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C.M.A.(MD)NO.886 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.01.2025

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.886 & 986 of 2022

C.M.A(MD)No.886 of 2022

R.K.Dhivya

... Appellant / Respondent

Vs.

C.J.Selva Singh

... Respondent / Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, to set aside the order passed in D.O.P.No.199 of 2020 dated 29.07.2022 on the file of the Family Judge, Tirunelveli by allowing the civil miscellaneous appeal.

For Appellant : Mr.J.Alaguram Jothi

For Respondent : Mr.S.Kumar

* * *

C.M.A(MD)No.986 of 2022

Selvasingh

... Appellant / Petitioner

Vs.

R.K.Divya

... Respondent / Respondent



Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, to set aside the judgment and decree made in I.D.O.P.No.199 of 2020 dated 29.07.2022 on the file of the Family Court, Tirunelveli in respect of ordering permanent alimony alone and allow the above appeal.

For Appellant : Mr.S.Kumar

For Respondent : Mr.J.Alaguram Jothi

* * *

COMMON JUDGMENT

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

The marriage between Selvasingh and R.K.Dhivya was solemnized on 19.01.2018 at Pettai, St.Antony's Church as per the Christian rites and customs. A girl child was born through the wedlock on 06.07.2020. Selvasingh was employed as Marine Engineer. The marital relationship came under strain. Alleging that the acts of the wife constituted cruelty, Selvasingh filed D.O.P.No.199 of 2020 on the file of the Court of Family Judge, Tirunelveli seeking dissolution of marriage. Dhivya filed counter controverting the allegations made by her husband. The husband examined himself as



P.W.1. One Baskar, a relative was examined as P.W.2. Ex.P.1 to Ex.P.10 were marked. Dhivya examined herself as R.W.1 and marked a copy of the complaint given by her before AWPS, Palayamkottai as Ex.R.1. After considering the evidence on record, the trial Judge vide order dated 29.07.2022 allowed the DOP in the following terms:-

“18. In the result, this petition is allowed and the marriage between the petitioner and the respondent solemnized on 19.01.2018 is hereby dissolved by granting decree for divorce u/s.10(1)(x) of Divorce Act and the petitioner is directed to pay a sum of Rs.10,00,000/- each as permanent alimony to the respondent and her child within two months from the date of this order as per Section 37 of the Divorce Act and it is specifically ordered that this decree shall take effect only on payment of above said amount by the petitioner to the respondent and her child. Both parties are hereby directed to bear their own costs.”

2. Aggrieved by the same, Dhivya filed C.M.A.(MD)No.886 of 2022. Aggrieved by the direction to deposit a sum of Rs.10 Lakhs towards permanent alimony, Selvasingh filed cross objection in C.M.A.(MD)No.986 of 2022.



3. The learned counsel on either side reiterated all the contentions set out in the respective memorandum of grounds of civil miscellaneous appeals.

4. The point for determination is whether the Court below was justified in dissolving the marriage.

5. The stand of the husband can be summarised as follows:-

The appellant was not a dutiful wife. She would often quarrel with him. She had suicidal tendencies. On one occasion, she consumed Phenyl. She filed several false complaints before the police against the petitioner and her in-laws. On 20.01.2020, she took back all her jewels. She made it clear that she did not want to live with the petitioner. She did not come for counselling. The relationship between the parties had irretrievably broken down.

6. The appellant / wife had denied the allegations made by her husband. She admitted the execution of Ex.P.9 in her cross examination. Ex.P.9 reads as follows:-

“Myself 'Dhivya RK' 19.01.2018 Selva Singh



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(S/o) Jeyaraj Singh என்பவருக்கு திருமணம் நடந்தது. எங்களுக்கிடையே எந்த விதத்திலும் ஒத்து போகவில்லை. நான் divorce செய்ய விரும்புகிறேன். எனக்கு divorce கொடுக்கும் பட்சத்தில் இவரோடு ஒரு ரூபாய் கூட ஜீவனாம்சம் வேணாம். எனக்கு என் உயிர் நிம்மதி முக்கியம்.”

Of course, she had claimed that Ex.P.9 was written under pressure.

