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C.M.A.(MD)NO.303 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.01.2025

PRONOUNCED ON : 26.02.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

C.M.A.(MD)No.303 of 2023

R.Romeo

... Appellant / Petitioner

Vs.

R.Ezhilarasi

... Respondent / Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, to set aside the order passed by the learned Family Court, Thanjavur in I.D.O.P.No.176 of 2020 dated 29.11.2022.

For Appellant : Mr.K.R.Laxman

* * *

J U D G M E N T

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

This appeal is directed against the order dated 29.11.2022 dismissing I.D.O.P.No.176 of 2020 on the file of the Family Court, Thanjavur.



2. The appellant had filed the said IDOP seeking dissolution of his marriage with the respondent. Though notice was issued in this appeal, the respondent refused to receive the same. The respondent herein refused to accept the notice sent through Court as well as the notice sent by the counsel for the appellant. The endorsement made by the Court bailiff reads that the respondent had told the process server that the notice may come from any quarter or may have been sent by anybody, she would not accept service. When the process server attempted to affix the same, that was also prevented by the respondent. In these circumstances, notice sent by the Court was returned with the endorsement that the respondent refused to accept notice.

3. Heard the learned counsel appearing for the appellant who reiterated all the contentions set out in the memorandum of grounds of appeal.

4. Since the respondent is absent, we carefully examined the pleadings as well as the evidence on record and also the impugned order passed by the Court below.



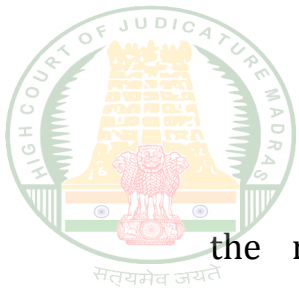
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5. The parties are Christians. The marriage between them took place on 23.01.2019 as per Christian rites and customs at Thanjavur. The case of the appellant / petitioner is that the respondent / wife refused to discharge her conjugal obligations as wife. The respondent is also said to have questioned the appellant's fidelity. The appellant doubted the mental soundness of his wife. The respondent is said to have the tendency to talk to herself implying unsoundness. The appellant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.6. The respondent filed proof affidavit but did not enter the witness box to face cross examination even though multiple opportunities were afforded to her. Therefore, the Court below rightly discarded the evidence of the respondent. Yet the Court below chose to dismiss the divorce petition filed by the petitioner on the ground that the petitioner did not prove that the respondent was mentally unsound. The Court below came to be conclusion because the petitioner admitted that for six months prior to the marriage, they used to regularly converse with each other over mobile. According to the Court below, if for six months a person could interact normally, such a person would not suddenly become



mentally unsound, post marriage. The Court below also came to the conclusion that the petitioner failed to make a fair disclosure. Even though the petitioner alleged that there was lack of conjugal cooperation from the respondent, it was proved that the respondent conceived and it was aborted. Unless the marriage had been consummated, the respondent would not have become pregnant. The petitioner who was examined as P.W.1 was cross-examined by the respondent's counsel. From the answers elicited during the cross examination, the Court below concluded that the petitioner did not maintain the respondent properly or conduct himself properly. Since the case of cruelty projected by the petitioner was not established, the Court below chose to dismiss the divorce petition.

6. The point for determination in this appeal is whether the appellant can be said to have made out a case for dissolving the marriage with the respondent on the grounds of cruelty. The appellant did not straightaway institute a petition for divorce before the Court below. It was preceded by issuing legal notice dated 30.07.2020. The legal notice was marked as Ex.P.5. It was received by the respondent on 07.08.2020. The acknowledgement card signed by



the respondent was marked as Ex.P.6. Ex.P.5 contained the allegations that were subsequently set out in I.D.O.P.No.176 of 2020.

Even after receipt of the legal notice, the respondent did not issue any reply. Of course mere failure to send reply notice cannot be put against the respondent. But this is a relevant factor that has to be taken into account while cumulatively considering all the circumstances projected by the appellant.

7. It is true that the appellant failed to disclose that his marriage with the respondent was consummated and that as a result, the respondent become pregnant and that it was subsequently, aborted. The appellant in all fairness should have referred to this aspect. Merely because the appellant did not make reference to the same, we cannot disbelieve his case in *toto*. The core allegation of the appellant is that the respondent failed to give him conjugal happiness. The appellant has been very categorical in his assertion in this regard. This assertion of the appellant could have been rebutted only by the respondent by entering the witness box. In this case, the respondent entered the witness box only for the purpose of chief examination by filing proof affidavit. She refused to face cross-



examination even though repeated opportunities were given to her.

