

*C.M.A.(MD)Nos.325 of 2019, 284 and 285 of 2022*

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

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**Reserved on : 23.09.2025**

**Pronounced on : 15.10.2025**

**CORAM:**

**THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

**and**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**C.M.A.(MD)Nos.325 of 2019, 284 and 285 of 2022**

**and**

**CMP(MD)Nos.4048 of 2019 & 2645 of 2022**

S.Vatshala

... Appellant / Petitioner

Vs.

D.Karthikeyan

... Respondent / Respondent

**PRAYER in CMA(MD)No.325 of 2019:** Civil Miscellaneous Appeal filed under Section 47 of Guardians and Wards Act, 1890, to call for the records relating to the Fair and Decretal order dated 16.02.2019 made in G.W.O.P.No.3 of 2015 on the file of the learned Family Court, Tiruchirappalli and set aside the same.

**PRAYER in CMA(MD)No.284 of 2022:** Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, 1984, to call for the records relating to the Fair order and Decretal order dated 21.10.2021 made in H.M.O.P.No.216 of 2016 on the file of the learned Family Court, Trichirappalli and set aside the same.



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**PRAYER in CMA(MD)No.285 of 2022:** Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, 1984, to call for the records relating to the Fair order and Decreetal order dated 21.10.2021 made in H.M.O.P.No.264 of 2015 on the file of the learned Family Court, Trichirappalli and set aside the same.

**In all cases:**

For Appellant : Mr.T.Antony Arul Raj  
Respondent : M/s.C.Geetha,  
For Mr.V.Angusamy

**JUDGMENT**

(Judgment of the Court was made by **L.VICTORIA GOWRI, J.**)

Challenging the order passed by the learned Family Judge, Family Court, Thiruchirapalli in Guardian and Wards Original Petition No.3 of 2015 dated 16.02.2019, and the common order passed by the Family Court, Trichy in H.M.O.P. No.264 of 2015 and H.M.O.P. No.216 of 2016 dated 21.10.2021, these Civil Miscellaneous Appeals in C.M.A.(MD) Nos.325 of 2019, 284 of 2022, and 285 of 2022 have been filed by the petitioner in G.W.O.P.No.30 of 2015 and H.M.O.P.No.264 of 2015.

2. The petitioner in G.W.O.P. No.3 of 2015, H.M.O.P. No.264 of 2015, is one S. Vatshala. Her husband, one D. Karthikeyan, is the respondent in these



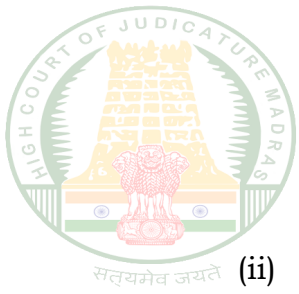
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two cases. The husband has filed another H.M.O.P.No.216 of 2016 before the same Court seeking divorce from Smt.K.Vatshala. For the sake of convenience, the parties herein are mentioned as per their ranking before the learned Trial Court in G.W.O.P. No.3 of 2015 and H.M.O.P. No.264 of 2015.

**3. CMA(MD)No.325 of 2019:**

***Petitioner's Case in G.W.O.P. No.3 of 2015:***

(i) The petitioner is the wife of the respondent. Their marriage was solemnised at Thanjavur on 24.06.2010 and was an arranged marriage. After the marriage, the petitioner-wife lived with the respondent in her shared matrimonial home at Madurai. From the very inception, the marital life of the petitioner was not cordial with the respondent husband. The respondent had been ill-treating the petitioner without any rhyme or reason, habitually scolding and beating her. Out of the wedlock, a female child, namely B.K. Ajitha, was born on 24.03.2011. After the childbirth, the petitioner joined the respondent and lived with him as a dutiful wife. However, even thereafter, when she returned from her maternal home after delivery, the respondent showed no change in attitude and continued to scold her for flimsy reasons. The respondent had no intention to live with the petitioner cordially from the very beginning.



