



WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 20.02.2025

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MS. JUSTICE R.POORNIMA**

C.M.A(MD)No.1605 of 2024

M.Sivasubramani

... Appellant/Petitioner

.Vs.

P.Kavitha

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act praying this Court to set aside the fair and decretal order made in H.M.O.P.No.174 of 2019, dated 14.10.2019, on the file of Family Court, Madurai

For Appellant : Mr.S.Gokul Raj

For Respondent : Mr.S.Malaikani



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JUDGMENT

DR.G.JAYACHANDRAN., J
AND
R.POORNIMA.,J

The Civil Miscellaneous Appeal is directed against the fair and decretal order made in H.M.O.P.No.174 of 2019, dated 14.10.2019, on the file of Family Court, Madurai.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The husband is the appellant herein. His petition for restitution of conjugal rights was dismissed by the Family Court, Madurai vide order, dated 14.10.2019.The short point involved in this case is that the appellant got married to the respondent on 10.11.2014. A female child was born to them on 13.4.2016.The appellant was employed as Assistant Professor in Cheran College of Engineering, Karur, whereas, the respondent was employed as Sub-Divisional Engineer, BSNL, Madurai. The dispute between the parties arose when both of them insisting the other one to get transfer to the place of their present



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working. This has lead to separation and the contention of the appellant is that due to ill advise of her parents, the respondent is not inclined to get transfer from Madurai to Karur, though there is every possibility of getting transfer. His further allegation is that the parents of the respondent wants the appellant to be “Veetu Mappilai” and settle at Madurai, for which, the appellant opposed. Since the respondent has voluntarily withdrawn from the marital company of the appellant, petition is filed for restitution of conjugal rights under Section 9 of the Hindu Marriage Act.

4.The trial Court, after appreciating the evidence of the Petitioner and respondent, held that the respondent is living in Madurai in view of her employment and hence, she cannot be forced to resign her job and join with the appellant,who has settled at Karur and employed in a Private Engineering College at Karur. Unless and until, withdrawal from the marital society voluntarily without any reason, the application for restitution of conjugal rights cannot be entertained.

5.According to the learned counsel for the appellant, cross-examination of



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D.W.1 discloses the intention of the respondent/wife that she is not ready to live with the appellant at Karur. When there is no valid reason for the respondent/wife to get transfer of her job or resign the job and join the appellant to save the marital life, the Court below ought not to have dismissed the Petition for restitution of conjugal rights. The appellant would further submit that though the respondent without any reason withdrew from the marital society within a year of the marriage, he waited for more than a year to file the Petition for restitution of conjugal rights. Therefore, the trial Court is not correct to say that the appellant has rushed to the Court for the prayer sought. It is also contended that even before marriage, the respondent promised that she will get transfer from Madurai to Karur. However, in the breach of promise, she later decided to stay at Madurai, which tantamount to desertion.

6.The records indicate that within six months of marriage, the marital relationship between the appellant and the respondent got strained. The grievance of the appellant is that he was not respected by the family members of the respondent and he was forced to shift the marital home from Karur to Madurai. Further grievance of the appellant is that the father of the respondent assured



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that he will get transfer of his daughter from Madurai to Karur using his influence, but, he failed in his promise.

7.This Court, on appreciation of evidence of P.W.1 and R.W.1, could easily see that incompatibility and rigidity among the spouses has caused the personal separation. The respondent, admittedly, is not inclined to join the appellant at Karur. However, she has valid reason for the said intention. Her employment at Madurai was even prior to the marriage. The appellant had married the respondent knowing well that she is employed in Madurai.

8.According to the appellant, the family members of the respondent made him to believe that they will arrange for her transfer from Madurai to Karur. Transfer from one place to another place in BSNL is subject to various factors and not within the exclusive discretion, right or power of the respondent. Being an educated person, the appellant ought to have thought of an alternate to save the marital relationship instead of approaching the Court by filing petition for restitution of conjugal rights. When there is no wilful and wanton withdrawal from the marital company, Section 9 cannot be invoked .The trial Court has



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rightly held, in which, this Court also endorsed.

9.For the reasons stated above, the Civil Miscellaneous Appeal stands dismissed. The appellant is at liberty to work out his remedy by filing petition under other provisions either to mend the constrained relationship or to break it amicably. No costs.

[G.J.,J.] [R.P.,J.]
20.02.2025

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

The Judge,
Family Court,
Madurai.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.
and
R.POORNIMA,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.1605 of 2024

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