



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

DATED : 12.02.2025

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MS. JUSTICE R.POORNIMA**

C.M.A(MD)No.696 of 2019

John Ruban

...Appellant/Petitioner

.Vs.

1.Philominal

2.Murugan

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act praying this Court to set aside the order passed by the Family Court, Dindigul in I.D.O.P.No.26 of 2017, dated 3.8.2019.

For Appellant : Mr.G.Gomathi Sankar

For Respondent-2 : Mr.N.Sathish Babu



WEB COPY

JUDGMENT

(Judgment of the Court was made by **DR.G.JAYACHANDRAN.,J**)

The appellant, being aggrieved by the dismissal of his divorce petition by the Family Court, Dindigul is before this Court to set aside the dismissal order and to grant divorce.

2.The appellant and first respondent belongs to Christianity.Their marriage was solemnized as per Christian rites and customs on 1.12.2016. A child was born to the first respondent on 20.09.2017. Even before that, the appellant had knocked the doors of the Court by filing a petition under Section 10(1)(x) of Indian Divorce Act on the ground of cruelty and adultery. The second respondent is the named adulteror. According to the appellant, the first respondent had affair with the second respondent even before the marriage. Soon after the marriage, within few days, she left the matrimonial home and went to her parental house and continued the affair with the second respondent. This was brought to the notice of the Village Panchayat and on their advise, the first respondent joined the appellant for a brief period. She gave birth to a male child on 20.09.2017 and remain at her parental house. The appellant had made allegations against the first



WEB COPY

respondent that she had been torturing him mentally and she refused to consummate the marriage and continued her affair with her boy friend, who is the second respondent. It is also alleged in the petition that the telephonic conversation of the first respondent with the second respondent was recorded and the same retrieved subsequently through her husband, who would disclose her extra marital affair.

3.After service of notice, both the first and second respondents appeared through their counsel and filed the counter. Based on the counter, the trial Court framed the following issues for consideration:

(1)Whether the first respondent had committed adultery and cruelty, apprehends danger to the life of the appellant or not?(sic)

(2)Whether the marriage of the appellant with the first respondent shall be dissolved or not?

4.The appellant mounted the witness box and examined as P.W.1 and one



WEB CRYM

Yuvaraj was examined as P.W.2. He was cross-examined by the first respondent.

In support of his case, four documents were marked by the appellant which are the marriage invitation, the marriage certificate, the Petition given by the appellant to the Superintendent of Police regarding desertion and cruelty of the first respondent and the compact disc containing the alleged conversation of the first respondent with the second respondent. The first respondent is the wife of the appellant, who remained absent before the Court below. Subsequently, she was set exparte on 14.3.2019. No evidence, both oral and documentary, was adduced on the side of the first respondent. The trial Court, on considering the evidence placed before it, disbelieved the case of the appellant and dismissed the Petition for divorce. Being aggrieved, the present Civil Miscellaneous Appeal is filed on the ground that the Court below failed to draw adverse inference against the respondents, who did not adduce any evidence to disprove the case of adultery alleged against him. Unjustified separation by the first respondent and refusal to have sexual relationship with him is a cruelty which is a ground to grant divorce. The copy of the complaint given by the appellant to the Superintendent of Police- Ex.P3, was disbelieved by the Court below without any explanation.



WEB COPY

5. The learned counsel for the appellant relying upon the judgment of this Court rendered in ***T. Tamilarasan .vs. Arokkiasamy and others reported in 2007(3) CTC 59*** submitted that the party who entered the witness box to substantiate the contentions made in the pleading has to suffer adverse inference against him. The learned counsel would submit that the above judgment is based on the dictum laid down by the Honourable Supreme Court in ***Vidhyadhar .vs. Mankikrao reported in AIR SCW 1129***. The Honorable Supreme Court, in the case cited supra, has held as below:

18.....