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(ii) The respondent's parents also supported his behaviour, never questioning him or interfering in his atrocities and domestic violence. The petitioner, as the mother of the minor child, fully dedicated her time to the welfare of the child, who was affectionate with her. The child was brought up well under the care and protection of the petitioner. Again, the petitioner became pregnant in mid-January 2013. However, due to the mental agony and torture suffered by her, the pregnancy ended in a natural abortion within three months of conception.

(iii) Thereafter, the petitioner went back with her child to Madurai and joined the respondent. After some time, the petitioner was sent out of the matrimonial home during September 2014. With the help of mediators, she and her parents persuaded the respondent to return the child. Ultimately, in mid-September 2014, the child was given to her. While the petitioner was arranging to admit the child in a school on an auspicious day, the respondent forcibly took the child away from her by the end of September 2014. All her efforts to get back the child ended in vain.

(iv) The minor child, according to her, is now illegally detained by the father without the care and comfort of the mother. The care of the mother is



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paramount for the welfare of the minor, particularly since the child is female. A child below the age of five ordinarily has to reside with the mother. The respondent, she claimed, was incapable of caring for the child and was depending on his parents. Hence, being the natural guardian and mother, she prayed for custody.

**4. Respondent's Counter in G.W.O.P. No.3 of 2015:**

(i) The respondent denied the allegations and contended that the marriage was not solemnised with his free consent. The petitioner had suppressed her earlier marriage with one Vadivel solemnised on 11.06.2001, which had been registered before the Marriage Registrar at Thanjavur. Despite being a divorcee, in the marriage registration application with the respondent, she had falsely declared her status as "spinster." The respondent came to know of this only on 05.02.2013. According to him, it was the petitioner who failed to behave properly with him from the very beginning. Despite her disrespectful behaviour, a child was accidentally born.

(ii) When confronted about her previous marriage, the petitioner casually replied that she did not wish to live with him or take the child. She left the matrimonial home at Madurai on 05.02.2013, after receiving all her jewellery

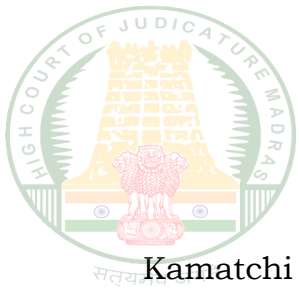


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and valuables under written acknowledgment signed by her father. At that time, she was pregnant for the second time. She later aborted that child. The respondent asserted that the petitioner voluntarily left behind their daughter Ajitha, then one year and eight months old, with him and his parents. She showed no affection towards the child, never visited her, and made no efforts to care for her. The present application, according to him, was not out of love but with an intent to extract money.

(iii) He also pointed out that the petitioner had filed a maintenance petition under Section 125 Cr.P.C. and other cases. He later came to know that she had obtained a decree of divorce against her first husband on 25.04.2014 from the Principal Subordinate Judge's Court, Trichy. According to the respondent, after leaving, the petitioner went to Delhi with her parents. Even during their joint life, she never acted as a dutiful wife or mother. The child was entirely cared for by him and his mother. The child, he said, was very much attached to them.

(iv) He further stated that the minor was now four years and three months old, studying in U.K.G. in a reputed school. He hailed from an orthodox family and held hereditary Sthanigar Miras rights at the Bangangaru



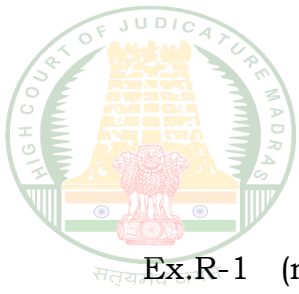
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Kamatchi Amman Temple. Due to stress, he left his job on 30.12.2014 and remained unemployed. The respondent further alleged that the petitioner never even kept the child's photograph in her phone or social media, but instead displayed the photo of actor Surya. He argued that the welfare of the child was paramount, not the so-called right of the mother. The child, who even referred to her grandmother as "Amma," would suffer if handed over to the petitioner. Hence, he prayed for dismissal.

