



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

DATED : 04.04.2025

CORAM:

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

**C.M.A(MD)No.518 of 2021
and
C.M.P(MD)No.4510 of 2021**

Gomathi Sankari ... Appellant/Respondent

.Vs.

Suresh Kumar ... Respondent/Petitioner

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.23 of 2019, dated 25.01.2021, on the file of Family Court, Tirunelveli.

For Appellant : Mr.T.Selvan

For Respondent : Mr.P.Samuel Gunasingh



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JUDGMENT

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

This Civil Miscellaneous Appeal is directed against the order passed by the Family Court, Tirunelveli in H.M.O.P.No.23 of 2019 filed under Section 13(1A) (i) of the Hindu Marriage Act, seeking dissolution of marriage.

2..The short facts involved in this case is that:

The appellant/wife and the respondent/husband got married on 23.08.2009 according to Hindu rites and customs. Thereafter, a daughter was born to them. However, the relationship was never cordial and there was frequent separation and re-union between them. There was also a Police complaint against the husband for dowry harassment and cruelty. In the said circumstances, the husband has filed H.M.O.P.No.79 of 2012 before the Principal Sub-Court, Tirunelveli, which was later transferred to Family Court, Tirunelveli and re-numbered as H.M.O.P.No.46 of 2014. The maintenance case filed by the wife



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before the Chief Judicial Magistrate in M.C.No.37 of 2012 was also pending. In the said circumstances, the wife apart from filing the maintenance case before the Criminal Court, also filed an application for restitution of conjugal rights which was taken on file by the Family Court, Tirunelveli in H.M.O.P.No.146 of 2014. Stating the above facts and submitting that even after lapse of one year from the decree of judicial separation, there is no resumption of cohabitation between the parties and therefore the marriage has to be dissolved under Section 13(1A)(i) of the Hindu Marriage Act, was the prayer by the husband in his H.M.O.P.No.23 of 2019.

3.The wife filed a detailed counter, wherein, she has reiterated how she was illtreated by the Petitioner and his family members, despite her discharge of her responsibility as a dutiful wife and her taking care of the minor daughter. It is further submitted in the counter that the Criminal Court initiated by her against her husband, ended in acquittal, due to compromise arrived at between the parties and hope that the conjugal relationship will be resumed. However, contrary to the compromise, the husband has not initiated any attempt for resuming cohabitation after expiry of one year period.



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4.The learned Family Court,Tirunelveli, on considering the ocular evidence of the parties and Ex,P1 to Ex.P10, which are related to the orders passed in M.C.Nos.37 of 2012, 41/19 and 18/2012 and in the order passed in the earlier proceeding held that the Petitioner has proved that there was no resumption or cohabitation even after one year from the date of decree for judicial separation and allowed the Petition for dissolution of marriage. The present Civil Miscellaneous Appeal is filed by the wife on the ground that the Family Court ought to have taken note of the fact that the conduct of the husband causing cruelty was the cause for separation. When she sought for restitution of conjugal rights and the husband had sought for divorce, the Family Court thought it that judicial separation for a period of two years will provide the scope for change in the mind and attitude to save the marital relationship. However, the conduct of the husband did not change and his misconduct cannot be taken apart by him by getting the marriage dissolved without taking technical character and interest in his wife and daughter.

5.The learned counsel for the appellant would submit that the Petitioner is well employed and earning several lakhs per month clearly pay Rs.



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15,000/- towards maintenance to the wife and daughter (Rs.10,000/- + Rs.5,000/-.

He is not interested in resuming marital relationship for no reason. At the same time, he cannot take advantage of his own wrong and have the benefit of adverse decree.

6.Heard the Counsels. Records perused.

7.The order of the Family Court,Tirunelveli in the earlier proceedings which has marked Ex.P15, dated 07.06.2016, had discussed about the reason for separation and the conduct of the respective parties..The admission of the appellant in the cross-examination that she got separated from her husband and living with the parents since 2012, been taken note by the Court coupled with the fact that the criminal complaints against the husband had prompted the Court to order judicial separation for a period of two years. The present petition for dissolution of marriage under Section 13(1A)(i) filed three years after the decree.There is no material to show that in between this period, either of the parties made genuine efforts for reunion or resumption of marital relationship. In the said circumstances, we find no fault in the order of the Family Court,



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Tirunelveli, which is impugned before this Court.

8.For the reasons aforesaid, the Civil Miscellaneous Appeal is dismissed
There is no order as to costs. Consequently, connected Miscellaneous Petition is
closed.

[G.J.,J.] [R.P.,J.]
04.04.2025

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

vsn

To

The Judge,
Family Court,
Tirunelveli.

Copy to

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



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

vsn

JUDGMENT MADE IN

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