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C.M.A.(MD)NO.569 OF 2021

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)Nos.569 & 570 of 2021

S.Arivazhahan

... Appellant / Petitioner
in both CMAs.

Vs.

B.Gayathri

... Respondent / Respondent
in both CMAs.

Common Prayer: Civil Miscellaneous Appeals filed under Section 19 of the Family Courts Act, 1984, r/w. Order 41 Rule 1, to set aside the judgment and decree passed in H.M.O.P.Nos.106 and 105 of 2017 on the file of the Family Court, Trichy dated 31.03.2021 and allow the civil miscellaneous appeal.

(In both CMAs.)

For Appellant : Mr.C.Vakeeswaran

For Respondent : Mr.T.A.Punithan

* * *

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

The marriage between S.Arivazhahan and B.Gayathri (parties herein) was solemnised on 23.05.2007 as per Hindu rites and customs. A girl child was born through the wedlock on 10.11.2008. Arivazhahan was employed as a teacher in Kendriya Vidhyala. He was then employed in Chennai. Since Arivazhagan was employed in Chennai during the year 2007, the matrimonial home was in Chennai. According to him, his wife left the matrimonial home in March 2008 itself. Alleging that the acts of the wife amounted to cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, Arivazhahan filed divorce petition before the Family Court at Chennai. Gayathri filed petition under Section 9 of the Act seeking restitution of conjugal rights. Both the OPs. were transferred to the Family Court, Thiruchirappalli and renumbered as H.M.O.P.Nos.106 of 2017 and 105 of 2017. Arivazhagan was the petitioner in H.M.O.P.No.106 of 2017, while Gayathri was the petitioner in H.M.O.P.No.105 of 2017. Both the OPs. were tried together. Arivazhahan examined himself as P.W.1 and marked Ex.P.1 to Ex.P.16. Gayathri examined herself as R.W.1 and Ex.R.1 to Ex.R.7 were



marked. After hearing both the parties and after considering the evidence on record, the learned Family Judge, Thiruchirappalli vide common order dated 31.03.2021 allowed H.M.O.P.No.105 of 2007 and dismissed H.M.O.P.No.106 of 2017. Questioning the same, Arivazhagan filed these two civil miscellaneous appeals.

2. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal. He emphasized the fact that the parties have been residing separately for the last several years and the marriage has suffered an irretrievable break down. According to him, this itself would constitute cruelty and prayed for severance of the marital tie.

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

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



5. The points for determination are as follows:-

(i) Whether the appellant had proved that the acts of the respondent constitute cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act, 1955?

(ii) Whether the marriage between the parties should be dissolved on the ground that the parties have been residing apart from each other for the last several years?

6. The appellant examined himself as P.W.1. The allegations made against the respondent are as follows:-

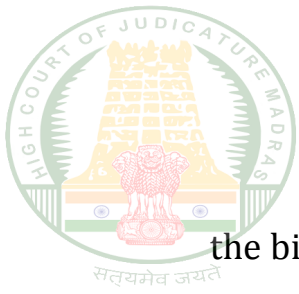
(a) The respondent never took part in household chores such as cooking. As a result, the appellant had to often take food outside.

(b) She often threatened to return to her parents' house or commit suicide.

(c) She expressed disgust in handling the articles of the appellant.

(d) She had taken back all the jewellery given at the time of marriage.

(e) The respondent did not even inform the appellant about



the birth of the girl child.

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(f) The respondent was utterly indifferent towards the appellant.

7. The appellant was cross examined. The appellant admitted that his wife conceived and suffered abortion for which treatment was taken in Best Hospital, at Kodambakkam, Chennai. He also admitted that within six months, she conceived again. Since the wife wanted to wear her jewellery, at her request the appellant handed over the jewels which were kept in bank locker.

8. The Court below took note of the conduct of the appellant. Though the appellant was employed as a Teacher in Kendriya Vidhyalaya and was earning close to a lakh of rupees, he was not maintaining his family. Therefore, the wife had to file M.C.No. 23 of 2015. She also sought interim maintenance. In the said case, the appellant filed I.A. for subjecting the child to DNA / paternity test. The results of the paternity test confirmed that it was the appellant who was the father of the girl child.

