

C.M.S.A.(MD)No.1 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.1 of 2017

Anuradha

... Appellant / Appellant / Petitioner

Vs.

Chockalingam

... Respondent / Respondent/ Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 100 of Hindu Marriage Act, 1995, read with Section 28 of CPC, to set aside the Judgment and decree of the learned 3rd Additional District Judge, Tirunelveli, dated 21.09.2016 in H.M.C.M.A.No.26 of 2015 confirming the Judgment and Decree of the Subordinate Judge, Sankarankoil in H.M.O.P.No.44 of 2014 dated 14.07.2015.

For Appellant : M/s.M.Mahalakshmi

For Respondent : Mr.B.N.Rajamohamed

JUDGMENT

This Civil Miscellaneous Second Appeal has been preferred against the Judgment and decree of the learned 3rd Additional District

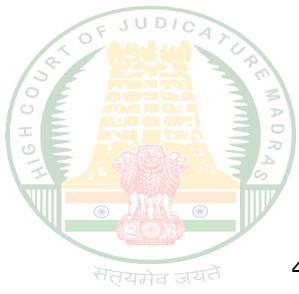


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Judge, Tirunelveli, dated 21.09.2016 in H.M.C.M.A.No.26 of 2015 by confirming the Judgment and Decree of the Subordinate Judge, Sankarankoil in H.M.O.P.No.44 of 2014 dated 14.07.2015.

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.

3.The petitioner is the wife and the respondent is the husband. The petitioner / wife filed a petition for divorce in H.M.O.P.No.44 of 2014 on the file of the Subordinate Judge's Court at Sankarankovil on the grounds of desertion and cruelty. The same came to be dismissed by the order of the said learned Trial Court on 14.07.2015. An appeal was preferred in H.M.C.M.A.No.26 of 2015 by the petitioner before the 3rd Additional District Judge's Court at Tirunelveli and the learned 1st Appellate Court found it unnecessary to interfere with the verdict of the learned Trial Court and dismissed the H.M.C.M.A.No.26 of 2015 on 21.09.2016. Challenging the same, the appellant is before me in this case.



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4.The petitioner was earlier married and was divorced by mutual consent. Similarly, the respondent husband was also previously married and his first wife has passed away. Following which, the parents of the respective parties arranged a marriage between the petitioner as well as the respondent on 14.06.2010. The marriage between the petitioner and the respondent husband was held at Sri Ganapati Mahal in the presence of friends and relatives on 14.06.2010. At the time of marriage, the respondent husband was working at a call center in Bangalore functioning under the company, namely, IBM. The petitioner is also employed and she is the manager in Indian Oil Corporation.

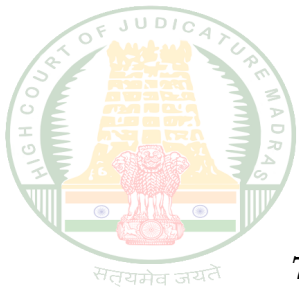
5.The factum of the first marriage of the petitioner with one Nalla Samy, S/o.Veeranam, Thummakundu Village, Usilampatti, Madurai District, was well informed to the respondent even before their marriage was arranged by the elders of both the parties. The respondent showed less interest in consummating the marriage and he avoided consummation for the first few weeks for the reason that he was tired due to the various work in which he was engaged relating to their marriage. The petitioner believing his words, was patient enough to take forward her matrimony with the respondent with peace and calm.



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Within a week of their marriage, the petitioner and the respondent moved to a rental house at Bangalore where the petitioner was residing.

6.However, the respondent avoided coming home during nights explaining that he was engaged in night duties and returned home only during daytimes when the petitioner had been away from home for her job and even before the petitioner could reach her home after job, the respondent willfully left the matrimonial home citing his working conditions. While so, all of a sudden, the respondent informed that he had resigned his job in IBM. Thereafter the respondent contacted the bank officials in which the petitioner availed a loan and sent a mail to them informing that he is likely to divorce the petitioner at the earliest, causing untold mental agony to the petitioner. Despite the petitioner's best efforts to conciliate with the respondent and to consummate her marriage with her husband, the respondent had been reluctant to consummate their marriage and had been irresponsible and commenced compelling the petitioner to fund him for commencing a new business. The petitioner's non cooperation in financing his business had further aggravated the indifferences between the petitioner and the respondent.

