



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

DATED : 21.03.2025

CORAM:

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

**C.M.A(MD)No.922 of 2019
and
C.M.P(MD)No.5106 of 2025**

C.Raj

... Appellant/Petitioner

.Vs.

E.Girija

...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act praying this Court to set aside the fair and decretal order made in H.M.O.P.No.378 of 2018, dated 1.7.2019, on the file of District Family Court, Tiruchirappalli.

For Appellant	: Ms.J.Anandavalli
For Respondent	: Mr.R.Subramanian



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JUDGMENT

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

The Civil Miscellaneous Appeal is filed seeking to set aside the fair and decretal order made in H.M.O.P.No.378 of 2018, dated 1.7.2019, on the file of District Family Court, Tiruchirappalli.

2.The appellant herein is the husband and the respondent is the wife. It is the admitted case that the marriage between the appellant and respondent was solemnized on 2.2.2009 according to Hindu rites and customs. They lived together only for seven days and got separated due to mistrust and accusation. The husband filed a Petition for divorce in H.M.O.P.No.121/2010 before the Sub Court, Trichy. The wife filed H.M.O.P.No.3895 of 2010 before the second Additional Family Court, Chennai for restitution of conjugal rights. She also filed M.C.NO.485 of 2010 for maintenance before the Family Court, Chennai. The cases were transferred to the Second Additional Family Court, Chennai and renumbered as H.M.O.P.No.1300 of 2011, on the file of Second Additional Family Court, Chennai and got dismissed for default on 5.6.2012. The Petition



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filed by the wife in H.M.O.P.No.3895/2010 for restitution of conjugal rights was allowed, whereas, the maintenance case filed by the wife in M.C.No.485 of 2010 was allowed ex parte and the husband was directed to pay a sum of Rs.10,000/- per month as maintenance. There was no further appeal on these petitions which culminated on 5.6.2012. After six years, the appellant filed H.M.O.P.No.378 of 2015 for divorce on the ground that the respondent despite having obtained an ex parte decree for restitution of conjugal rights, after six years not on the ground of an ex parte decree three years ago, had not taken any steps for their reunion and therefore, since they are living separately even after a decree of restitution of conjugal rights for more than one year, is entitled for divorce. He has also taken a plea that the respondent has given a false complaint to the police after dismissal of the divorce petition holding that he has solemnized an illegal marriage with one Vimala and therefore, committed the act of bigamy. The criminal complaint with false accusation leads to broken marriage.

3.The trial Court, on considering the evidence let in by either side, had held that the marriage relationship exists only for one week and there is no consummation of marriage. However, taking note of the Petition filed for



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restitution of conjugal rights in the year 2010 and the complaint to the police to make the husband to come and join with her, has taken no steps by the wife to enforce the decree for restitution of conjugal rights and dismissed the Petition for divorce stating that the appellant ought to have pursued his earlier petition for divorce instead of filing a fresh petition for divorce, is not maintainable.

4.The learned Trial Court had specifically mentioned that the dismissal of the earlier H.M.O.P ought to have been restored by filing a petition under Order 9 Rule 9 of Civil Procedure Code, instead of filing a fresh H.M.O.P, is not maintainable.

5.The learned Senior Counsel appearing for the appellant submitted that the order of the trial Court suffers from legal infirmity and factual error. The provisions of the Hindu Marriage Act entitles a person to institute a fresh petition for divorce if there is no restitution of conjugal rights in a proceedings to which they are parties (Section 13(1A)(ii)). While so, the finding of the trial Court that the appellant ought to have resorted to the provision under Order 9 Rule 9 of Civil Procedure Code to restore his earlier divorce petition is illegal



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and not sustainable. The subsequent events has given a new cause of action to the appellant to maintain a petition for divorce and having found that the marriage was not consummated and had sustained only for seven days and the parties are living separately for more than 16 years and the respondent wife had not taken any steps even she is armed with a decree for restitution of conjugal rights in respect of dissolving the marriage on the sole ground that the respondent had failed to enforce the decree for restitution of conjugal rights as contemplated under Order 21 Rule 32 of Civil Procedure Code.

