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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A(MD) Nos.355 & 356 of 2022

Subbulakshmi ... Appellant / Respondent

Vs.

Durai Sivakumar ... Respondent / Petitioner

Prayer in C.M.A.(MD)No.355 of 2022: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, to set aside the fair and decreetal order dated 04.02.2022 made in H.M.O.P.No.176 of 2020 on the file of the Family Court, Tirunelveli and allowed the same with cost.

Prayer in C.M.A.(MD)No.356 of 2022: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, to set aside the fair and decreetal order dated 04.02.2022 made in H.M.O.P.No.253 of 2020 on the file of the Family Court, Tirunelveli and allowed the same with cost.

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For Appellant : Mr.Ajmalkhan
Senior Counsel
For Respondent : Mr.T.Selvam
(in both C.M.As)

COMMON ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.)**

Subbulakshmi / appellant in this appeal got married to Durai Sivakumar / respondent herein on 08.09.2019 at Melapalayam, Corporation Marriage Hall as per Hindu rites and customs. Complaining that she was subjected to cruelty, the appellant left the matrimonial home in January 2020 itself. There was no exchange of legal notices between the parties. While so, on 09.10.2020, Durai Sivakumar filed H.M.O.P.No.176 of 2020 seeking dissolution of marriage on the ground of cruelty under Section 13(1)(ia) of Hindu Marriage Act. After filing her counter affidavit, Subblakshmi filed H.M.O.P.No.253 of 2020 seeking restitution of conjugal rights. Durai Sivakumar examined himself as P.W.1 and marked Ex.P1 to Ex.P4. Subbulakshmi examined herself as R.W.1 and Psychiatrist Dr.Bhuvaneswaran who had examined

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Subbulakshmi was examined as R.W.2. Ex.R1 to Ex.R6 were marked on her side. After hearing the evidence on record, the Family Judge, Tirunelveli vide order dated 04.02.2022 allowed H.M.O.P.No.176 of 2022 and dismissed H.M.O.P.No.253 of 2020. Challenging the same, Subbulakshmi filed C.M.A.(MD)No.355 of 2022 against H.M.O.P.No. 176 of 2020 and C.M.A.(MD)No.356 of 2022 against H.M.O.P.No.253 of 2020. Both the parties filed IAs for reception of additional evidence.

2. The learned Senior Counsel appearing for the appellant contended that the court below had allowed the divorce petition without even proper consideration of the evidence on record. He also called upon this Court to take note of the marital misconduct committed by the respondent herein.

3. Per contra, the learned counsel appearing for the respondent submitted that this CMA itself should not be entertained. He pointed out that even though Section 19 of the Family Court Act prescribes the period of 30 days for filing an appeal, the present appeals were not filed within the said limitation period. He added that the appellant had

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conducted herself in a disorderly fashion and in fact that was even admitted by her. He specifically drew our attention to the relevant portion of the deposition in which the appellant had admitted that she had scratched her hand with the kitchen knife. He submitted that such conduct would give a legitimate apprehension in the mind of the husband that his wife was entertaining a suicidal tendency and that would definitely constitute cruelty. He called upon this Court to sustain the impugned order and dismiss the civil miscellaneous appeals.

4. We carefully considered the rival contentions and went through the evidence on record. It is well settled that an application filed under Order 41 Rule 21 of C.P.C is to be taken up for consideration only at the time of final hearing of the main appeal itself.

5. We have heard the learned counsel on either side. We are of the view that interest of justice requires that IAs filed by both the parties deserve to be allowed. IAs are accordingly allowed. The birth certificate issued by the Chennai Corporation is marked as Ex.R7. Likewise, the private compliant filed by the appellant herein is sought to be marked by the respondent as Ex.P5.

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6. Let us address the point of limitation first. Section 19 of the Family Courts Act prescribes that every appeal shall be preferred within a period of 30 days from the date of Judgment or order of a Family Court. But then, Section 28(4) of the Hindu Marriage Act, 1955 states that every appeal under this Section shall be preferred within a period of 90 days from the date of the decree or order. Thus, there is a clear apparent inconsistency between the two statutory provisions. It is well settled that whenever such inconsistency appears, it should be the function of the Court to harmonize the same and resolve that. The Hon'ble Full Bench of the High Court of Bombay in the decision reported in **2016 (6) CTC 772** (vide ***Shivram Dodanna Shetty v Sharmila Shivram Shetty***) had already settled the issue. It was held therein as follows:-

> "**24.** While interpreting the provisions of the said two enactments, it needs to be considered that we are a country of vast population, millions of people face financial hardship for litigating a matter, people have to spend considerable amount of time, money and energy. The geographical conditions further make easy access to justice difficult and taking into consideration all these circumstances, coupled with the peculiar situation faced by the parties while litigating matrimonial, family related

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issues, the Apex Court made certain observations in the case of *Savitri Pandey* which suggestion was accepted by the Parliament and accordingly the law was amended.

