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CMSA No. 53 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2025

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMSA No. 53 of 2025

AND

CMP NO. 18583 OF 2025

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. 53 of 2024

PRAYER

To allow the above Civil Miscellaneous Second Appeal and set aside the Decree and Judgment dated 29.07.2021 made in CMA No.2 of 2022 by the Honble District Judge, Myladuthurai in reversing the Decree and Judgment dated 28.03.2019 made in HMOP 198 of 2016 filed by the Respondent wife for restitution of Conjugal Rights on the file of the Honble Sub Court, Myladuthurai.



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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 29.07.2021 made in CMA No.2 of 2022 by the Additional District Judge, Myladuthurai in reversing the Decree and Judgment dated 28.03.2019 made in HMOP 198 of 2016 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 wife filed HMOP No. 198 of 2016 on the file of the Sub Court, Myladuthurai, for restitution of conjugal rights. On hearing both sides, the learned judge dismissed the petition on 28.03.2019. After more than 8 years. Challenging the judgement passed by the Sub Judge, Mayiladuthurai, wife filed



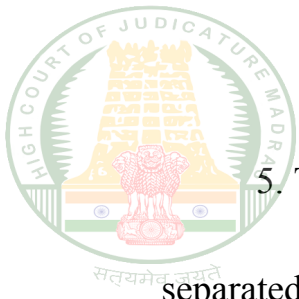
an appeal before the District Judge, Myladuthurai, in CMA No. 2 of 2022,

wherein the first appellate judge passed an Judgment on 29.07.2021 held that

there is a possibility for reunion between the respondent and wife and dismissed

the said C.M.A. Challenging the same the appellant has filed the present appeal.

4. Both the husband and wife appeared before this Court along with their respective counsels. The fact reveals that on 04.09.2016 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.



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5. 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 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.

6. On a perusal of records it is seen that already this Court on 31.07.2025 in the connected C.M.S.A. 52 of 2024 has directed the husband/appellant to pay Rs.15,000/- as maintenance to wife/respondent till his superannuation. Further, the husband is directed to pay Rs.5,00,000/- as permanent alimony to the wife. The said direction passed by this Court shall be taken note by the respondent and he shall pay the maintenance as such without any deviation.



7. With the above observations this his Civil Miscellaneous Appeal is disposed of No Costs. Pending petition(s), is 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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