**5. *Evidence Before the learned Trial Court:***

(i) To substantiate her case, the petitioner examined herself as P.W-1 and marked Exhibits P-1 to P-4. The respondent examined himself as R.W-1 and marked Exhibits R-1 to R-11. The learned Trial Court framed the issue as to whether the petitioner-wife was entitled to be appointed guardian of the minor child Ajitha and to obtain custody from the respondent-father.

(ii) The petitioner reiterated her allegations of cruelty and domestic violence, explaining that she lived with the respondent till September 2014 when she was driven out. She relied on her exhibits, including the marriage invitation (Ex.P-1), birth certificate of the minor (Ex.P-2), family card (Ex.P-3), and Aadhaar card (Ex.P-4). The respondent reiterated his stand, producing

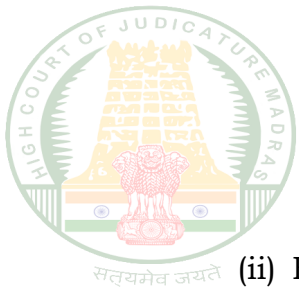


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Ex.R-1 (marriage extract of petitioner with Vadivel), Ex.R-2 (marriage registration form), Ex.R-3 (acknowledgment by the petitioner's father for jewels taken on 05.02.2013), Ex.R-4 (DV Act complaint), Ex.R-5 & R-6 (H.M.O.P. copies), Ex.R-7 (counter), Ex.R-8 (ration card), Ex.R-9 (advocate notice dated 10.02.2015), and Ex.R-11 (school admission bills).

#### **6. Trial Court's Findings:**

(i) The learned Trial Court noted that admittedly the petitioner was the wife of the respondent and the minor Ajitha was born out of their wedlock. By then, the child was about 8 years old and had been living with her father and from June 2014, studying in school. The Court observed that custody decisions must be guided solely by the welfare of the child, not the competing rights of the parents. It referred to Section 17 of the Guardians and Wards Act, 1890, which emphasises the welfare of the minor, the age, sex, and preference of the minor, and the character and capacity of the proposed guardian. The learned Trial Court held that the petitioner's version that the child was forcibly taken from her custody in September 2014 was inconsistent with her own advocate's notice (Ex.R-9), where she admitted that the child had remained with the respondent. The delay of 2½ years in filing the petition without any steps taken to see or reclaim the child was also held against her.



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(ii) Ex.R-11 (school admission bills) disproved her claim that the child was taken away in September 2014, as the child was admitted to school as early as June 2014. The learned Trial Court found that the petitioner had left the matrimonial home on 05.02.2013, taking back her jewels under Ex.R-3 acknowledgment signed by her father, and leaving the child with the respondent. It held that her subsequent petitions were afterthoughts. It further noted that when the minor was produced before Court, she expressed willingness to remain with her father, identifying her grandmother as her mother. The Court found that the child was happy, studying well, and well cared for by the father and grandparents.

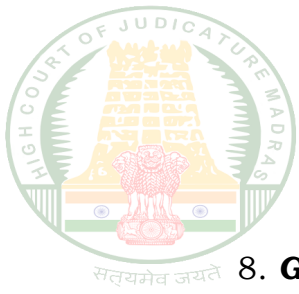
### **7. Trial Court's Conclusion:**

The learned Trial Court concluded that the welfare of the minor would be best served if custody remained with the father. It therefore dismissed the petition for custody filed by the petitioner-mother. However, in line with the principles laid down by the Hon'ble Supreme Court in **Gaurav Nagpal v. Sumedha Nagpal**<sup>1</sup>, **Gaytri Bajaj v. Jiten Bhai**<sup>2</sup>, the Court recognised that a child has a right to the affection of both parents. Accordingly, it granted the petitioner-mother visitation rights, while continuing custody and guardianship with the respondent-father.

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<sup>1</sup> [(2009) 1 SCC 42]

<sup>2</sup> [2013 (1) LW 886 (SC)]



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## 8. **Grounds in Appeal:**

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The appellant-wife assailed the judgment of the learned Trial Court primarily on the following grounds:

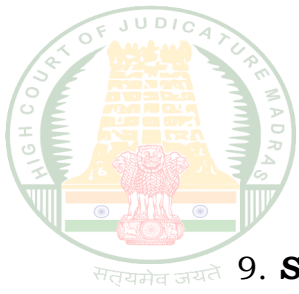
(i) **Right of Natural Guardian:** The Court failed to appreciate that the petitioner, as the natural guardian, was entitled to guardianship and custody of the minor.

