



C.M.A(MD)No.255 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated: 18.12.2025

CORAM

THE HONOURABLE MR JUSTICE G.K.ILANTHIRAIYAN

AND

THE HONOURABLE MS JUSTICE R.POORNIMA

C.M.A(MD)No.255 of 2023

R.Surya Prabha

: Appellant/Petitioner

Vs.

S.Manivannan

: Respondent/Respondent

Prayer:- This Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, to set aside the fair and ex-order made in HMOP No.400 of 2016 on the file of the Family Court, Madurai, dated 13.12.2022 and grant a decree of divorce in favour of the appellant.

For Appellant

: M.Sam Eugene Jebakumar

For Respondent

: Mr.D.Balamurugapandi



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J U D G M E N T

WEB COPY (Judgment of the Court was made by the Hon'ble **R.POORNIMA.J.**)

This Civil Miscellaneous Appeal has been filed as against the fair and ex-order made in HMOP No.400 of 2016 on the file of the Family Court, Madurai, dated 13.12.2022 and to grant a decree of divorce in favour of the appellant.

2.The petitioner/wife filed a petition under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act,1955 to dissolve the marriage solemnized between the petitioner and the respondent, on 11.11.2013 on the ground of cruelty and desertion. The petitioner has specifically alleged that there was a demand of dowry at the time of marriage. The respondent and his family members demanded 55 sovereigns of gold jewels and Rs.3 lakhs cash. The parents of the petitioner also agreed for the same. On the date of marriage, the father of the petitioner was able to provide only 45 sovereigns and Rs.3 lakhs cash and agreed to give 10 sovereigns of jewels within a year. But even an hour before the scheduled time of marriage, the respondent and his parents and sister threatened that unless the remaining 10 sovereigns of jewels were given, they would not agree for the marriage and staged a walk out. Thereafter, the parents



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of the petitioner promised that the remaining 10 sovereigns will be given within a year and on that account, the marriage was conducted.

3.The petitioner further stated that her husband is an impotent and even after one week of the marriage, they did not enjoy the conjugal pleasure and subsequently, she found that the respondent male organ was under developed. When she questioned the same, he stated that he had undergone a surgery six months before the marriage and it will be cured. In between, the father of the respondent who retired from the service on 31.01.2014 continued to reside along with the spouse and embarrassed her when she was alone. When the same was complained by the petitioner to the respondent, he has not questioned his father, but asked her to adjust him. Therefore, she suffered mental agony. When she reported the same to her mother, the parents of the petitioner informed the same to the mother and sister of the respondent. But neither they showed interest, nor felt ashamed. Rather they drove the petitioner out of the house and told her that she can live with her parents till the payment of the balance of dowry. Ever since she was living continuously with her parents at Madurai. Thereafter, she become pregnant and delivered a baby on 21.10.2014 in Booma Nursing Home, Madurai. When the



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petitioner contacted the respondent and informed about the birth of child over phone, he asked her to pay the dowry immediately and to adjust his father. Therefore, she gave a complaint before the District Social Welfare Officer, Madurai, on 25.05.2015. A negotiation was arranged, but failed. Though the impotency of the respondent is a ground for divorce, she did not file any petition for nullity of marriage. She wanted to live as a traditional Hindu wife. Since the respondent treated her with mental cruelty, she filed a petition for divorce on the ground of cruelty and desertion.

4.The respondent/husband denied the entire averments contained in the petition, disputing the allegation of impotency, demand of dowry and misbehaviour by his father and stated that after the marriage, they were living in the matrimonial home for a short period and thereafter, shifted to Chennai, where he was working and residing at TVS Colony, Anna Nagar West, Chennai. The petitioner become pregnant and as per the request of her parents, she went to Madurai during February 2014. He used to visit her every Saturday and Sunday at Madurai and also paid maintenance for her. A child was born on 21.10.2014 at Madurai. He paid the entire hospital expenses. The brother of the



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petitioner, who was studying B.E involved in some immoral activities and entangled the skirmish with neighbours, which caused chaos among the family. Hence, the respondent intervened and sort out the same. But he has not changed his attitude. Both the petitioner and the respondent decided to place a separate house at K.K.Nagar, Madurai and the respondent also changed his business at Madurai. The father of the petitioner demanded a sum of Rs.5,00,000/- for arranging marriage for their son namely Prabhakaran, for which he refused by stating that he was only 24 years and denied to pay the same. In the meantime, when he was not in home, the parents of the petitioner came to his house and made advise to the petitioner and secretly arranged marriage to the said Prabhakaran with one Vidya. When it was brought to his knowledge, he has not turned up to attend the marriage. Therefore, there was misunderstanding. In the meantime, she lodged a false complaint before the District Social Welfare Officer, Madurai as against the respondent and his family members, for which they appeared before the District Social Welfare Officer and explained the real fact. At that time, the petitioner was not appeared. Hence, it was informed that they are going to close the matter. Even the petitioner filed the present HMOP No.400 of 2016 seeking the relief of dissolution of marriage, the matter was



