



CMA. No.3405 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2025

CORAM :

**THE HON'BLE MR. JUSTICE R. SURESH KUMAR
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

CMA.No.3405 of 2021
and CMP.No.19657 of 2021

L.Sethuraman

...Appellant

-VS-

G.Maithili

...Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act to set aside the fair order and decree passed in H.M.O.P.No.90 of 2015 dated 27.09.2021 on the file of the Family Court, Erode.

For Appellant : Mr.A.Thiyagarajan
Senior counsel

For Respondent : Mr.V.S.Kesavan



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CMA. No.3405 of 2021

JUDGMENT

(Judgement was delivered by P.DHANABAL, J.)

This civil miscellaneous appeal has been preferred as against the fair and decreetal order passed by the Family Court, Erode in H.M.O.P.No.90 of 2015 dated 27.09.2021, wherein the respondent herein has filed petition for divorce as against the appellant on the ground of cruelty and the same was allowed and the marriage between the appellant and the respondent was dissolved. Aggrieved by the said order, the present appeal has been preferred by the husband/appellant.

2. The appellant is the husband of respondent. Their marriage was solemnized on 18.06.2009 at Kalakad, Basker Thirumana Mandapam, Tirunelveli District. The said marriage was also registered at SRO Kalakad. Thereafter due to misunderstanding between the parties, the respondent herein has filed a petition for divorce under section 13(1)(i-a) of Hindu Marriage Act.

3. The respondent in the divorce petition filed before the Family Court levelled allegations against the appellant that he did not show any interest in the family life. The appellant took the respondent to Dubai where he was working



as Civil planning Engineer. Both were lived at Dubai and Quatar. During the said period, the appellant did not have any conjugal relationship with the respondent. When the same was questioned by the respondent, the appellant would beat the petitioner/respondent and also press the pillow in the nose of the respondent, attempted to kill her and refused to lead the matrimonial life. Thereafter, they reached India and lived at Madurai. Even after that, the appellant had not shown any interest in the matrimonial life and the marriage between the petitioner and the respondent has not been fully consummated due to the physical incapacity of the appellant. The appellant is physically and psychologically unable to consummate the marriage. Therefore, the respondent/wife filed petition for divorce.

4. The appellant/husband, who is the respondent in the main petition before the Family Court filed counter denying the allegations in respect of the matrimonial life. It is stated that after two months of the marriage, the appellant took the respondent to Dubai and they lived at Dubai and Quatar. The respondent alone is not physically fit for the matrimonial life and she was given such medical advise by the doctors. The appellant was always ready to lead a matrimonial life with the respondent. But she is not fit for matrimonial life.



While so, without any truth, by raising false grounds, the respondent has filed the petition for divorce. Therefore, the petition is liable to be dismissed.

5. Based on the aforesaid pleadings, the Family Court framed the following points for consideration:

1. Whether the appellant has caused cruelty to the respondent?
2. Whether the respondent is entitled for decree for divorce as prayed for?

6. Before the Family Court, on the side of the wife/respondent, she was examined as PW.1 and marked EX.P1 to P9. On the side of the appellant/husband, he himself was examined as RW1 and no documents have been marked. The medical report issued by the Rajiv Gandhi Government Hospital, Chennai, for the husband/appellant was marked as Ex.C1.

7. After evaluating the oral and documentary evidences adduced on either side, the Family Court allowed the petition and granted divorce on the ground that the appellant is not fit for family life and the same caused mental cruelty to the respondent/wife and granted divorce under section 13(1)(ia) of the Hindu Marriage Act. Now the husband appellant preferred this appeal raising various grounds.

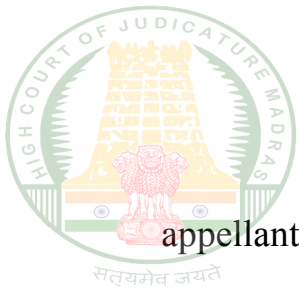


CMA. No.3405 of 2021

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8. The learned counsel for the appellant/husband would submit that the relationship between the parties are admitted. The respondent/wife filed petition for divorce with false allegations and there is no cruelty caused by the appellant as alleged by the petitioner in the petition . The main ground raised by the respondent/wife before the Trial Court is that appellant/husband is not capable for matrimonial life and medically he is not fit for matrimonial life. The trial Court, relied on Ex.C1 medical report. Based on the medical report, the Family Court came to an erroneous finding. In fact, right from the marriage solemnized in the year 2009, appellant lived a good matrimonial life with respondent/wife, however, no children born to the parties and the same cannot be termed as cruelty under section 13(1)(ia) of the Hindu Marriage Act.

8.1. The findings of the Family Court about the matrimonial cruelty is error in law. The Family Court failed to consider the evidences adduced by the appellant. PW1/respondent/wife, in her evidence, has categorically stated that when they came to India on 31.12.2014, they celebrated Pongal Festival on 23.01.2015; that time, the respondent along with appellant had consulted the doctor to confirm her pregnancy. The aforesaid statement clearly shows that the



CMA. No.3405 of 2021

appellant had performed his matrimonial obligations and the same was not considered by the Family Court. The EX.C1 was not marked through the doctor who issued the certificate and the said document cannot be relied upon without examining the doctor. Therefore, the Family Court, without considering the fact that there are no grounds raised by the wife to prove the cruelty, allowed the petition and granted the divorce on the ground of cruelty. Therefore, the fair and decreetal order are liable to be set aside.

