondent was staying in her parents house at Chinna Kuyavarpalaym, Nellithope. Such an attitude of the respondent caused severe mental agony to the petitioner. Therefore, the petitioner vacated the rented house at Pondicherry and went back to Tindivanam and called the respondent to live with him at Tindivanam, but she refused. Hence, the petitioner was constrained to send notice through counsel on 17.04.2011 calling the respondent/wife to live with him.

iv) The respondent filed HMOP.No.38/2011 for restitution of conjugal rights. After due conciliation proceedings, the respondent agreed to live with the petitioner. Hence, the said HMOP was dismissed as not pressed. But the respondent/ wife was not willing to live with the petitioner and they were living separately from 05.02.2011. The respondent filed maintenance petition in MC.No.16/2012 before the Family Court at Puducherry. All the strenuous efforts taken by the petitioner for restitution ended in vain. The petitioner had stated that he



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cannot go after the respondent desperately expecting her to live with him all through his life or lingering in courts of law. The respondent had committed cruelty to the petitioner. Hence, he filed a petition for dissolution of marriage.

3. The averment in the counter filed by the respondent/wife are as follows:

i) The respondent admits the marriage with the petitioner and the birth of female child on 12.01.2010. The respondent is a M.A.B.Ed. graduate. At the time of marriage, as per the demand of the petitioner's family, the respondent's parents gave sufficient Sridhana articles. After one week of marriage, the petitioner's sisters and his mother scolded the respondent for insufficient dowry which caused mental cruelty to the respondent. The petitioner's father used to drink alcohol and scolded the respondent. He was in the habit of having relationship with other ladies in his village. Hence, the petitioner and the respondent were staying in the respondent's parents house and the petitioner went to Tindivanam for work from Puducherry from June, 2008.

ii) After five months of child's birth, the respondent went to the



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petitioner's house. The family members of the petitioner did not care the child. Hence, the petitioner along with the respondent went to a rented house and lived separately. When the respondent went to her parents house for her uncle's death and came back to the rented house, she found that the petitioner had vacated the house. The petitioner sent lawyer's notice calling the respondent to live with him. The respondent also sent a reply stating to take her back along with her child to the matrimonial home. But there was no progress. Therefore, the respondent gave a complaint before the Women Commission, Puducherry. During enquiry, the petitioner refused to live with her and told that he will approach the court of law. Subsequently, the petitioner filed HMOP.38/2011 before the Principal Sub Judge, Tindivanam. The respondent appeared and expressed her willingness to live with the petitioner. The petitioner also arranged a separate house at Tindivanam. During the pendency of the above case, the petitioner and the respondent were living together in a rented house at Tindivanam. On 01.09.2011, when the child was suffering from fever and vomiting and since the petitioner did not take care of the child, the respondent called her brother and took the child to a doctor at Puducherry and stayed at Puducherry for continuous treatment.



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iii) On 11.09.2011, the respondent brought the child to matrimonial home but the petitioner did not provide proper food for the child. The petitioner scolded the respondent and her family members for insufficient dowry. On 26.09.2011, the child was suffering from illness. Hence, she took the child for treatment at Puducherry. On 19.01.2012, the petitioner, his brother and uncle came to respondent's parent's house and asked the thali and instigated the respondent to put her signature in the divorce deed and scolded the respondent and her parents using filthy language. Hence, she lodged a complaint before the Orleanpet Police Station. The respondent, without any option stayed in her parent's house. Suppressing the above facts, the petitioner filed the vexatious O.P. The respondent is willing to live with the petitioner for the welfare of the child. Hence, she prayed to dismiss the O.P.

4. The trial Court found that the respondent left the matrimonial home on 05.02.2011 and deserted her husband voluntarily and that though the petitioner/husband offered his willingness, the respondent/wife did not care about the readiness and willingness of the petitioner. Further, the petitioner has arranged a rented house at



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Tindivanam for separate residence on 31.08.2011 and thereafter, a petition in HMOP.No.38 of 2011 was filed by the petitioner/husband for restitution of conjugal rights and subsequently, after compromise, the said petition was dismissed as not pressed. The parties are living separately for the past seven years. Considering the facts and circumstances and the evidence of both parties, the trial Court came to the conclusion that the petitioner is entitled for the relief of divorce on the ground of cruelty and desertion and accordingly, granted a decree of divorce.

5. Learned counsel for the respondent would state that O.P. was filed as early as in the year 2013 and divorce was granted on 04.04.2018. No interim order was granted in this appeal. He would further state that now, the respondent/husband got married and settled in life. Hence, he prayed to dismiss the appeal.

6. Learned counsel for the appellant seeks short accommodation to argue the matter.



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8. It is seen from the records that initially, the Appeal was admitted on 19.09.2018. Thereafter, at the request of both the parties, the matter was adjourned to 12.12.2019. When the matter was called on 13.12.2020, adjournment was sought for, stating that they would report settlement and hence, the matter was adjourned. On several occasions, the matter was adjourned only at the request of the appellant's side i.e., on 11.11.2024, 25.11.2024, 02.12.024, 16.12.2024, 17.12.2024 and 02.01.2025. Even today, the learned counsel for the appellant seeks adjournment. Learned counsel for the respondent is ready to argue the matter.

9. This Court had granted several opportunities to the appellant/wife. There is no interim order granted by this Court in this Appeal. The appellant and the respondent are living separately for more than 13 years. The respondent/ husband also married another woman after grant of divorce decree by the Family Court on expiry of the limitation period and settled in life. Therefore, we are of the opinion that there is no point in keeping the Appeal pending as there is no possibility of the marriage between the parties being revived. We also find that there is no merit in this Appeal. Hence, the divorce granted in the



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judgment and decree dated 04.04.2018 passed by the Family Court, Puducherry, in HMOP.No.47 of 2013, is hereby confirmed. The appellant/wife shall approach the appropriate Forum for maintenance in the manner known to law. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

(J.N.B, J.) (R.S.V., J.)
02.01.2025

vsi

To
The Family Court,
Puducherry.

J. NISHA BANU, J.
and
R. SAKTHIVEL, J.



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