



C.M.S.A(MD)Nos.18 & 19 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved	05.11.2025
Date of Pronounced	21.11.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.S.A.(MD)Nos.18 & 19 of 2018

C.M.S.A.(MD)No.18 of 2018

R.Vasudevan : Appellant/Appellant/ Petitioner

Vs.

S.Valli : Respondent/Respondent/Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act r/w. Section 100 of CPC, to set aside the judgment made in CMA.No.24 of 2012 dated 03.08.2013 on the file of the District Court, Trichy confirming the Order and decretal order dated 06.04.2011 made in HMOP.No.169 of 2003 on the file of the Principal Subordinate Court, Trichy and allow this Civil Miscellaneous Second Appeal.



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R.Vasudevan

: Appellant/Appellant/ Respondent

Vs.

S.Valli

:Respondent/Respondent/Petitioner

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act r/w. Section 100 of CPC, to set aside the judgment made in CMA.No.25 of 2012 dated 03.08.2013 on the file of the District Court, Trichy confirming the Order and decretal order dated 06.04.2011 made in HMOP.No.199 of 2004 on the file of the Principal Subordinate Court, Trichy and allow this Civil Miscellaneous Second Appeal.

In both cases

For Appellant : Mr.S.Sarvagan Prabhu

For Respondent : Mr.A.Balakrishnan

JUDGMENT

The Appellant/husband has filed these Civil Miscellaneous Second Appeals against the judgment dated 03.08.2013 passed in CMA. Nos. 24



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and 25 of 2012 on the file of the District Court, Trichy confirming the Order and decretal order dated 06.04.2011 made in HMOP.No.169 of 2003 and 199 of 2004 on the file of the Principal Subordinate Court, Trichy.

2. The case of the petitioner / husband in both petition in brief.

The marriage between the petitioner and respondent took place on 16.03.2000. At the time of marriage, the petitioner was employed in Muscat. He took the respondent to Muscat in October 2000 as some delay had occurred in obtaining the visa. From the date of marriage the respondent was made complaints against his mother and cousin sisters. After joining with him at Muscat the respondent began to exhibit abnormal behavior suspecting his character and even started enquiring with neighbours about the petitioner marital status. On occasion, she stood behind holding a knife. When questioned, she stated that she did not even need knife to kill him and that she could easily do so by mixing poison in his food. Though she wanted to secure a job. However, obtaining a job for women in Muscat was not easy. The respondent wished to return to India to resume her employment at Anna University contrary, to the wishes of the petitioner. Subsequently she returned to



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India on 16.04.2001. Thereafter both the parties have been residing separately. The mediation efforts taken for reunion did not yield the desired result. The respondent has caused cruelty and harassment, to the petitioner. The marital relationship has irretrievably broken down. Hence, the petitioner has filed HMOP.No.169 of 2003 for dissolution of marriage.

3. The case of the respondent/wife in both the petitions in brief:

The respondent is a well educated, Ph.D. Degree holder and she is employed at Anna University at the time of marriage. After marriage, the petitioner alone went to Muscat and after some time, he invited her to join with him at Muscat. The parties lived together in Muscat for 6 months. During this period, the petitioner failed to act as a dutiful husband and he refused to provide conjugal companionship to the respondent. Without any reasonable cause, the petitioner treated the respondent with cruelty. He had no intention of keeping the respondent at Muscat. Consequently, he did not permit her to attend the interview scheduled at Caledonian College of Engineering at Muscat and thereafter drove her out of matrimonial home and compelling her to return to India after approximately 6 months.



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4. After the respondent returned to India the petitioner without any prior notice, filed the petition for divorce on imaginary and baseless, allegations. Despite cruelty and harassment inflicted upon her, the respondent is ready and willing to cohabit with the petitioner and is not inclined to seek a divorce. She desire to lead live peaceful matrimonial life, with her husband and has therefore filed the petition for restitution of conjugal rights in HMOP.No.199 of 2004.

5. Before the trial Court the petitioner/husband examined himself as P.W.1 and Ex. P.1 was marked. The respondent/wife examined herself as R.W.1 and Exs.R1 to R46 were marked.

6. After conducting a joint trial and considering the evidence and records, trial court by a common order allowed the petition filed by the respondent/wife for restitution of conjugal rights and dismissed the petition filed by the petitioner/husband for dissolution of marriage in a common order.



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7. Aggrieved by the said common order, the husband filed CMA.Nos.24 and 25 of 2012 before the first appellate court. The first appellate Court, after considering the evidence and records, dismissed both the appeals and confirmed the findings of the trial court. Aggrieved over the same, the husband has preferred these Civil Miscellaneous Second Appeals with the following among other grounds:

(a) That the Courts below have not properly appreciated the oral and documentary evidence let in by the appellant, the Courts below failed to evaluate the contention of the cruelty on the basis of facts and circumstances of the case.

(ii) The 1st appellate Court not given any reason for confirming the judgment of the trial Court.

(iii) That the Courts below have not properly appreciated the facts of the case and perusing the allegation made by each others, the Court could easily draw inference that there is possibility between both parties to reunion.

(iii) That the fair order and decretal order of the Courts below are liable to be set aside and hence, the learned counsel for the appellant prayed to allow these Civil Miscellaneous Second Appeals.