(ii) **Tender Years Doctrine:** At the relevant time, the child was of tender age (4 to 8 years), and the love, touch, and presence of the mother were essential for her welfare and development.

(iii) **Misconstruction of Evidence:** The learned Trial Court erred in placing reliance upon Ex.R-11 (school bills), when the real dispute arose only from September 2014, when the petitioner was thrown out and the child was forcibly taken by the respondent.

(iv) **Absence of Disqualification:** The learned Trial Court failed to note that there was no disqualification proved against the petitioner-mother to disentitle her from custody.

(v) **Improper Procedure:** The learned Trial Court ignored that the child's expressed preference was influenced by the fact that she had been in the custody of the father throughout the proceedings, without an opportunity to bond with the mother.



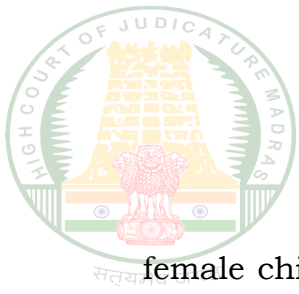
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**9. Submissions:**

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(i) The counsel for the petitioner-wife contended that being the natural guardian of the minor daughter, she was entitled to guardianship and custody, particularly because the minor was a female child. He urged that at the time of filing the G.W.O.P., the child was only four years old, and by the time of disposal, she was eight years old. At such a crucial stage of formative years, the mother's love, care, and physical presence were of paramount importance for the emotional, psychological, and physical growth of the child.

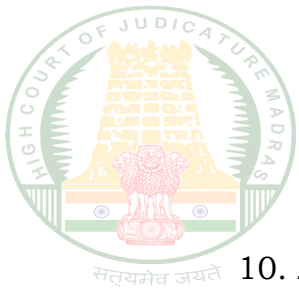
(ii) The learned counsel appearing for the petitioner further alleged that ,the learned Trial Court erred in dismissing the petition by over-relying on certain documents such as Ex.R11 (school admission bills), misconstruing their relevance to the actual point of controversy. According to her, she had been thrown out of the matrimonial home only in September 2014, and thereafter, the child was forcibly taken away from her custody by the respondent. Hence, Ex.R-11 could not have been used to disbelieve her version. He further contended that, no disqualification was ever alleged against her by the respondent-husband. The learned Trial Court failed to consider that a mother cannot be deprived of the company of her child for no fault of her own. He emphasized that the tender years doctrine, as well as the provisions of the Guardians and Wards Act, 1890, required that custody of such a young



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female child must ordinarily rest with the mother, unless disqualification was clearly established and sought to allow the CMA.

(iii) Per contra, the learned counsel appearing for the respondent-husband reiterated that, the petitioner had suppressed her earlier marriage with one Vadivel, solemnised on 11.06.2001, and falsely declared herself a spinster while marrying him. He contended that she had voluntarily left the matrimonial home on 05.02.2013, taking back her jewels under Ex.R-3 acknowledgment signed by her father, and leaving behind the minor child, who was then only one year and eight months old. He further asserted that from then onwards, the child was continuously under the care of her father and that of her grand mother, had been admitted in school in June 2014, and had been studying well. The child was happy and deeply attached to her father and her grandmother, to the extent of addressing her paternal grandmother as “Bhuvana Amma.” According to him, the petitioner had filed custody proceedings only afterthought, to harass her husband and extract money. He relied upon Ex.R-1 to Ex.R-11 to substantiate his contentions and pressed for dismissal of the CMA.



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10. **Analysis:**

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(i) We have carefully considered the pleadings, the oral and documentary evidence, the grounds urged in appeal, and the findings of the learned Trial Court. It is well-settled law that the paramount consideration in custody disputes is the welfare of the child, not the statutory right of either parent.

