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C.M.A.(MD)NO.854 OF 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

C.M.A.(MD)No.854 of 2018

Emaldarani

... Appellant / Petitioner

Vs.

Joseph

... Respondent / Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, to set aside the judgment and decree dated 10.07.2018 passed in I.D.O.P.No.19 of 2017 on the file of the learned Family Court of Sivagangai and allow the appeal.

For Appellant : Mr.C.Deepak

For Respondent : No appearance.

* * *

J U D G M E N T

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

Heard both sides.

2. The appellant Emaldarani married the respondent Joseph on 14.11.1999 at Rajakambeeram as per the Christian rites and customs.



Two children were born through the wedlock. The appellant filed I.D.O.P.No.19 of 2017 on the file of the Family Court, Sivagangai under Section 10(1)(x) of the Indian Divorce Act seeking dissolution of marriage on the ground of cruelty. The respondent filed counter opposing the prayer. The appellant examined herself as P.W.1 and marked Ex.P.1 and Ex.P.2. The respondent examined himself as R.W.1 and marked Ex.R.1 and Ex.R.2. The Judge of the Family Court vide order dated 10.07.2018 dismissed the OP. Challenging the same, this appeal came to be filed.

3. Notice issued to the respondent was duly served and the name of the respondent has also been printed in the cause list. But he has not chosen to enter appearance.

4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal and called upon this Court to set aside the impugned order and grant relief as prayed for.

5. Since the respondent had not entered appearance, we went through the records ourselves.



6. It is seen that the appellant and the respondent are living separately for the last 11 years. The appellant is a tailor by avocation. She had deposed before the Court below that her husband was originally employed as conductor and then as canteen manager and then as an insurance agent. It appears that he had contracted debts and consequences were visited on the family.

7. It is the duty of the husband as a head of the family to ensure that the family has the requisite financial support.

8. The financial crisis caused as a result of the husband's acts may not by itself constitute cruelty. But then, 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 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."

9. We are satisfied that the marital relationship has irretrievably broken down. The order impugned in this appeal is set aside. I.D.O.P. No.19 of 2017 on the file of the Family Court, Sivagangai is allowed as prayed for. We are constrained to take the aforesaid decision primarily for the reason that the respondent has not chosen to contest the appeal before this Court. We are also satisfied that the ground of cruelty stands made out in view of the aforesaid decision of the Hon'ble Supreme Court. This civil miscellaneous appeal is allowed. No costs.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)
9th January 2025



NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To:

1. The Judge,
Family Court,
Sivagangai.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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