



WEB COPY

CMA(MD)Nos.119 and 120 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19/11/2025

CORAM

THE HONOURABLE MR JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MRS JUSTICE **L.VICTORIA GOWRI**

CMA(MD)Nos.119 and 120 of 2021
and
CMP(MD)No.1020 of 2021

(1)CMA(MD)No.119 of 2021:-

Arunkumar : Appellant/Respondent

Vs.

Shanmuga Sundari : Respondent/Petitioner

Prayer:-This Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1988, against the judgment and decree, dated 03/12/2020 passed in HMOP No.331 of 2018 on the file of the Family Court, Tirunelveli.

For Appellant : Mr.S.Muthuraman
& Mr.Boominathan

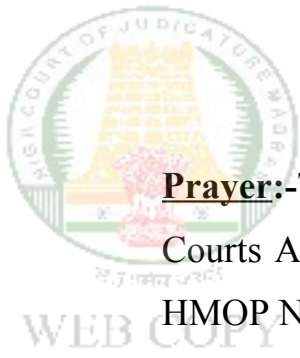
For Respondent : Mr.H.Arumugam

(2)CMA(MD)No.120 of 2021:-

Arunkumar : Appellant/Respondent

Vs.

Shanmuga Sundari : Respondent/Petitioner



Prayer:-This Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1988, against the judgment and decree, dated 03/12/2020 passed in HMOP No.184 of 2019 on the file of the Family Court, Tirunelveli.

For Appellant : Mr.S.Muthuraman
& Mr.Boominathan

For Respondent : Mr.H.Arumugam

COMMON JUDGMENT

(Judgment of the Court was made by the Hon'ble **P.VELMURUGAN. J.**)

These Civil Miscellaneous Appeals are directed against the common order made in HMOP Nos.331 of 2018 and 184 of 2019, dated 03/12/2020 on the file of the Family Court, Tirunelveli and to set aside the same.

2.For the sake of convenience, the parties are referred to as the husband and wife in the appeals.

3.The facts of the case are as follows:-

The marriage between the husband and the wife was solemnized on 09/11/2016 at Palayamkottai as per the Hindu Rites and Customs. The marriage was registered at Melapalayam Sub-Registrar Office, on 10/11/2016. The husband is a close relative to the wife and she studied MCA, M.Phil. The



husband had studied MCA and is working as Senior Engineer in a private Company at Taramani, Chennai. There was consummation of marriage and the spouse living happily. The wife was working as a Lecturer in Rose Marry Girls College before the marriage and had resigned the job due to marriage. The husband requested his wife to study Ph.D Course, for which, he asked to make job arrangement in Chennai. As the wife was not able to get a seat in Chennai, she joined Ph.D Course at Tirunelveli. The husband used to contact his wife through mobile phone often. All of a sudden, the wife received a letter from his husband with false allegations. The wife sent a proper reply, on 18/05/2018. In the meantime, the husband filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, for divorce, in HMOP No.776 of 2018 before the Sub Court, Tambaram and later, it was transferred to Family Court, Tirunelveli and renumbered as HMOP No.184 of 2019. Since the wife is always ready and willing to live with her husband, on 06/12/2018, she filed a petition in HMOP No.331 of 2018 under Section 9 of the Hindu Marriage Act seeking the relief of restitution of conjugal rights.

4.Before the Family Court, in order to substantiate their stand, on the side of the wife, 2 witnesses were examined as PW1 and PW2 and 23 documents were marked as Exs.P1 to P23. On the side of the husband, he himself was examined as RW1 and 7 documents were marked as Exs.R1 to R7.



5.The Family Court, after considering the materials and appreciating the evidence adduced on either side, has passed a common order, dismissing the petition for divorce filed by the husband and allowed the petition for restitution of conjugal rights filed by the wife and directed the husband to live with the wife within one month from the date of the order.

6.Aggrieved over the same, the husband as appellant filed these Civil Miscellaneous Appeals.

7.The learned counsel for the appellant/husband would submit that the marriage was never consummated between the husband and wife and the trial Court failed to appreciate that the parties lived together only for 20 to 30 days; The wife left the matrimonial home, on 10/12/2016 barely 30 days after the marriage and has been living separately for the past several years and in such a short span of time, the consistent rejection by the wife traumatized the husband and the trial Court erred in relying on the wedding photographs posed to presume that the couple was happy, by ignoring the specific oral testimony regarding the private cruelty suffered by the husband within the four walls of the bedroom; During the cross examination, the wife categorically admitted the short duration of their stay together, which shows that there was no sufficient time to build a marital bond and even when the husband met with an accident, on



06/02/2016 and suffered fracture, the wife has not shown any interest to take care of her husband as a dutiful wife; When the husband requested her to return to the matrimonial home, she verbally abused him over phone and such a statement from a wife is destructive to the matrimonial fabric and constitutes mental cruelty; The trial Court failed to consider the fact that the petition for restitution of conjugal rights was not bona-fide, since it was filed nearly after two years of separation i.e., only after receiving the divorce notice, but merely a legal strategy to harass the husband and the trial Court failed to appreciate the fact that the petition for restitution of conjugal rights filed solely as a counter-blast to the divorce petition after years of separation without any prior effort of reunion.