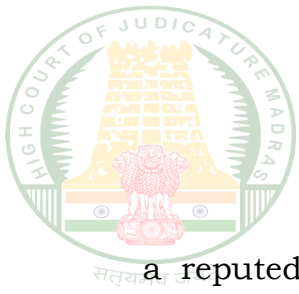
[**Gaurav Nagpal v. Sumedha Nagpal**<sup>3</sup>].

(ii) In the present case, the admitted factual matrix is that since February 2013, the child has been continuously living with the respondent-father and paternal grandmother. Ex.R-3 acknowledgment signed by the petitioner's father clearly supports this position. The allegation that the child was forcibly taken away in September 2014 is inconsistent with Ex.R-9, the petitioner's own advocate's notice. Furthermore, Ex.R-11 (school admission bills) objectively establishes that the child was already admitted to school in June 2014, which corroborates the respondent's version and disproves the petitioner's.

(iii) As of the date of disposal of the G.W.O.P., the child was already about 8 years old, deeply attached to her father and grandmother, studying in

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a reputed school, and found by the learned Trial Court to be happy and content. A change in custody at this stage would disrupt her settled life and may cause emotional and psychological harm.

(iv) It is true that the mother's love and presence are vital for the emotional growth of a child, especially a female child. However, custody is not determined merely on the basis of maternal preference but on the overall welfare of the child, including stability, education, attachment, and happiness in the present environment. In this case, the balance tilts in favour of the respondent-father, though visitation rights to the mother must be preserved to enable the child to enjoy the love and affection of both parents.

(v) In view of the above discussion, we find no infirmity or perversity in the order of the learned Family Judge, Family Court, Thiruchirappalli, warranting interference under appellate jurisdiction.

(vi) Accordingly, the Civil Miscellaneous Appeal in C.M.A(MD)No.325 of 2019 stands dismissed, upholding the judgment and decree of the learned Trial Court. However, the visitation rights already granted to the petitioner-mother shall continue, and the Family Court shall, if necessary, regulate such



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visitation to ensure that the child has access to the love and care of both parents. No costs.

**11. C.M.A(MD)Nos.284 & 285 of 2022:**

These Civil Miscellaneous Appeals arise out of the common adjudication of two matrimonial proceedings between the same parties: H.M.O.P. No.264 of 2015 filed by the wife under Section 9 of the Hindu Marriage Act, 1955 (“herein after referred to HMA”) seeking restitution of conjugal rights, and H.M.O.P. No.216 of 2016 filed by the husband under Sections 13(1)(i-a) and 13(1)(i-b) HMA seeking a decree of divorce on the grounds of cruelty and desertion.

12. For the sake of convenience, the parties are referred to by their ranks before the learned Trial Court in H.M.O.P. No.264 of 2015: the petitioner/wife (“the wife”) and the respondent/husband (“the husband”).

**13. Factual Matrix in H.M.O.P. No.264 of 2015 and H.M.O.P. No.216 of 2016:**

The marriage between the wife and the husband (both Hindus) was



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solemnised on 24.06.2010 at Trichy Sri Rengam Radha Krishna Mahal, in accordance with Hindu rites and customs, after the elders of both families, through S.S. Matrimonial Centre, matched the horoscopes and finalised the alliance. Prior to this marriage, the wife had married one Vadivelu on 11.06.2001 and had obtained a decree of divorce on 24.01.2003 from the learned Subordinate Judge's Court at Trichy. According to the wife, this fact of earlier marriage and divorce was duly disclosed to the husband's family before the present marriage was fixed. From the inception of the marriage, the wife alleges lack of cordiality, domestic violence for flimsy reasons, repeated demands for additional jewellery and money, and the mortgaging of her jewellery by the husband for his expenses. She alleges both physical and mental abuse, including taunts over her earlier marriage. Out of the wedlock, a girl child was born on 24.03.2011 at Sri Rengam Pangajam Hospital.

