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C.M.A.(MD)NO.690 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

C.M.A.(MD)No.690 of 2023

D.Ashwini Madhu

... Appellant / Petitioner

Vs.

S.Jayakumar

... Respondent / Respondent

Prayer: Civil Miscellaneous appeal filed under Section 19(1) of Family Courts Act 1984s r/w. Section 28 of Hindu Marriage Act, 1955, to call for records and set aside the fair and executable order dated 29.05.2023 passed in H.M.O.P.No.206 of 2022 on the file of the Family Court, Sivagangai and allow the Civil Miscellaneous Appeal.

For Appellant : Mr.J.Barathan,
for Mr.T.R.Jeyapalam

* * *

**J U D G M E N T**

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

The appellant herein got married to the respondent Jeyakumar on 15.07.2008. The marriage between the parties was also registered. Subsequently, the appellant filed H.M.O.P.No.174 of 2011 on the file of the III Additional Sub Court, Madurai seeking divorce. An ex-parte order was passed on 01.10.2013. Subsequently, the respondent filed set aside petition and it was also allowed. H.M.O.P.No.174 of 2011 was later dismissed for non-prosecution. A girl child was born through the wedlock on 27.08.2014.

2. It is relevant to note that the appellant is a medical graduate in Allopathic medicine whereas the respondent is eking out his livelihood only as a parotta master. According to the appellant, even though she wanted to sustain the marriage, on account of the cruelty meted out by the respondent, she could not live with him and therefore, she left the matrimonial home in September 2017 along with the child. The appellant wanted the marriage to be dissolved through mutual consent. The specific allegation of the appellant is that the respondent had illicit intimacy with one Latha. With these allegations, the appellant filed



H.M.O.P.No.206 of 2022 before the Family Court, Sivagangai. The

Family Court dismissed the HMOP vide order dated 29.05.2023.

Aggrieved by the same, this appeal has been filed.

3. Even though the respondent was served and his name is also printed in the cause list, he has not chosen to contest this appeal.

4. The learned counsel appearing for the appellant points out that the respondent did not contest the OP before the Family Court, Sivagangai. The OP was filed on the specific ground that the respondent had treated the appellant with cruelty and that he was also guilty of desertion. The appellant examined herself as P.W.1. Her father Duraipandi was examined as P.W.2 and her mother was examined as P.W.3. Ex.P.1 to Ex.P.8 were marked.

5. The testimony of the appellant was not contested by the respondent. We therefore fail to understand as to how the Court below could have held that the appellant did not prove the case of cruelty. In matrimonial matters, the standard of proof will have to be quite different. To prove acts that happen within four walls, it may not be fair to expect



corroboration from independent sources. The Court below will have to apply its mind and find out if the testimony of the spouse commands confidence. The testimony of the appellant was not challenged by the husband. Therefore, it ought to have been accepted by the Court below. The Court below ought to have concluded that the allegation of cruelty and desertion made by the appellant has been established.

6.In this view of the matter, the impugned judgment is set aside. The marriage that took place between the appellant and the respondent on 15.07.2008 stands dissolved. This civil miscellaneous appeal is allowed. No costs.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)
24th January 2025

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



To:

1. The Judge,
The Family Court, Sivagangai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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