8.It is the further argument of the appellant/husband that this Court also referred the matter to mediation with a view to reunite the couple, but the wife adamantly refused to attend the mediation hearings for about three times and hence, the mediation failed; If really the wife wants reunion, she would have attended the mediation and the failure on the part of her from participating in the mediation process would clearly establish that her real intention is not reunion and filing of the petition for restitution of conjugal rights is only for harassing the husband; the trial Court failed to consider the fact that the wife and her family members displayed avarice by demanding the husband to transfer his



salary and his widowed mother's pension benefits to them; further immediately after the reception, on 16/11/2016, the wife's parents demanded eviction of the family friend, who were residing for 23 years in the first floor of the husband's house and demanded transfer of the house title to the wife and this caused immense mental stress to the husband and his widowed mother and therefore, under these circumstances, he prayed for allowing these Civil Miscellaneous Appeals by setting aside the impugned common order passed by the trial Court.

9.On the other hand, the learned counsel for the respondent/wife would submit that the wife has filed a petition for restitution of conjugal rights and the same was allowed; Though the husband filed a petition in HMOP No.184 of 2019 for divorce on the ground of cruelty, he has not proved the same; Whatever the allegations made in the petition filed by the husband for divorce and the counter filed in the restitution of conjugal rights petition, it is not proved with sufficient materials, except the husband, who was examined as RW1, no independent witness was examined to prove the allegations made in the petition against the wife.

10.He would further submit that the trial Court has rightly appreciated the evidence both oral and documentary and dismissed the petition filed by the husband for divorce and allowed the petition filed by the wife for restitution of



conjugual right based on the materials; mere allegations levelled in the petition or averments made in the counter affidavit may not be a ground to allow the petition especially in the matrimonial cases like dissolution of marriage and when the husband has come with a specific allegation, it is for him to prove the same with substantial evidence, either oral or documentary and in this case, no independent witness was examined; Even some of the allegations made in the public that means performance of marriage, one of the allegations that the wife did not give any respect to the mother of the husband and even refused to perform pathapooja, however photographs shows that the husband and the wife together performed pathapooja and neither the mother of the husband was examined nor any person, who attended the marriage was examined to substantiate the allegations during the marriage; Though the husband made another allegation that when he met with an accident and sustained fracture and was in treatment, the wife neglected to extend her service as a dutiful wife and she left the matrimonial home and went to the parental home, for which, the wife stoutly denied and stated that only the husband asked his wife to go to the parental home in Tirunelveli in order to pursue her Doctorate and in order to prove the same, the father of the wife was examined as PW2, but on the side of the husband, he has not examined any independent witness, especially the mother who all along with the husband and therefore, whatever allegations levelled by the husband against the wife, the husband has not proved with



substantial materials; Further, as far as the consummation of marriage is concerned, it is the private affair between the spouse within four walls, for which, no independent evidence can be let in; when the husband has given allegations, the wife has stoutly denied; As far as the other aspect namely outside of the bedroom is concerned, the husband has to prove the same with substantial materials; Therefore, in this way, the wife stoutly denied about the non-cooperation for cohabitation and the husband has not proved his case as alleged by him, either in the petition for divorce or in the counter statement in the restitution of conjugal rights petition; The trial Court has rightly appreciated the evidence both oral and documentary and came to the conclusion that the wife is only ready and willing to live with the husband and in order to establish the same, the wife filed documents in the petition for restitution of conjugal rights, whereas the husband filed a petition for divorce on the ground of cruelty, however, he failed to establish the same by examining any independent witness. Therefore, there is no merit in both the appeals and they are liable to be dismissed.

11.Heard both sides and perused the materials available on record.

12.The marriage between the husband and wife is not in dispute. After the marriage, they lived together in Chennai is also not in dispute.



13.The main contention of the husband is that no consummation of marriage had taken place and the wife ill-treated the husband and his mother and she also voluntarily left the matrimonial home and residing in her parental home within a short span of 20 days from the date of marriage and the consummation of marriage never took place and the wife refused to cooperate for the consummation of marriage and the purpose of marriage itself has been defeated and when the husband met with an accident and got fracture and was taking treatment, without taking any care, the wife left the matrimonial home, which itself shows that the wife is not interested to lead the martial life and even during welcoming days, she and her family members had not given proper respect and the mother of the husband was also not properly respected and when the husband wanted to do pathapooja to his mother as a sign of respect and gratitude towards her, the wife and her parents refused to do the same. Therefore, on many occasions in many aspects, the wife caused mental cruelty not only to the husband, but also to his mother. Despite taking steps to take back the wife to lead a marital life peacefully, the wife refused for cohabitation. Therefore, he filed a petition for dissolution of marriage on the ground of cruelty.