14. The wife avers that the husband's parents and sister joined in humiliating her about her earlier marriage; that during her second conception, she was compelled to abort; and that, left with no option due to physical and mental abuse, the second pregnancy terminated. She further asserts that in September 2014 she was chased out of the matrimonial home; that mediation attempts by her family failed; that the husband refused to hand over the minor child; and that, during a police enquiry on his complaint, the husband



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declared he was unwilling to live with her and would resolve differences only before a Court. Hence, she filed H.M.O.P. No.264 of 2015 for restitution of conjugal rights.

15. The husband's case is that he was employed with MSD Burma Company, Madurai, and had registered his horoscope with Atchaya Marriage Information Centre; that the wife's family represented her as an M.Sc. and a suitable match but suppressed her earlier marriage and divorce; that the wife was short-tempered and suspicious, neglected household responsibilities, and frequently threatened divorce. He states a female child was born on 24.03.2011; that in February 2013, when she was pregnant for the second time, she insisted on travelling to her maternal home despite his advice; that he then came to know about her earlier marriage; and that on 05.02.2013 she took away her jewellery and household articles, leaving behind a written acknowledgment signed by her father. He says she aborted the second pregnancy and refused to return; that, unable to bear the discord, he resigned his Madurai job in January 2014, shifted to Thanjavur, and admitted the child in a school there in June 2014. He further says that in February 2015 the wife, through mediators, demanded Rs.50,50,000/- (Rupees Fifty Lakhs and Fifty Thousand only) for mutual consent divorce, prompting him to issue a legal notice on 01.02.2015 and, eventually, to file H.M.O.P. No.216 of 2016



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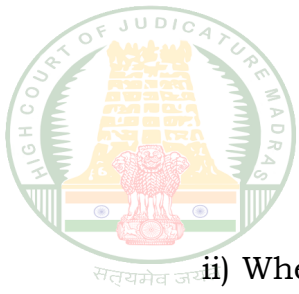
seeking divorce on cruelty and desertion.

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**16. Trial and Evidence:** Both petitions were tried together. The wife was examined as P.W.1, and Exhibits P1 to P10 were marked. The husband was examined as R.W.1, and Exhibits R1 to R7 were marked. The details of Exs. P-1 to P-10 marked through the petitioner wife as PW-1 are as follows:- P1- Marriage invitation; P2-Marriage photographs; P3-Birth certificate dated 24.03.2011; P4-Family card; P5-Ration card; P6-Wife's legal notice dated 06.08.2019; P7-Husband's reply dated 25.08.2019; P8-Husband's legal notice dated 01.02.2015; P9-Wife's reply dated 10.02.2015; P10-Acknowledgement card. Marked through respondent husband as RW-1 are as follows:- R.W.-1; Exs. R-1 to R-7: R-1-G.W.O.P. No.3 of 2015 petition; R2-Counter therein; R-3-Order therein; R-4-Notice in M.C. No.119 of 2015 (DV Act); R-5-Marriage application filed by the wife; R-6-Acknowledgement dated 05.02.2013 signed by the wife and her father on taking jewellery and household articles; R-7-Marriage registration extract.

**17. Points for Determination framed by the learned Trial Court:**

i) Whether the respondent-husband is entitled to divorce on the ground of cruelty.



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ii) Whether the respondent-husband is entitled to divorce on the ground of desertion.

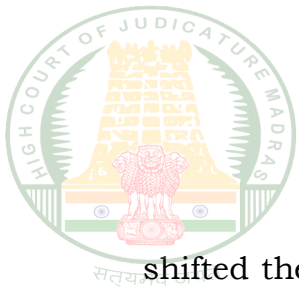
iii) Whether the petitioner-wife is entitled to restitution of conjugal rights.

### **18. Findings of the Trial Court:**

Neither party had substantiated allegations of cruelty with cogent evidence. The wife failed to prove that she was chased away in September 2014. The acknowledgment dated 05.02.2013 (Ex.R6) indicated that she left the matrimonial home voluntarily. From 2013 to 2015, she took no diligent steps to return or seek custody of her child. Thus, the trial court dismissed H.M.O.P. No.264 of 2015 filed by the wife for restitution of conjugal rights and allowed H.M.O.P. No.216 of 2016 filed by the husband for divorce on the ground of desertion by judgment dated 21.01.2019.