6. The learned counsel for the respondent submitted that the conduct of the appellant who has wilfully withdrawn from the marital relationship within seven days of marriage and solemnization of marriage with another lady, when the first marriage was not legally dissolved, to be taken note of by this Court if the subsequent events has given a new cause of action for the appellant to file a second divorce petition. He would submit that the complaint to the Police was in respect of bigamous marriage conducted by the appellant with one Vimala. The Police has completed the investigation and filed the final report and the same was taken cognizance by the learned Judicial Magistrate, Thuraiyur in C.C.No11



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of 2015 and the matter is still pending. While so, the appellant after marrying a lady without dissolving the first marriage, cannot expect the respondent to come and join with him pursuant to the decree for restitution of conjugal rights.

7. This Court, after considering the materials and evidence placed and the arguments of the respective counsels find that the marriage between the appellant and the respondent solemnized on 2.2.2009 and there was no consummation of marriage and this fact is admitted as well as held to be a correct by the trial Court. The earlier divorce petition filed by the appellant was dismissed for default. The decree for restitution of conjugal rights was granted ex parte on 5.6.2012. Thereafter the respondent has not taken any legal steps for enforcement of the said decree. The alleged complaint given to the Police Station appears to be in respect of the subsequent solemnization of marriage by the appellant with one Vimala is pending investigation. The earlier application for restitution of conjugal rights filed in the year 2010 cannot be construed as a step taken by the respondent for restitution of conjugal rights. The trial Court on two counts had miserably failed to apply the correct law and facts in this case. The first count rejecting the divorce petition on the ground of maintainability is



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incorrect in the light of Section 13(1A)(ii) of the Hindu Marriage Act observing that the petition for restitution of conjugal rights and police complaint is sufficient proof for steps taken by the wife for enforcement of the decree is incorrect on facts. Since the restitution of conjugal rights decree itself was passed in H.M.O.P.No.3895 of 2010 and the police complaint regarding bigamous marriage will not disclose any intention of the respondent to enforce the decree of restitution of conjugal rights when the statute provides a procedure for enforcing the decree of restitution of conjugal rights. The respondent having failed to execute the decree in the manner known to law, her right to the husband got accrued under Section 13(1A)(ii) of the Hindu Marriage Act in the light of the proven fact that the marital relationship which was cordial only for 7 days and remains broken for almost more than 16 years with no sign of intention to enforce the decree of restitution of conjugal rights. The appellant herein is entitled the relief sought for. However, it is made clear that the dissolution of marriage will be from the date of this order and any violation of law including bigamous marriage is to be proved in the Court of Law pending subsistence of the earlier marriage which has to be dealt with in the manner known to law. The dissolution of marriage by virtue of this order, dated 21.3.2025 will have no



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bearing in the decision of the pending criminal case and also in the order passed in the maintenance case, this Court is not inclined to interfere, since it is not under the consideration of this Court and the appellant had to challenge the order of maintenance in the manner known to law.

8.In the result, the Civil Miscellaneous Petition is allowed setting aside the order made in H.M.O.P.No.378 of 2018, dated 1.7.2019, on the file of District Family Court, Tiruchirappalli.The marriage solemnized between the appellant and respondent on 2.2.2009 at Packialakshmi Mahal,Thuraiyur according to Hindu rites and customs is dissolved by a decree of divorce with effect from the date of this order (ie., from 21.03.2025) No costs. Consequently connected Miscellaneous Petition is closed.

[G.J.,J.] [R.P.,J.]
21.03.2025

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
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To

The Judge,
Family Court,
Tiruchirappalli

Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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

vsn

JUDGMENT MADE IN

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and
C.M.P(MD)No.5106 of 2025

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