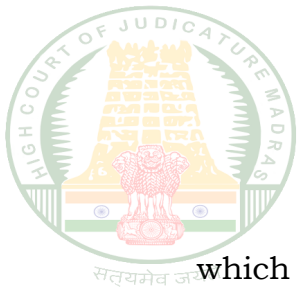


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7.The respondent went to the extent of threatening the petitioner that he videographed the petitioner while she was changing her dress in her bedroom and further threatened her that he would upload the same in social media. As a result of which, the situation in the life of the petitioner and respondent had reached a point of no return and the respondent voluntarily left the matrimonial home at Bangalore within three months of marriage, that is, in the month of September 2010. Thereafter the details of the respondent is not known to the petitioner and the petitioner lost hope in her life, since it was her second attempt in which she tried to reconcile her life by commencing a matrimony with the respondent. Under such circumstances, she was left with no other option rather filing a petition for divorce on the grounds of desertion and cruelty before the learned Trial Court.

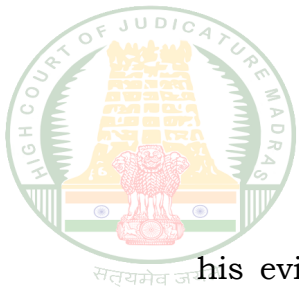
8.The respondent has filed a counter before the learned trial court refuting the allegations set out in the petition for divorce, fully denying the various allegations of cruelty and desertion and claimed that he had never ever inflicted any kind of cruelty on the petitioner, but he was actually chucked out of the matrimonial home by the petitioner along with her father, forcibly by treating him inhumanly with unparliamentary words. Not able to withstand the emotional abuse to



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which he was subjected to he was forced to leave the matrimonial home, but he is of the fond hope of reconciling his indifferences with his wife and live with her all through his life. The respondent in his counter affidavit refuted the claim of the petitioner that he had resigned a job from IBM and he categorically submitted that he is continuing to work in IBM. However, he admitted the fact that the marriage was not consummated not because of his mistake but because of the non cooperation from the petitioner and on that basis, the respondent sought for dismissal of the HMOP.

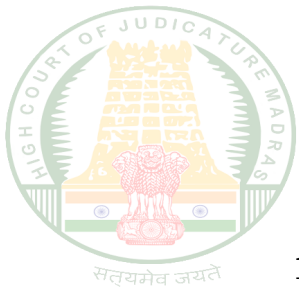
9.The learned Trial Court had examined two witnesses, that is, the petitioner as PW-1 and the respondent is RW-1. Seven documents were marked on the side of the petitioner as Exhibit P1 to P7 and six documents were marked on the side of the respondent as Exhibit R-1 to R-6. Ex-B3 was marked through the petitioner who deposed his evidence as PW-1 and the said document was a e-mail dated 22.01.2011 sent by the respondent husband to the bank DHFL wherein the petitioner was maintaining an account and availed a loan, he had made an enquiry by the mail that whether the loan availed by the petitioner would trouble him in the event of filing a petition for divorce by him before a competent Court. The respondent had deposed



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his evidence and had marked medical certificate dated 17.09.2011 as Exhibit R-3 proving his potency and his medical fitness to consummate a marriage. He also marked the DVD as Exhibit R-6 with the recorded conversation between the respondent, petitioner wife and her father in which they have emotionally abused the respondent. However, the learned Trial Court carefully perusing the various materials available on record and the deposition deposed by the petitioner and the respondent and the respective pleadings, came to a decision that the petitioner had miserably failed to prove the factum of cruelty and further the case of desertion was also not properly proved by the petitioner by observing that the petitioner had miserably failed to prove that the respondent had been willfully living away from the petitioner without an intention to reconcile. Accordingly, the HMOP was dismissed.

10. Against which the petitioner filed an first appeal in H.M.C.M.A.No.26 of 2015 before the 3rd Additional District Judge, Tirunelveli. After considering the arguments put forth by the respective counsels for the petitioner as well as the respondent and also considering the materials available on record, the 1st Appellate Court did not find it necessary to interfere with the order of dismissal passed by the learned Trial Court and the matter is before me by means of second appeal by the petitioner wife.



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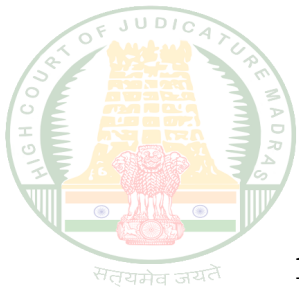
11.The learned counsel for the petitioner submitted that the learned Trial Court ought not to have dismissed her petition for divorce, despite the admission made by the respondent that the marriage was not at all consummated. Having not consummated with the marriage and having left the matrimonial home voluntarily within three months of marriage with no children the petitioner is living separated from the respondent for the past more than 11 years and the relationship has reached a point of no return and forcing the petitioner to live in a matrimonial life without consummation itself would amount to cruelty. The learned Trial Court failed to appreciate this aspect and proceeded to dismiss her petition for divorce despite the admission made by the respondent that marriage was not consummated and they are not living together beyond the period of three months from the date of matrimony and pressed for allowing the appeal.