### **19. Grounds of Appeal:**

Challenging the judgment, the wife filed C.M.A.(MD) Nos.284 and 285 of 2022, contending that the trial court erred in dismissing her petition for restitution of conjugal rights. The respondent failed to prove desertion for the statutory period of two years prior to filing the petition. The trial court wrongly



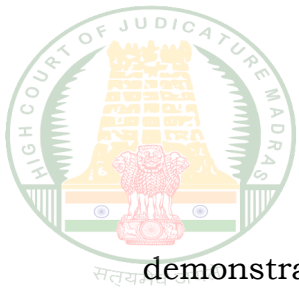
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shifted the burden of proof on the wife. Exhibit R6 was not properly proved as her father was not examined. The trial court ignored her reply notice (Ex.P9) wherein she had categorically stated she was driven out in September 2014. The trial court failed to appreciate that she filed proceedings for custody of her child, showing her willingness to live with the respondent.

## **20. Submissions :**

(i) The learned counsel for the wife submitted that, her earlier marriage and divorce were fully disclosed before the present marriage; alleged continuous domestic violence, financial demands, mortgaging of jewellery, humiliation by in-laws, compelled abortion of second pregnancy, and forcible eviction in September 2014; further stated that she sought to reconcile and sought custody of the child; disputed that she left voluntarily in February 2013 and pressed for allowing the CMAs.

(ii) The learned counsel for the husband relying on Ex.R6 acknowledging the wife taking away her jewellery and home appliances on 05.02.2013 from her shared matrimonial home and her father's signature; asserted that she left on her own, threatened divorce often, and never returned; pointed to his resignation (Jan 2014) and child's schooling at Thanjavur (June 2014) to



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demonstrate separate living; contended that for over two years prior to filing H.M.O.P. No.216 of 2016, the wife remained away without reasonable cause; asserts cruelty through repeated threats of divorce, neglect, and conduct undermining matrimony and pressed for dismissal of the CMAs.

## **21. Analysis:**

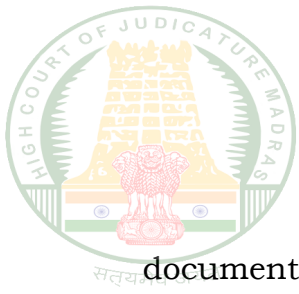
We have carefully considered the pleadings, the oral and documentary evidence, the grounds urged in appeal, and the findings of the learned Trial Court.

### **A. Desertion - Section 13(1)(i-b) HMA,1955:**

The law requires proof of (i) factum of separation and (ii) animus deserendi, the intention to bring cohabitation permanently to an end, continuing for not less than two years immediately preceding the petition. The burden is on the respondent-husband.

#### **(i) On the factum of separation:**

Ex.R6 (05.02.2013) stands out as a contemporaneous document acknowledging the wife's taking away jewellery and household articles, bearing her father's signature. The wife has not examined her father to dislodge this

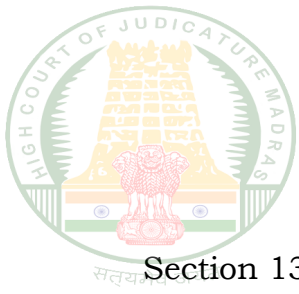


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document. The husband's resignation in January 2014 and shifting to Thanjavur, followed by the child's school admission in June 2014, corroborate that cohabitation had ceased well before mid-2014. The wife asserts she was driven out in September 2014; however, she has not adduced independent evidence (such as neighbours/mediators or contemporaneous documents) specifying residence with the husband between 2013 and September 2014, nor bills/letters/medical records to demonstrate continued cohabitation at Madurai during that period.