28.We are of the view that considering the scheme of both the enactments and the purpose behind amending the provisions of section 28(4) of the Act of 1955, it would not be appropriate to apply different period of limitation, one in case of orders passed by the Family Courts and in another by the regular Civil Courts. Such an approach would frustrate very purpose of legislation.

29. For the reasons stated above, we hold that for an appeal filed under sub-section (1) of section 19 of the Family Courts Act, 1984, period of limitation prescribed under sub-section (4) of section 28 of the Hindu Marriage Act, 1955 shall apply".

7. We respectfully follow the aforesaid decision of the Hon'ble Full Bench of Bombay High Court and answer this issue against the respondent herein. It is relevant to note here that the petition for divorce was not filed under Section 13(1)(iii) which enables the aggrieved spouse to seek divorce if the other party is of unsound mind. The respondent herein sought divorce only on the ground of cruelty. The concept of cruelty has been delineated in more than one case.

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8. In the case on hand, the court below had gone squarely by the admission of the appellant that she scratched her hand with a kitchen knife. It is well settled that no part of testimony of witness should be read in isolation. It should be read contextually and in its entirety. The appellant had only stated as follows:-

> "On account of cruelty meted out by the respondent's mother, I scratched my hand".

It is seen that the appellant scratched her hand and no such act which could not have possibly endangered her life itself was ever committed by the appellant. What appears to have been committed by the appellant was rather trivial and innocuous in nature.

9. Since the respondent herein had questioned the mental soundness of the appellant in his petition, the court below chose to subject the appellant herein to psychiatric examination. R.W.2 was appointed as doctor who conducted the examination. R.W.2-Dr.Bhuvaneswaran examined the appellant and issued Ex.R6-medical report dated 16.11.2021. The medical report reads as follows:-

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3.

DEPARTMENT OF PSYCHIATRY

TIRUNELVELI MEDICAL COLLEGE

ASSESSMENT REPORT

FAMILY COURT RECEIPT 22 NOV 2021 -1975- TIRUNELVELI

REF NO: LETTER NO-827/2021 dated 24/09/2021 O/O Magistrate Family Court

HMOP 253/2020

Mrs Subbulakshmi, Age 21, D/O Arumugam, R/O 28, thiruvalluvar street, melapalayam, palayamkottai, tirunelveli was examined in psychiatry department as outpatient (OP:2484) from 06/10/2021 to 16/11/2021.

Ex. F

Detailed history was elicited. Mental status examination was done. Psychometry was done. Based on the findings it is found that

she is not suffering from any mental illness.

திருநெல்வேலி மருத்துவ கல்லூரி & மருத்துவமனை மனநல மருத்துவத்துறை தேதி DATE: 16/11/2021 திருநெல்வேலி-11 SEAL

16/11/2021

Dr. B. BHUVANESHWARAN, M.D.,
Assistant Professor of Psychiatry
Reg.No: 74400
Govt. Tirunelveli Medical College Hospital
Tirunelveli - 627 011.

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10.On the face of such an assessment report issued by the Department of Psychiatry, Tirunelveli Medical College, the court below ought to have drawn an irresistible inference that the appellant was of sound mental condition. The court below had given a finding that the conduct of the appellant inflicting injury on her hand would itself prove cruelty. When R.W.2/the doctor himself had stated that the appellant is not suffering from any mental illness, it was not open to the Court to give any contra conclusion particularly in the absence of any other evidence. It is true that the opinion of the expert is not binding on the court. But then, for the Court, to dissent from the expert opinion, convincing substantial reasons must be adduced. In this case, the reason given by the court below is a mere *Ipse dixit* and it is not based on any material evidence. More than anything else, the appellant herein had demonstrated before us that Durai Sivakumar/respondent herein entered into a relationship with one Umasundari and through the relationship, a child was born on 08.03.2022. The court below passed the decree on 04.02.2022. The fact indicates that he had already entered into a physical relationship with another woman and that within 34 days from passing of the decree, a child was born to the respondent. He could not have done

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so during the subsistence of his marriage with the appellant herein. The statute clearly states that even if divorce is granted, till the expiry of the appeal period, the successful party cannot contract another marriage. In this case, by entering into a physical relationship with another woman during the subsistence of the marriage, a person who is guilty of marital misconduct is not entitled to any relief at the hands of the court.

11.In this view of the matter, the impugned order is set aside. H.M.O.P.No.176 of 2020 filed by the respondent stands dismissed. H.M.O.P.No.253 of 2020 filed by the appellant stands allowed. Both the Civil Miscellaneous Appeals are allowed. No costs.

(G.R.S., J.) (R.P., J.)
09.01.2025

Index : Yes / No
Internet : Yes / No
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To

The Family Court, Tirunelveli.

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G.R.SWAMINATHAN, J.
AND
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