9. The learned counsel for the respondent-wife would submit that the marriage between the appellant and the respondent was solemnized on 18.06.2009; thereafter they went to abroad. From the beginning of the marriage life, the appellant had not shown any interest in conjugal life and he is medically unfit for the matrimonial life. So far, the marriage between the appellant and the respondent has not been consummated.

9.1. Before the Family Court, the respondent was examined as PW1; EX.P1 to P9 were marked. On the side of the appellant-husband, he himself



was examined as RW1, but no documents were marked. However, the medical certificate was marked as Ex.C1. As per medical certificate, the appellant is unfit for family life. Therefore, the Trial Court fairly came to a conclusion that right from the marriage, the parties have no children and the marriage has not been consummated. Therefore, it amounts to matrimonial cruelty and thereby correctly allowed the petition. Therefore, this appeal filed by the appellant-husband, is liable to be dismissed.

10. Heard both sides and perused the records.

11. Upon hearing both sides and perusing the records, the point for determination in this appeal is whether the respondent/wife proved cruelty as against the appellant for granting divorce on the ground of cruelty.

12. In this case, there is no dispute in respect of the status of the parties relationship viz., husband and wife. Their marriage took place on 18.06.2009. Thereafter no children born to them.

13. According to the respondent, the marriage has not been



consummated; the appellant has not shown any interest in the matrimonial life.

Medically he is not fit for the marriage life. When the same was questioned by the respondent, the appellant attempted to kill her by pressing the pillow on her face and also assaulted her. When the said facts were narrated to the appellant's parents, they also assaulted the respondent stating she should not reveal the physical condition of the appellant to anybody.

14. Thereafter, the respondent filed petition before the Family Court, Erode, for granting divorce on the ground of cruelty. Before the Family Court PW1 was examined and marked EX.P1 to P9. On the side of appellant/husband, RW1 was examined and no documents were marked. Apart from the above evidence, Ex.C1 was marked. Based on the available evidences, the Family Court allowed the petition for divorce on the ground of cruelty.

15. According to the appellant/husband, the respondent alone was unfit for matrimonial life. Respondent did not state any grounds to prove that cruelty was allegedly caused by the appellant-husband. The Trial Court, without considering the evidences adduced by the appellant-husband, only based on the document i.e,medical certificate- Ex.C1 came to a conclusion that cruelty is



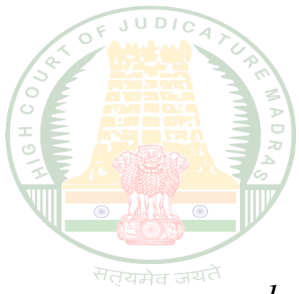
CMA. No.3405 of 2021

proved. According to the appellant, the said finding is erroneous.

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16. In this case, both the parties blamed each other in respect of the matrimonial life when there is no children born to them. While so, the Trial Court based on E.C1 came to a conclusion that the appellant is medically unfit for matrimonial life.

17. In order to prove Ex.C1, no medical witness was examined and the respondent who is the petitioner before the Family Court, failed to examine the doctor who issued the certificate Ex.C1. Without examining the doctor, the medical certificate cannot be sole evidence to decide the case. Therefore, the findings of the Family Court based on the medical report Ex.C1 is erroneous. However, it is admitted by both the parties that the marriage has not been consummated and the parties were separated from 2015 onwards. Therefore, the same is considered to be irretrievable break down of their relationship. However, that is not a ground to grant divorce. The parties are separated for more than 10 years and there is no cohabitation between them for a long period. The Hon'ble Supreme Court, in the case of ***Rakesh Raman Vs.Kavita (AIR 2023 SC 2144)***, in paragraph 18, held as follows:



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“18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under section 13(1)(ia) of the 1955 Act. We therefore, hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.”

18. On a careful perusal of the above said judgment, it is clear that the long separation and absence of cohabitation and complete break down of all meaningful bonds and existing bitterness between the parties has to be read as cruelty under section 13(1)(ia) of the Hindu Marriage Act, 1955. In the case on



and also, the parties are separated for a long period of time and there is no cohabitation between them and there is a complete break down of all meaningful bonds. Therefore, the above said acts would cause cruelty.

19. The non cohabitation for a long period and broken down of matrimonial between the parties would amount to cruelty. The respondent also pleaded in the pleadings that the appellant attempted to kill her by pressing the pillow on her face and the same was also not specifically denied by the appellant. Further the parents of the appellant husband also assaulted the respondent wife. Therefore, there are reasonable apprehension to the respondent to live along with the appellant and the same will amount to mental cruelty. Therefore, the respondent is entitled to divorce on the ground of cruelty as if stated above.

20. Though the trial Court has discussed about the document issued by the medical college authorities, divorce was granted not solely on that ground; but also taking note of the fact that no child was born to them even after the marriage from the year 2009 and the same would cause cruelty. Therefore, this Court is of the opinion that the respondent is entitled to divorce on the ground



CMA. No.3405 of 2021

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21. In view of the above, this court need not interfere with the order in challenge, ie., decree of divorce granted by the Family Court. For the above reasons, this Civil Miscellaneous Appeal has no merits and deserves to be dismissed.

22. Accordingly, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.K,J.] [P.D.B, J.]
06.08.2025

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To

The Family Court, Erode.



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CMA. No.3405 of 2021

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CMA.No.3405 of 2021
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CMA. No.3405 of 2021

06.08.2025