**(ii) On animus deserendi:**

The wife's removal of articles on 05.02.2013 (Ex.R6), coupled with no demonstrable steps to resume cohabitation from 2013 till 2015, and the husband's consequent change of employment and relocation, collectively indicate a continuing state of separation attributable to the wife. The legal notices in February 2015 (Ex.P8 and Ex.P9) show contestation, but do not negate the prior long separation. Even assuming the wife alleged eviction in September 2014 in Ex.P9, the earlier contemporaneous record Ex.R6 and the husband's relocation chronology carry greater evidentiary weight. Accordingly we are of the considered view that, husband has established that the parties have lived separately since 05.02.2013, that such separation continued for over two years immediately preceding the presentation of H.M.O.P. No.216 of 2016, and that the desertion is without reasonable excuse. The ground under



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Section 13(1)(i-b) is made out.

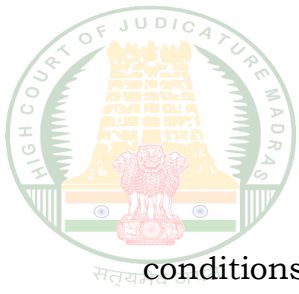
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**B. Cruelty - Section 13(1)(i-a) HMA:**

“Cruelty” is assessed on the totality of circumstances. Repeated threats of divorce, humiliation, and conduct causing mental agony may amount to cruelty; equally, unsubstantiated allegations cannot be *ipso facto* elevated to cruelty. Here, while the husband alleges frequent threats of divorce and neglect, the trial Court found insufficient particulars from both sides regarding specific acts of cruelty. On reappraisal, we are not persuaded to substitute that view solely on the same material. As desertion is independently established, it is unnecessary to rest the decree on cruelty as well. Though the ground of cruelty is not independently established to the degree necessary; the decree of divorce can rest on desertion alone.

**C. Restitution of Conjugal Rights - Section 9 HMA:**

For Section 9, the petitioner must prove that the other spouse withdrew from his/her society without reasonable excuse. The materials, particularly Ex.R6, the absence of proof of cohabitation after early 2013, and the wife’s inactivity from 2013 to 2015 to resume cohabitation or even to visit or secure custody of the child, cumulatively show that it was the wife who withdrew. In such circumstances, a decree for restitution cannot be granted. Accordingly we are precisely of the view that, the wife has not established the statutory pre-

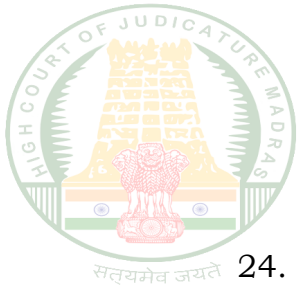


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conditions for restitution; her petition under Section 9 H.M.A.,1955, is liable to be rejected.

22. In final, the husband has proved desertion by the wife within the meaning of Section 13(1)(i-b) H.M.A,1955, both factum and animus deserendi, continuing for more than two years immediately prior to filing H.M.O.P. No.216 of 2016. The ground of cruelty is not independently established on the pleadings and proof as they stand; however, that does not affect the husband's entitlement to divorce on desertion. The wife has failed to establish entitlement to restitution of conjugal rights under Section 9 HMA, 1955, since the evidence shows her withdrawal without reasonable excuse.

23. Thus, the Civil Miscellaneous Appeal arising out of H.M.O.P. No.216 of 2016 (Divorce), C.M.A.(MD)No.284 of 2022 is dismissed. The marriage solemnised on 24.06.2010 between the parties is dissolved by a decree of divorce under Section 13(1)(i-b) HMA,1955, (desertion). The Civil Miscellaneous Appeal arising out of H.M.O.P. No.264 of 2015 (Restitution of Conjugal Rights), C.M.A.(MD)No.285 of 2022 is dismissed. There shall be no order as to costs. All connected miscellaneous petitions are closed.



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24. We further clarify that any pending or future proceedings regarding custody/visitation/maintenance shall be considered on their own merits, uninfluenced by observations herein except to the limited extent of the findings on marital status. Parties are at liberty to invoke appropriate jurisdiction for those ancillary reliefs.

**[P.V.,J.] [L.V.G.,J.]**

**15.10.2025**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
Sml

To

The Family Court, Tiruchirappalli.

Copy to

The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.VELMURUGAN, J.,**

**AND**

**L.VICTORIA GOWRI, J.,**

Sml

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**15.10.2025**