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referred to the Mediation and both the parties had a mediation talk and settled the matter amicably and both were returned back to Chennai and living peacefully and their son joined a school in Chennai. Under these circumstances, when the respondent went out of station for his business, the petitioner took a sum of Rs.4,25,000/- and 20 sovereigns of jewels and went to Madurai. When he returned back to his home and called the petitioner, she replied that her mother was ill, hence she rushed to Madurai. In the meantime, the mother of the petitioner died on 22.05.2020. Thereafter, whenever he called his wife, she replied that she will stay in Madurai for the shake of her father, but never turned up. In the meantime, she married one Saravanan, S/o.Boominathan on 30.08.2020 at Manamadurai in the presence of her father and one Mohan and Anbagam. When the same has been brought to his knowledge, he lodged a complaint before the Inspector of Police, Town Police Station, Manamadurai, on 31.08.2020, for which, CSR Receipt No.617/2020 has been issued and he produced the photograph of second marriage of the petitioner. But till date, no action has been taken on the complaint given by him. In the meantime, the petitioner again approached the Court for restoration of the divorce case. Due to Covid-19 pandemic, he could not able to appear before the Court. However, the IA petition filed by the



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petitioner was allowed due to the non-appearance of the respondent. The petitioner never come to the Court with clean hand and she committed the offence of bigamy and dishonestly by suppressing the real facts of the case before the Court, she obtained a decree of divorce and hence, prayed for dismissal of the petition.

5. During trial, the petitioner was examined as P.W.1 and another 2 witnesses were as P.W.2 and P.W.3 and marked 3 documents as Exs.P1 to P3, whereas the respondent was examined R.W.1 and marked 4 documents as Exs.R1 to R4.

6. After hearing both sides, the petition filed by the petitioner/wife for divorce was dismissed. Against which, the present appeal is filed.

7. The learned counsel for the appellant submitted that the Trial Court failed to consider that the respondent was not living with the appellant at any point of time and he has not preferred any petition for restitution of conjugal rights. It also failed to consider that he had never been a dutiful or caring husband and dictating of his parents blindly. He



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also supported his father for his illegal act and directed the appellant to satisfy his illegal desirous. The Trial Court ought to have seen that the respondent and his family members demanded 55 sovereign of gold jewels and Rs.3,00,000/- cash as dowry and subsequently after providing 45 sovereigns of gold jewels demanded dowry and harassed the appellant. The Trial Court ought to see that mental cruelty be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other and the parties cannot reasonably also be expected to live together or that the wronged party cannot reasonably be asked to put up with such conduct and continued to live with other party. The Trial Court also failed to see that mental cruelty by means of a studied neglect or indifference of one spouse to the other or even a continued ill treatment of once spouse by the other and cessation of material intercourse amounts to acts of cruelty. The conduct of the respondent in the subject case caused mental suffering. Hence, the appellant/wife is entitled to get the decree of divorce.

8.The learned counsel for the respondent stated that the appellant got married for the second time and living separately and in



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order to conceal the same, a false case has been foisted against him and the appellant has not proved the cruelty and harassment alleged to be meted out to her.

9.Heard the learned counsel on either side and perused the materials available on record.

10. The first allegation raised is that the respondent demanded dowry, but for which she has not made any complaint against the respondent or against his family members. On the side of the appellant/wife Ex.P3 was marked, which is the complaint filed against the husband and his family members under DVC Act. But she has not filed the copy of the order passed by the Criminal Court to prove the same. But during cross examination admitted that the complaint filed by her in DVC was closed.

11.The second allegation stated against the respondent/husband is that he is an impotent. But it is proved that out of the wedlock and legal consummation, they begotten a child.



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12.The third allegation is that the father of the respondent misbehaved with the petitioner and when she complained about the same, the respondent insisted her to adjust with his father, for which also she has not filed any complaint against her father-in-law. During her cross examination, the appellant admitted that no complaint was filed against her father-in-law.

13. She further contended that she delivered a male child and the respondent failed to maintain the child, but compelled her to pay the remaining dowry. However, during her cross examination, she admitted that both the petitioner and the respondent were celebrated the first birth day of the child in School for Visually impaired people at Madurai, Sundararajanpatti in the year 2015.

14. PW2 the father of the petitioner stated that her daughter has not personally talked to him with regard to the misbehavior of the father-in-law. But she conveyed the same to his wife. He also admitted that no complaint was registered against the respondent and his family members for demand of dowry or for the misbehavior of her father-in-law. But he admitted that a complaint was lodged by the respondent for



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contracting the second marriage to his daughter, the police officials asked them to approach the Civil Court.

15.The Aunt of the petitioner was examined as PW3. She also admitted that she has not aware of the allegations contained in the petition.

16. Though the appellant raised very many allegations against the respondent, but she failed to prove the same. The respondent marked certain photographs to show that the appellant got married for the second time before obtained divorce, for which, he has also filed any complaint.

17. On perusal of above it proved that the appellant was living separately for a long time due to misunderstanding and threw several allegations against each other. The appellant has not proved any of the allegations as against the respondent. But the respondent made serious allegation of contracting the second marriage by the appellant for which except photographs, no other materials filed to substantiate his claim.



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18. During the course of argument, the learned counsel for the respondent also stated that there is no chance for reunion and no objection in allowing the appeal. So, this Court is of the view that the appeal is to be allowed, since there is no chance for re-union.

19. Considering the above facts and circumstances of the case and also considering the fact that there is no chance for re-union, this Court is of the considered view that the marriage solemnized between the appellant and the respondent is to be dissolved by granting a decree of divorce.

20. In the result, this Civil Miscellaneous Appeal is **allowed**. The fair and ex-order, dated 13.12.2022 made in HMOP No.400 of 2016 on the file of the Family Court, Madurai is set aside and the marriage between the appellant/petitioner and the respondent/respondent solemnized on 11.11.2013 is dissolved. No costs.

(G.K.I., J.) (R.P., J.)
18-12-2025

Index: Yes/No
NCC: Yes/No
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To,
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- 1.The Family Court,
Madurai.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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**G.K.ILANTHIRAIYAN,J
and
R.POORNIMA,J**

er/rm

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