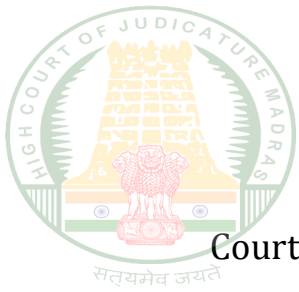


9. From this single circumstance, we would conclude that it

is the act of the appellant that amounts to cruelty. The appellant admits his marriage with the respondent. A child was born through the lawful wedlock. It is really too much on the part of the appellant to question the paternity of the child. The appellant has virtually impeached the integrity and chastity of the respondent.

10. Even according to the appellant, separation from the respondent took place in March 2008 itself. The marriage had taken place only on 23.05.2007. During this period, the respondent suffered abortion and six months later, she conceived once again. Admittedly, the child was born on 10.11.2008. This means that the conception must have taken place in January 2008. This itself indicates that there was cordial relationship between the parties atleast up to January 2008. Nothing substantial could have taken place between January 2008 and March 2008.

11. The child was christened "Siru Nagai". The appellant admits that it was he who chose the name for the child. This also indicates that the marital tie was intact till then. Therefore, the trial



Court rightly did not attach much significance to the allegations made by the appellant with regard to the conduct of the tonsuring ceremony for the child.

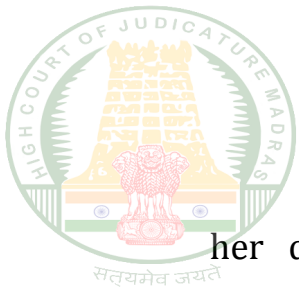
12. It is beyond dispute that since 2008, till date the appellant did not pay any maintenance for the wife and child. When the child was sought to be admitted in Kendriya Vidyalaya, the appellant / his father refused to extend his cooperation. Therefore, the child could not secure admission in Kendriya Vidyalaya, the very school in which the appellant is employed. The appellant had borne the educational expenses of the child only for one year and that too pursuant to the direction of the Court below.

13. It is true that the parties have been remaining separate for the last several years. But on this ground, we are not inclined to grant relief to the appellant. The foregoing facts would clearly establish that the appellant miserably failed to discharge his obligation as a married man. Even though the girl child had been begotten, he did not even bother to attend to its most elementary needs. It is true that M.C.No.23 of 2015 filed by the respondent



herein suffered dismissal. Therefore, the wife may not be entitled to any relief of maintenance in the absence of formal Court order. But then, the appellant could not have defaulted on his obligations to maintain his child. The testimony of the appellant has not been corroborated in any manner.

14. It is a case of oath against oath. The Court had to believe either the uncorroborated testimony of the appellant or that of the respondent. From the overall conduct exhibited by the appellant, the Court below has chosen to disbelieve his version as improbable and go by the testimony of the respondent. The appellant has not paid a single pie towards maintenance of his girl child for more than 15 years. The appellant questioned her very paternity by filing a petition before the Court below. Even after the DNA results confirmed his paternity, he did not chose to make amends. At no point of time, the appellant took any initiative for settling his differences with his wife. The appellant lived together with the wife for hardly eight months. During this period, the respondent suffered abortion and conceived again. In this background, we are of the view that the respondent's version deserves greater credence. The respondent had expressed



her desire for reunion. When the appellant issued notice, the respondent gave reply notice immediately. She participated in the proceedings. She examined herself. She withstood the cross examination and her stand could not be shaken at all. She also filed a petition for restitution of conjugal rights. The Court below rightly dismissed the divorce petition filed by the husband and allowed the petition filed by the wife. The Hon'ble Supreme Court in its recent decision reported in *2024 LiveLaw (SC) 643 (Prabhavathi @ Prabhamani V. Lakshmeesha)* held that irretrievable breakdown of marriage can't be used to the advantage of the party responsible for the collapse of marriage. The boggy of irretrievable breakdown of marriage cannot be used to the advantage of a party who is solely responsible for tearing down the marital relationship. The appellant's misdemeanours were duly taken note of by the learned Judge of the Family Court. We decline to interfere with the order passed by the Court below.

15. At the same time, we need to render justice to the child.

Section 25 of the Hindu Marriage Act, 1955 is as follows:-

“25. Permanent alimony and maintenance.



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—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any



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woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”

16. Since the appellant is drawing substantial salary, in the interest of justice we direct the appellant to pay a sum of Rs.20,000/- (Rupees Twenty Thousand only) per month towards the maintenance of the child. The appellant's liability will commence from 01.03.2025. These civil miscellaneous appeals are dismissed with the aforesaid direction. No costs.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)
26th February 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To:

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



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