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C.M.A.(MD)NO.924 OF 2022

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)No.924 of 2022

O.Vijay,
S/o.Ochappan,
Through his power agent Ochappan. ... Appellant / Petitioner

Vs.

S.Menaka ... Respondent / Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act, 1984, to set aside the judgment and decree dated 01.08.2022 made in H.M.O.P.No.159 of 2021 on the file of the Family Court, Tiruchirappalli and thereby allow the appeal in favour of the appellant forthwith.

For Appellant : Mr.N.Tamilmani

For Respondent : Mr.S.Ramesh

* * *

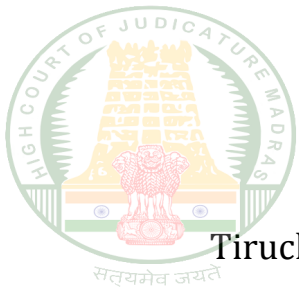
**JUDGMENT**

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

Heard both sides.

2. The marriage between O.Vijay and the respondent S.Menaka was solemnised on 26.02.2007 at VSR Ramathilagam Marriage Hall, Thirumangalam as per the Hindu rites and customs. Since the appellant was employed in USA, he took the respondent to be with him. They lived together for about seven years in USA. On 26.06.2013, a male child was born. In March 2014, both of them came down to Thirumangalam near Madurai. The appellant told the respondent to perform hair tonsuring function as per their family customs and return to America. Thereafter, the appellant alone returned to USA. Serious differences of opinion arose between the two families over the performance of hair tonsuring ceremony. It is alleged by the appellant that the respondent performed the said ceremony even without intimating the appellant's parents. It is this event that seems to have triggered the entire cause of action. The appellant filed H.M.O.P.No.159 of 2021 before the Family Court,



Tiruchirapalli seeking dissolution of marriage on the grounds of cruelty and desertion. He examined himself as P.W.1 and marked Ex.P.1 to Ex.P.7. The respondent examined herself as R.W.1 and marked Ex.R.1 to Ex.R.6. After considering the evidence on record, the Court below vide order dated 01.08.2022 dismissed the OP. Aggrieved by the same, this civil miscellaneous appeal came to be filed.

3. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of appeal. He pointed out that the appellant did make genuine and sincere efforts to effect reconciliation. But the respondent did not respond favourably. He drew our attention to Ex.P.7 pointing out that the appellant only wanted reunion and nothing else. Since his efforts did not yield any fruitful result, he was left with no other option but to file Divorce OP. The learned counsel further submitted that the respondent had kept away from the conjugal company of the appellant for more than seven years and that therefore, the appellant cannot be blamed for taking up the plea of desertion. He also pointed out that the conduct of the respondent amounted to cruelty. He



added that the relationship between the parties has irretrievably broken down and therefore, no purpose will be served in keeping the tie alive. He called upon this Court to set aside the impugned order and grant relief as prayed for by the appellant.

4. Per contra, the learned counsel appearing for the respondent submitted that the impugned order is well reasoned and that it does not warrant interference.

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

6. The appellant and the respondent appear to have had a happy matrimonial life for over seven years from 2007 to 2014. A male child was born on 26.06.2013 through the wedlock. The parties came down to India in March 2014. As per the family customs, hair tonsuring function had to be performed for the child. The appellant did not stay in India to participate in this function. Instead, he returned to USA with instructions to the respondent to return to USA after performance of the ceremony. It appears that the parents of the



respondent and the parents of the appellant did not see eye to eye.

Since there was no consensus between them regarding the date and venue of conducting the function, the parents of the respondent performed the hair tonsuring function without involving the parents of the appellant. This had caused extreme bitterness between the parties and strained their relationship.

7. In our view, neither the appellant nor the respondent could be blamed for this turn of events. The respective parents are to be blamed. But then, the appellant ought to have conducted himself with a little more maturity. He ought not to have blown this issue out of proportion so as to let it affect his matrimonial relationship.

8. The claim of the appellant that he made arrangements for the respondent to rejoin him along with their child is not borne out by the record. The respondent had sent e-mail on 09.11.2014 (Ex.R1) calling upon the appellant to take her back along with the child. The appellant does not appear to have returned on 22.04.2015. The appellant does not appear to have given any positive reply, as otherwise he definitely would have marked his reply as one of his



exhibits. A reading of P.W.1's testimony would show that after taking tickets for the respondent and the child, he cancelled the same. The respondent's VISA had expired and to renew the same, the signature and cooperation of the appellant was absolutely necessary. The appellant did not cooperate for securing VISA renewal for the respondent. Therefore, it is too much for the appellant to allege that the respondent did not join him and therefore, she is guilty of desertion. The Hon'ble Supreme Court in its decision reported in (2022) 5 SCC 459 (*Debananda Tamuli v. Kakumoni Katakya*) held as follows:-

"7. ... The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. ... "



Admittedly, the respondent was in need of VISA for the respondent to join the appellant. It is the appellant who must have taken necessary steps as he was residing in and employed in USA. He did not do so. The respondent was dependant on him. She cannot join him without the VISA. In the present case, the respondent never had the *animus* to bring the cohabitation to a permanent end. Therefore, the Court below rightly rejected the claim of desertion as alleged by the appellant.

9. To dissolve the marriage on the ground of cruelty, convincing evidence must be available. None of the acts attributed to the respondent by the appellant can even remotely amount to cruelty.

10. There is sufficient evidence available on record to show that the appellant had been acting at the instance of his father. The respondent has proved and it has been brought out in evidence that two days prior to the solemnization of the marriage, the father of the respondent had deposited a sum of Rs.10 Lakhs in the joint account of the appellant and the respondent. The Court below had given a finding that the dispute arose between the parents of the appellant



and the respondent regarding transfer of the said fund and regarding opening of the locker in the name of the father of the appellant for depositing jewellery. The Court below after an elaborate consideration of the evidence on record had concluded that the appellant has not established his allegation of cruelty.

11. We carefully re-appreciated the entire evidence on record. We went through the testimonies of P.W.1 and R.W.1 and also went through the documentary evidence. After hearing the learned counsel on either side, we are more than satisfied that the Court below had correctly approached the issue and rightly dismissed the petition for divorce. Interference in this case is not called for. This civil miscellaneous appeal is dismissed. No costs.

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

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Index : Yes / No
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To:
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1. The Judge,
Family Court,
Tiruchirappalli.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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