14.But on perusal of the records, it is seen that pending OP, the wife filed a petition invoking Section 9 of the Hindu Marriage Act, for restitution of conjugal rights and expressed her readiness and willingness, whereas the



husband alone refused to take her back. Only at the advise of the husband, she left the matrimonial home only for pursuing her Doctorate, since she was not able to get registration for Doctorate in Chennai and therefore, in order to pursue the Doctorate study, her husband only advised her to stay in her parental home at Tirunelveli for pursing her Doctorate study and only on his advise, she left the matrimonial home for the purpose of pursuing her Doctorate and not as stated by the husband that without having any interest or cohabitation, she voluntarily left the matrimonial home.

15.Further allegation of the husband is that during the marriage ceremony, the mother of the husband was not given proper respect and the reception of bride was also not done as per the Rites and pathapooja for his mother was not performed as per the Hindu rites and the ceremonies also not done as per the wish and will of the husband and the marriage ceremony was not conducted as per the will and wish of the husband and the husband and his mother was ill-treated by the wife and her family members and when he met with an accident and sustained fracture injuries, the wife refused to extend her service as a dutiful wife to her husband and therefore, she caused mental cruelty on several aspects. Whereas the wife has stoutly denied the said allegations by way of filing counter in the divorce petition and she has also filed a petition for restitution of conjugal rights and she expressed her willingness to live with her



husband and also denied the allegation of non-consummation of marriage. That be the case, the wife stoutly denied all the allegations levelled against her. So, it is the duty of the husband, who one made the allegation for getting divorce has to establish those allegations.

16.A reading of the documents produced on either side and also the allegations made in the petitions and also the averments made in the counter in each petitions and also the oral evidence let in by the husband and the documents marked by both the husband and the wife, the allegation during the performance of the marriage was totally denied and the photographs marked also shows that all the ceremonies were performed meticulously including the reception of the bride and also the performance of patha pooja to the mother of the husband. Further the husband has not examined, either his mother or any of the family members or relatives or friends or any independent witness to substantiate that allegations. Therefore, in the absence of the same, the Family Court has rightly appreciated the fact that the husband did not prove the allegation regarding cruelty alleged to have caused by the wife during marriage.

17.Further, as far as the left of matrimonial home despite the husband met with an accident and sustained fracture injuries is concerned, the wife stoutly denied and specifically stated that the husband only advised her to go to



her parental home at Tirunelveli in order to pursue the Ph.D Course and therefore, the wife both in the counter and in the evidence has specifically denied. The father of the wife was also examined as PW2 and he also denied those allegations including demand of finance and also transfer of the property in the name of the wife. All the allegations were denied by the wife and also the father of the wife during trial. Therefore, the evidence of PW1 and PW2 clearly shows that the appellant did not prove the same either by examining any independent witness or by producing any documentary evidence. Even the letters exchanged between the husband and wife were also marked as Exs.P3 and P4 and whatever the allegations made by the appellant, the same were denied by the wife giving proper reply and therefore, when the wife stoutly denied all the allegations specifically, then it is for the husband to substantiate the same in the manner known to law. But whereas in this case, the husband has not proved the same.

18.Further, consummation of marriage is concerned, the wife has stoutly denied the same. Even no independent witness can be expected and the relationship between the spouse is within four walls, it is their exclusive knowledge and there would be no independent witness or material to prove the same. Therefore, a conjoint reading of the allegations made by the husband, This Court is of the considered view that he failed to prove those allegations.



Therefore, proving the consummation marriage, unless both parties expressed their willingness for the medical test, it cannot be proved and it is their private affairs, for which also the husband has not stated anything that he is ready to go for the medical test and he has also not filed any application to send the wife for medical test. However, wife has filed petition for restitution of conjugal rights. Therefore, in the absence of the same, it is settled law that if the husband come forward with specific allegations, it is for him to prove the case on his own strength and he cannot take advantage of the loop holes left by the wife. Therefore, reading of the entire materials, this Court finds that the husband has not proved the allegations levelled against the wife. Whereas the trial Court made elaborate discussion and given a valid reason for dismissing the petition filed by the husband for dissolution marriage and rightly allowed the petition filed by the wife for restitution of conjugal rights. Reading of the entire materials, while re-appreciating the evidence, this Court finds no reason to interfere with the common order passed by the trial Court.

19. In the result, both Civil Miscellaneous Appeals stand **dismissed**, confirming the impugned common order passed by the trial Court. No costs. Consequently, connected Miscellaneous Petition is closed.

(P.VELMURUGAN, J.) (L.VICTORIA GOWRI, J.)
19-11-2025

Index: Yes/No
Internet: Yes/No
er



CMA(MD)Nos.119 and 120 of

To,

1. The Family Court,
Tiruneveli.

2. The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CMA(MD)Nos.119 and 120 of

**P.VELMURUGAN,J
and
L.VICTORIA GOWRI,J**

er

CMA(MD)Nos.119 and 120 of 2021

19/11/2025