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C.M.A.No.2803 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 21.01.2025

Delivered On: 19 .02.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

C.M.A.No.2803 of 2018

Mr.A.V.N.Sathish

...Appellant

VS.

Mrs.A.Kalyani

...Respondent

Prayer:- CMA filed under Section 19 of the Family Courts Act, as against the Judgment and Decree of the II Additional Family Court, Chennai dated 31.10.2018 made in O.P.No.3437 of 2015.

For Appellant: R.Srinivas, Senior Counsel
for Mrs. Mythili Srinivas.

For Respondent: Mr.S.Lakshmanasamy



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J U D G M E N T

J.NISHA BANU, J.

This CMA has been filed by the appellant/husband as against the order passed in O.P.No.3437 of 2015 on the file of II Additional Family Court, Chennai, whereby, the petition for divorce filed by the appellant/husband against the respondent/wife has been dismissed.

2. This court directed the parties to appear before the court on 21.01.2025, and since the steps taken for settlement were unsuccessful, the matter was taken up for arguments.

3. The averments pleaded in the O.P., is that the marriage between the appellant and the respondent was solemnized on 01.07.2010 at Secunderabad. The respondent/wife is a resident of Chennai whereas the appellant/husband is from Hyderabad. Out of wedlock, a female child was born on 09.09.2011.

(ii) On account of severe attitudinal problems between them, the

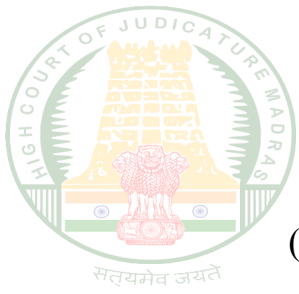


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marital bliss did not last long and several upheavals in the matrimony surfaced within few days.

(iii) The respondent was quarrelsome and picked up quarrels with the appellant/husband and his parents. She did not discharge her duties as a wife and also as daughter-in-law. Several times the respondent/wife would leave the matrimonial home unannounced and would come back after a few days. At this time, the respondent got conceived and left to Chennai on 23.04.2011. After seemantham was performed by the petitioner's parents at Hyderabad, child was born at Chennai on 09.09.2011. Even after 15 months of stay in her parent's house, respondent's parents did not send her to Hyderabad.

(iv) Thereafter, the respondent came to matrimonial home only on 25.07.2012 after much delay. The respondent would use derogatory language against the appellant and her mother-in-law. The respondent put the petitioner in embarrassing moments and at a point of no return, she left the matrimonial home on 11.10.2013. Since the mediation between the parties tried by elders of the family, did not yield any good result, the appellant filed divorce petition.



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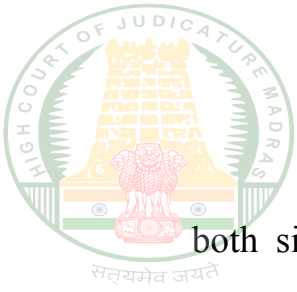
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(v) The appellant filed I.A.No.303/2014 in O.P.No.762/2014 before the Family Court, Hyderabad and obtained order dated 12.06.2014 restraining the respondent from going to the house/residence of the appellant. The respondent registered dowry harassment complaint before All Women Police Station, Hyderabad, against appellant and his parents and sister and appellant's relatives in Crime.No.202.

(vi) The appellant/husband was put in jail for 5 days and with help of his parents, he obtained anticipatory bail. Since there was no Presiding Officer in the trial court, petition in I.A.No.303/2014 was pending which has been filed for the purpose of vacating the interim order.

(vii) In the meanwhile, transfer petition filed in Supreme Court was ordered and thereby, the HMOP has been transferred to III Additional Principal Judge, and is numbered as HMOP.No. 3437 of 2015. According to the appellant/husband, the appellant and his parents were subjected to unmitigated cruelty at the hands of the respondent and her parents.

4. The Trial court after analysing the pleadings, counter, evidence on



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both sides held that there is no material to show that the conduct of the respondent/wife amounts to cruelty. Such kind of behaviours, wrongs and conduct of the respondent as alleged by the appellant is not found proved by reliable circumstances and supporting witness. The trial court further held that adverse presumption ought to have drawn against the petitioner/husband for non-examination of the members of his family, who were described as witness to the alleged acts of cruelty and insult made by his wife. The learned Judge further found that since there is no evidence to prove mental cruelty, the relief claimed for decree of divorce is to be rejected. On such findings, husband's divorce petition was dismissed.

5. The learned counsel for the appellant/husband would submit that the learned Trial Judge erred in dismissing the OP for dissolution of marriage. The trial judge failed to see that the acts of cruelty alleged by the appellant against the respondent were clearly established. It is also submitted that the respondent caused mental cruelty to the husband and deliberately spoiled his name by falsely alleging about the illicit relationship with one Mrs.V.Jayanthi or his skin disease which shows that the respondent was



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treating him false and demeaning allegation against the appellant.

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6. Per contra, the learned counsel for the respondent would contend that the respondent/wife is ready to come to the matrimonial home along with her child. There are proofs stating that she was very much in Hyderabad living with her parents at the time of taking I.A.No.303/2014 and when filing 498(A) by the appellant, this also shows that she was available in respondent matrimonial house. The respondent faced all harassments in the hands of the appellant and his parents. The respondent has also sent her close relatives for mediation with the appellant family but their mediation also failed, inturn the appellant and his family lodged a criminal case against the mediators who visited the house of the appellant. That case was closed as lack of evidence on 15.11.2014. After several mediations also they didn't change their attitude. It is also further argued that the appellant/husband has not examined any of his parents to show and to prove that there was any harassment at his matrimonial home. Therefore, prayed for dismissal.

7. Heard both sides counsel submissions and perused the impugned



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order carefully.

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8. In the facts and circumstances of the case, unless cruelty is established by way of evidence , a decree of divorce cannot be granted. The appellant has not made out a case for dissolving the marriage on the ground of cruelty as the respondent's alleged cruel acts directly involved the appellant and his parents and sister, as such, their testimony is crucial in establishing the pattern of behaviour and the severity of cruelty. But as rightly held by the learned Judge, trial court, adverse inference has to be drawn against the appellant/husband for non-examination of the members of his family, who were described as witness to the alleged acts of cruelty and insult made by the respondent/wife.

9. The appellant in the present case has not made out a case for dissolution of marriage on the ground of cruelty. Therefore, we are of the view that since there is lack of evidence on the side of appellant/husband to prove the mental cruelty caused by the respondent/wife, the appellant is not



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entitled to the decree of dissolution of marriage on that ground. Therefore,

the CMA filed by the husband is dismissed. The impugned orders passed in

Judgment and decree dated 31.10.2018 made in HMOP.No.3437 of 2015

seeks no interference and is hereby confirmed. No costs.

[J.N.B.J.]

[R.S.V.J.]

19.02.2025

Index: Yes/No

Internet: Yes/No

nvsri

To

The learned Judge,

II Additional Family Court, Chennai.



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J.NISHA BANU,J.

And

R.SAKTHIVEL, J.

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Judgment in

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