



C.M.A(MD) No.299 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 31.01.2025

Pronounced On : 26.02.2025

CORAM

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

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Hemalatha

... Appellant

Raghavan

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, to call for the records in H.M.O.P.No.13 of 2019 on the file of the Family Court, Ramanathapuram dated 19.05.2020 and set aside the same.

For Appellant : Mr.P.Muthusamy

For Respondent : Mr.D.Balamurugapandi



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ORDER

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

The marriage between the appellant and the respondent was solemnized on 17.09.2015 as per Hindu rites and customs. No child was born through the wedlock. Their marital relationship came under strain. The respondent filed H.M.O.P.No.13 of 2019 on the file of the Family Court, Ramanathapuram for dissolving the marriage. He examined himself as P.W.1 and marked Ex.P1 to Ex.P3. The appellant examined herself as R.W.1. After considering the evidence on record, the court below vide order dated 19.05.2020 allowed H.M.O.P and dissolved the marriage. Aggrieved by the same, this appeal came to be filed.

2. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal. He submitted that the husband had not made out any case for dissolving the marriage and that the court below ought to have dismissed the petition. He called upon this Court to set aside the impugned order and allow the appeal as prayed for.



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3. Per contra, the learned counsel appearing for the respondent submitted that the impugned order is well reasoned and that it does not warrant interference.

4. We carefully considered the rival contentions and went through the evidence on record.

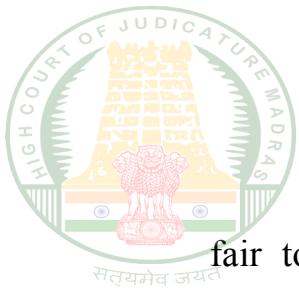
5. Both the appellant and the respondent herein are employed in Highways department. The respondent herein joined the department in the year 1997 as Mazdoor. On the other hand, the appellant herein joined the department as road inspector in the year 2009. The appellant possessed MA degree qualification. On the other hand, the respondent herein had studied only upto 10th standard. The appellant was elder to the respondent by six years. However, they chose to enter into the wedlock on 17.09.2015. Contending that the conduct of the appellant constituted cruelty, the respondent herein filed H.M.O.P.No.13 of 2019.



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6. It is not in dispute that the parties separated from each other since 13.03.2016. Though the marriage took place on 17.09.2015, the parties separated on 13.03.2016. Thus, they were together for less than six months. They had lived as husband and wife for hardly two months. The respondent herein deposed before the court below that he was subjected to humiliation by the appellant herein not only at home but also in the office. As already noted, while the appellant was the road inspector, the respondent herein was working as Mazdoor under her. According to the respondent, the appellant quarreled with him because he did not enter her name as nominee in the service register. The respondent also alleged that she wanted to set up independent residence and that they should not live with the parents of the respondent herein. This was not acceptable to the respondent herein. The respondent further deposed that the appellant had conjugal relationship with him only for few days and thereafter, she refused on the ground that the respondent herein was unfit not only in his job but even as a husband. While the appellant herein denied such imputations, she admitted that after two months, there was no physical relationship between them. These are matters that have taken place within the four walls and therefore, it is not



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fair to expect corroboration. The court must apply the standard of probability.

7. While the husband had studied only upto 10th standard, the wife had passed MA. The appellant was working as road inspector, whereas during the relevant time, the husband was working as Mazdoor under her. The appellant was also elder to the respondent by six years. The appellant claimed that she only counselled the respondent herein to discharge his duties in a very responsible manner and that she acted only in her capacity as official superior and her intention was not to insult him.

8. We are clearly of the view that the testimony of the respondent evokes our confidence. We wanted the parties to appear before us to explore the possibility of amicable settlement. The appellant reiterated her stand that she wants reunion. The respondent was utterly opposed to the very idea of reunion. In fact, he could not even articulate himself. He broke down. He appeared to have completely lost his self confidence. The court below had referred the parties to the mediation centre for



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conciliation. Both the parties did not appear before the mediation centre.

However, the appellant herein had submitted before the court below that even though she regularly appeared, it was the respondent herein who did not appear. Thereupon, the trial Court called for report from the mediation centre. The report was to the effect that the appellant also did not appear. The trial Court concluded that the appellant had made a false statement and that her desire for reunion was not sincere.

9. It is pertinent to note that the appellant herein did not seek restitution of conjugal rights. If she was really sincere about rejoining her husband, she would definitely have filed a petition under Section 9 of the Hindu Marriage Act, 1955. She did not even issue any legal notice calling upon her husband to join her. This raises serious doubts as to whether the appellant truly wants to rejoin her husband.

10. In these circumstances, we are inclined to rely on the decision of the Hon'ble Supreme Court reported in 2023 SCC Online SC 497 (Rakesh Raman Vs. Kavita). It was held therein that where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial



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bond is beyond repair. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty. Thus, the Hon'ble Supreme Court held that the long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act.

11. The case on hand would fall under such category. The parties have been remaining separate for close to 9 years. The appellant had not taken any steps for reunion. Therefore, separation by itself would constitute mental cruelty. In this view of the matter, we sustain the order passed by the court below. This Civil Miscellaneous Appeal stands dismissed. No costs.

(G.R.S., J.) (R.P., J.)
26.02.2025

Index : Yes / No
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The Family Court, Ramanathapuram.



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AND
R.POORNIMA, J.

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