12.Per Contra, the learned counsel for the respondent categorically submitted that Courts are functioning not to separate the families but to take the best efforts to reconcile when even if one of the partner is sincerely willing to save the matrimony. As far as the respondent is concerned, he had lost his first wife and with a fond hope of undoing his loneliness and taking forward a happy married life, he married the petitioner. All the allegations made by the petitioner's



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counsel that he had subjected her to cruelty, claiming that she has married him for the second time is baseless. She had failed miserably to prove the said aspect before the learned Trial Court except the email which the respondent had sent to the bank where he genuinely claimed if he would be liable even if he is going for a divorce cannot be taken as an act of cruelty as against the respondent. He never left the matrimonial home voluntarily but the verbal abuse inflicted on him by the petitioner as well as her father had created an atmosphere of animosity in the matrimonial home to that extent that he could not live peacefully in the said house if he continued to live there and hence he was left with no other option rather leaving the house. However, he had contested the petition for divorce which was filed by his wife with a fond hope to reconcile. Despite his sincere efforts taken before the mediation and counselling given before the learned Trial Court with his dream of reconciling his marriage, continuously and consistently, the same was resisted by the petitioner. The petitioner has taken the case for first appeal, even where the respondent emerged successful. Even after all these years, with the fond hope of getting a favorable verdict only for the purpose of rejoining his wife the respondent is actively contesting the second appeal and pressed for dismissal of the second appeal.



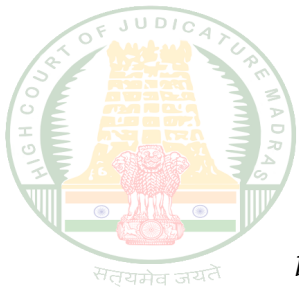
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13.The learned counsel for the petitioner relying upon the judgment in Naveen Kohli vs. Neelu Kholi reported in (2006) 4 SCC 588 : 2006 SCC Online SC 311 submitted that the Hon'ble Supreme Court considering the case of Kanjan Devi versus Pramod Kumar Mittal had observed that if the parties were living separately for more than 10 years, then the Court should come to a conclusion that the marriage between the parties had irretrievably broken down and that there was no possibility of reconciliation and on that basis, the marriage between the parties were dissolved by a decree of divorce.

14.Relying upon yet another case in Rakesh Rakesh Rahman Vs. Smt.Kavita reported in (2023) 3 SCR 552, she submitted that in the presence of bitter allegations of loyalty and desertion from both the sides, the marital relationship has broken down irretrievably since there is a long separation of 25 years and absence of cohabitation and the relevant portion of the said case is extracted as follows:

“18.We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. 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

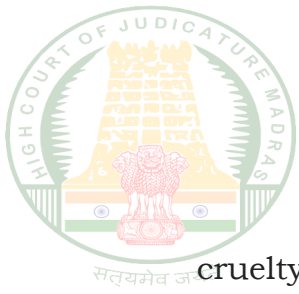


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between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and 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 inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.”

15. Even in the instant case, the respondent husband had admitted that the marriage was not consummated. The factum of separation within three months of marriage was also admitted by the respondent husband, though he had claimed that it was not voluntary but because of the emotional abuse to which he was subjected to. However, considering the fact that both the petitioner as well as the respondent had experimented their life for a second time were not able to take forward their life by cohabiting the marriage and further augmenting situations in the matrimony so as to give birth to children. In the absence of cohabitation and in the event of separation within a period of three months from marriage, I am bound to follow the verdict of the Honourable Apex Court observing that the long separation and absence of cohabitation and complete breakdown of all meaningful bonds and the existing bitterness between the two has to be read as



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cruelty under section 13-1(i)(a) of the Hindu Marriage Act, 1955. In the instant case, though the respondent husband is willing to reconcile the petitioner wife has not shown even an iota of willingness to reconcile. Obviously the case cannot be appreciated on the grounds of desertion, because the factum of animus deserendi is absent in this case.

16.Fully fortified by the observation of the Honourable Supreme Court that long separation and absence of cohabitation and complete breakdown of all meaningful bonds would amount to cruelty, I hereby allow this Civil Miscellaneous Second Appeal on the grounds of cruelty deviating from the verdict of the Trial Court as well as the 1st Appellate Court.

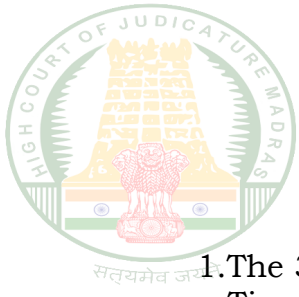
17.Accordingly, this Civil Miscellaneous Second Appeal is allowed.

There shall be no order as to costs.

13.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To



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1.The 3rd Additional District Judge,
Tirunelveli.

2.The Subordinate Judge,
Sankarankoil.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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