The Court below ought to have drawn adverse inference against the respondent. If the respondent had completely remained ex-parte, it is one thing. In this case, the respondent, after filing counter opposing the prayer for dissolution of marriage and after expansively cross examining the petitioner, kept away from the witness box. This conduct of the respondent cannot be lost sight of.

8. It is true that the petitioner used to regularly converse with the respondent over mobile phone during the months preceding the marriage. It is quite possible that the respondent had a normal conversation with the petitioner. It is one thing for the respondent to engage in telephonic conversation with the petitioner and it is entirely another matter to discharge one's conjugal duties as wife. It is quite possible that the respondent was psychologically not ready. No conclusion as regards the conduct of the respondent post marriage can be drawn from her conduct prior to the marriage. The petitioner in his petition as well as in the legal notice had graphically described as to how the respondent would react. The petitioner had also deposed that he had taken the respondent for psychological



treatment and to prove the same, he had also marked Ex.P.4 medical prescriptions. Merely because the doctor was not examined, Ex.P.4 could not be totally eschewed. Section 14 of the Family Courts Act, 1984 is as follows:-

“14. Application of Indian Evidence Act, 1872.—A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).”

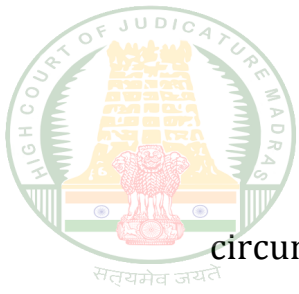
In paragraph No.4 of the petition, the appellant had specifically pleaded that he took the respondent to Dr.S.Ilangovan, Psychiatrist on 22.02.2020 and that the said Psychiatrist after examining the respondent prescribed certain medicines for her and also advised them to take her for psychological counselling. According to the petitioner, the advice given by the Psychiatrist was not followed by the respondent. This averment found in the appellant's petition has not been denied in the counter filed by the respondent. Ex.P.4 medical prescription has also not been specifically challenged by the



respondent. In these circumstances, the Court below erred in applying the strict principles of the Indian Evidence Act, 1872. The Court below being a Family Court ought to have considered Ex.P.4 and not discarded the same on the ground that the doctor who issued the prescription was not examined.

9. The marriage between the parties took place on 23.01.2019. The parties are remaining separate from each other since 26.03.2020. The respondent has not taken any step for reunion. The respondent has not filed any petition under Section 32 of the Divorce Act, 1869 for restitution of conjugal rights.

10. We are therefore of the view that it would be safe to conclude that the respondent has treated the petitioner with cruelty. The Hon'ble Supreme Court in the decision reported in **2023 SCC OnLine SC 497 (Shri Rakesh Raman Vs. Kavitha)** had held that long separation and absence of cohabitation and complete break down of meaningful bonds and existing bitterness between spouses would constitute cruelty. In the counter filed by the respondent, she had averred that the petitioner lacks the elementary humanity. In such



circumstances, the petitioner is justified in entertaining reasonable apprehension that it would be injurious for him to live with the respondent.

11. In this view of the matter, the impugned order is set aside. It is declared that the marriage solemnised between the appellant and the respondent on 23.01.2019 as per the Christian rites and customs at Thanjavur stands dissolved. This civil miscellaneous appeal is allowed.

12. The appellant had undertaken to deposit a sum of Rs.3,00,000/- to the credit of I.D.O.P.No.176 of 2020 on the file of the Family Court, Thanjavur within a period of four weeks towards full and final settlement of the respondent's claims. Recording the said undertaking, we direct the appellant to make such deposit within a period of four weeks from the date receipt of a copy of this order. It would be open to the respondent herein to withdraw the same fully or in the alternative, it is open to the respondent to independently sue the appellant for maintenance. We leave it open to the respondent. It is well settled that the expression "wife" occurring in Section 125 Cr.P.C. would include a divorced wife also. The right of



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the respondent to avail such remedy is left open. This civil
miscellaneous appeal is allowed. No costs.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)

26th February 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To:

1. The Judge,
Family Court,
Thanjavur.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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