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8. This Civil Miscellaneous Second Appeal was admitted on the following substantial questions of law:-

i) Whether the oral evidence adduced by the appellant/husband before the Trial Court is sufficient to prove the facts of mental cruelty caused by the respondent/wife, or not?

ii) Whether it is permissible to discard the entire oral evidence of the appellant / husband without assigning any valid reasons or not?

9. Heard the learned counsel on either side and perused the materials available on record.

10. For the sake of convenience, the parties are referred to herein, as their own ranking as before the Trial Court.

11. The appellant/husband filed the divorce petition under Sections 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, 1955 seeking divorce on the ground of cruelty and desertion. The respondent/wife filed



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a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955.

12. During the course of argument, the learned counsel for the appellant submitted that the marriage between the parties solemnized on 16.03.2000 and the husband and wife have been living separately for more than 21 years. It was further contended that the marriage between the parties has irretrievably broken down leaving no possibility of reunion. The appellant counsel also relied upon the judgment rendered by the Hon'ble Apex Court in *Samar Gosh v. Jaya Gosh* reported in *AIR- ONLINE 2007 SC 347* in support of his contention.

13. He further submitted that since the wife has permanent employment at Anna University, she is not inclined to live with the husband and that this circumstances also constitutes a ground taken for divorce. He therefore, prayed that the petition filed by the husband for dissolution of marriage be allowed and that the petition filed by the wife for restitution of conjugal rights be dismissed.

14. On the other hand, the learned counsel for the respondent



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stated that the wife is not responsible for the irretrievable breakdown of the marriage; rather she has always been ready and willing to resume cohabitation, that is why she filed a petition for restitution of conjugal rights in HMOP.No.199 of 2004. It was further contended that she continues to be willing to live with a petitioner and the petition for dissolution of marriage deserves to be dismissed and the Court below properly dismissed the same and the same need no interference.

15. The learned counsel further submitted that the marriage between the parties was solemnized on 16.03.2000. At the time of marriage, the husband was employed in Muscat and the wife was employed as lecturer in Anna University. It was agreed between the spouses that after the marriage, the husband would take her along with him to Muscat. However, at the time of marriage, the husband had come to India only for 5 days holidays and within those days, he made an allegation against the wife that she had a quarrel with her mother-in-law and sister-in-law and went to abroad with an assurance that he will take her to Muscat. Though she applied for visa to travel, along with her husband in the month of June, he did not take her to Muscat. She had also applied 6 months leave, which was proved under Ex.R1. However,



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the husband did not take her immediately, she was taken her to abroad only after 6 months viz., during the month of October. Thereafter, they lived together for 6 months. Subsequently, when the wife attempted to apply for a job and attend an interview, the husband did not permit her, which led to a petty quarrel between the parties. Thereafter, the husband showed no interest in her, even went to the extent of not providing her with food. Consequently, at his instigation, she returned to India on 16.04.2001. However, her husband assured her that he would come to India and take her back. Therefore, she extended her leave for a further period of one month, with a fond hope that he would come and take her. However, contrary to his assurance, he did not do so. Subsequently, he came to India. She went to the husband's house and requested for reunion, but he refused.

16. According to the respondent, she had a cordial relationship with her mother-in-law and frequently travelled to her mother-in-law's residence and maintained regular communications with her. She further contended that she wrote several letters to her husband. To substantiate her contention the wife filed train/bus tickets under Ex.R25 to Ex.R31 and phone receipts under Ex.R13 to Ex.R24, letters addressed to her



husband under Ex.R32 to Ex.R45.

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17. Though the husband made several allegations stating that she had quarrelled with her mother-in-law and sister-in-law, he has not produced any documents or evidence to substantiate his contention.

18. During trial, the husband filed only one exhibit viz., the marriage invitation. In contrary, the wife filed 46 exhibits demonstrating her consistent willingness to live with her husband.

19. One of the further ground for divorce raised by the husband was that the wife had not adopted the lifestyle of the foreign country. Such content cannot be amount to cruelty, as it is unreasonable to expect an Indian woman to immediately adopt a foreign lifestyle soon after the marriage.

20. Though the appellant/husband and the respondent/wife have been living separately for a long time, the evidence shows that their separation was due to husband's unwillingness to take her back. The respondent proved that she had filed a petition for restitution of conjugal



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rights and made several attempts to resume cohabitation with her husband. Therefore, the dissolution of marriage cannot be granted on the ground of irretrievably broken down of the marriage, as the husband failed to show that the wife is the reason for the same.

21. The ground urged by the appellant for dissolution of marriage was not established by the husband with substantial evidence or supporting document. On the other hand, the wife has proved her continuous willingness to rejoin her husband and to resume cohabitation.

22. The allegation levelled against the respondent was not proved and therefore, the first appellate Court has correctly dismissed the petition. This Court finds no merit in the Civil Miscellaneous Second Appeal and hence, the same is liable to be dismissed.

23. Such being the position, this Court do not find any infirmity in the findings of the Courts below. Accordingly, the substantial questions of law are answered.

24. In the result, these Civil Miscellaneous Second Appeals are



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dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.11.2025

Index : Yes / No

NCC : Yes / No

RM

To

1.The District Court,
Trichy.

2.The Principal Subordinate Court,
Trichy.

Copy to

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



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R.POORNIMA, J.

RM

Judgment in
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