‘Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held by various High Courts and the Privy Council beginning from the decision in Sardar Gurbksha Singh .vs. Gurdial Singh, AIR 1927 PcC 230. This was followed by the Lahore High Court in Kirpa Singh .vs. Ajaipal Singh AIR 1930 Lah. I and the Bombay High court in Ulla Kharagjit Carpenter .vs. Narsingh Nandkishore Rawat, AIR 1970 Madh Pra 225, also followed the Privy Council decision in Sardar Gurbakhsh Singh’s case AIR 1927



WEB COPY

PC230(Supra).The Allahabad High Court in Arjun Singh .vs. Virender Nath, AIR 1971 All. 29 held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division bench of th Punjab and Harayana High Court in Bhagwan Dass .vs. Bhishan Chand, AIR 1974 P and H 7, drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.”

6.Though notice was served to both respondents, the first respondent has not entered appearance and the second respondent entered appearance through his learned counsel Mr.N.Sathish Babu.

7.The l;earned counsel for the second respondent would submit that unnecessarily, the second respondent has been dragged as an adulteror in this case without any evidence and since his reputation is at stake, he is forced to contest the case. The second respondent has filed his counter denying all the allegations and has chosen not to cross-examine the appellant's side evidence or let in any evidence on his side, since it is purely a matrimonial dispute between the apepllant and the first respondent. This cannot be construed as an



WEB COPY

implicit concerned to the allegations made against him to draw adverse inference.

The Court below has rightly held that the appellant who has made allegations of adultery is bound to prove the same. The non-examination of witness or non participation in the trial by the second respondent will not enure adverse inference in his favour.

8.It is a case of matrimonial dispute of a Christian couple, wherein, pre-amendment legal position mandates that to dissolve a marriage solemnized under Christian law must be on the ground of adultery coupled with cruelty or desertion. The said provision been later omitted by Act 6 of 2010 with effect from 01.03.2019, wherein, there is no compulsion or mandate to establish the adultery to get divorce. This Court is of the view that matrimonial relationship is a continuous fact. The parties who solemnize marriage as per their religious customs have decided to get separated and not interested in retrieving the marital relation. The dispute to be viewed pragmatically in the light of change in the legislation and circumstances. Here is a case where the husband has made an allegation of adulterous life of his wife. Though there is no adequate proof for the same, the respondents apart from denying the allegations through their



WEB COPY

pleadings, had chosen not to contest the case any further and the first respondent had remained exparte in the trial Court.

9.The learned counsel for the appellant states that the first respondent is living with her child separately since November 2017. Earlier she filed Domestic Violence case in Petition No.80 of 2017, but did not pursue the petition and the same got dismissed for default on 12.11.2021.Even before that, she did not evinced any interest and was set exparte by the trial Court, due to her absence. Long separation and the refusal to cohabit with the appellant has to be construed as cruelty which falls within the scope and ambit of Section 10(i)(x) of the Indian Divorce Act

10.After considering the submissions made by the learned counsel for the appellant and the documents relied, this Court is inclined to allow the appeal considering the fact that the first respondent for a long period without any explanation or justification deserted her husband which indicates that she is not inclined to live with the appellant. This tantamounts to cruelty and in view of the amendment to the Act in the year 2019, the appellant is not bound to prove the



WEB COPY

adultery though he has made allegations of adultery.

11. Accordingly, the Civil Miscellaneous Appeal is allowed. The judgment and decree made in I.D.O.P.No.26 of 2017, dated 3.8.2019, on the file of Family Court, Dindigul is set aside. The marriage solemnized between the appellant and first respondent on 01.12.2016 according to Christian rites and customs at Puitha Vanathu Chinnappar Church in Karunkalpatty Village stands dissolved by a decree of divorce. There shall be no order as to costs.

[G.J.,J.] [R.P.,J.]
12.02.2025

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

The Judge,
Family Court,
Dindigul.



WEB COPY

Copy to

The Section Officer
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



DR.G.JAYACHANDRAN, J.
and
R.POORNIMA,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.696 of 2019

12.02.2025