7. Admittedly, the appellant /wife lodged complaint on 08.10.2020 before AWPS, Palayamkottai. Subsequently, she also filed DVC No.15 of 2020 before the Judicial Magistrate, Kovilpatti. We went through the averments set out in the Domestic Violence complaint. A bare reading would clearly lead to the conclusion that the relationship between the parties had completely broken down. It is also relevant to note that the appellant had not taken any step for re-union. She did not file any petition for restitution of conjugal rights. She never gave any notice indicating her stand that she wants re-union. More than anything else, she had taken back all of her jewel on 20.01.2020 itself. The marriage had taken place on 20.01.2018 and the fact that on the second anniversary, the jewellery was taken back would show that the situation had reached a point of no-return.



It appears that some of her articles are still with the husband and she indicated her willingness to take them back. The appellant admittedly left the matrimonial home on 26.10.2019.

8. The Hon'ble Supreme Court in the decision reported in **2023 SCC OnLine SC 497 (Shri Rakesh Raman Vs. Kavitha)** had held as follows:

“20. ...

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair.

21. ... We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. 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. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a ‘marriage’ would only mean giving sanction to cruelty which each is



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inflicting on the other.”

9. We are of the view that the Court below took into account all the circumstances and chose to grant divorce. The approach adopted by the Court below appears to be sound.

10. The Court below also rightly awarded permanent alimony in favour of the wife. It is true that Section 37 of the Divorce Act, 1869 provides for ordering permanent alimony where a decree is obtained by the wife. But there is no prohibition against grant of permanent alimony in favour of the wife when she is the respondent. We would take it that the statute is silent on this aspect. The Hon'ble Supreme Court in the decision reported in **AIR 1993 SC 1014 (M.V. Elisabeth V. Harwan Investment and Trading (P) Ltd.)** had held as follows:-

" 86. The judicial power of this country, which is an aspect of national sovereignty, is vested in the people and is articulated in the provisions of the Constitution and the laws and is exercised by courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of a



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bygone age. Access to court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience."

11. The Hon'ble Division Bench of Madras High Court in the decision reported in *AIR 1966 Mad 225 (Stella Pakkiam & Others V. K.P.P.Rajiah Ratnam)* and the High Court of Karnataka in the decision reported in *2009 SCC OnLine Kar 574 (K.Kumar V. Leena)* held that the suit for maintenance filed by the wife is very much maintainable even though the Divorce Act, 1869 is silent on this. Coming to the case on hand, the husband had fathered a girl child through the appellant. The child was born on 06.07.2020, much before the parties separated. The husband does not appear to have contributed even a single pie towards maintenance of the child. Even while upholding the decree of the order of the Court below awarding Rs.10 Lakhs as permanent alimony to the appellant / wife, we are of the view that the matter cannot stop there. The husband was a



Marine Engineer. He comes from a fairly affluent background. The girl child will have to be properly educated. Marriage will have to be celebrated when she reaches the appropriate age. Therefore considering the status of the appellant / husband, it would be proper to award a sum of Rs.20,000/- as monthly maintenance for the child. It is not necessary to drive the appellant/ wife to file maintenance suit independently against the husband. Since it is the husband who wants to snap the marital tie, it is only just and proper that he is made to bear the financial obligations for bringing up the girl child by the appellant/ wife. Even if a care taker is appointed for bringing up the child, one will have to pay not less than Rs.10,000/- per month. To get admission in a decent school, one will have to pay a few thousand rupees per month. The appellant / husband cannot wash away his responsibility towards his child. The husband can have grievances only against the wife. He cannot say anything against the daughter. No offer was made by the husband that he would bring up the child. Even if the offer is made, we would doubt his sincerity. He has so far not bothered to come and see the child. Even before us, he did not make any prayer for visitation. In these circumstances, we dispose of the civil miscellaneous appeals in the following terms:-



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i) The conditional decree of dissolution of marriage passed by the Court below is confirmed.

ii) The appeal filed by the husband stands dismissed.

iii) Selvasingh, the petitioner in D.O.P.No.199 of 2020 on the file of the Family Court, Tirunelveli is directed to pay a sum of Rs.20,000/- (Rupees Twenty Thousand only) towards monthly maintenance of the girl child born through his wedlock with the appellant. This liability will commence from 01.03.2025 onwards.

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, Tirunelveli
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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