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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-06-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR JUSTICE K. RAJASEKAR

C.M.A No. 2431 of 2016

and

C.M.A No.2432 of 2016

Viswanathan

..Appellant in both
Appeals

Vs

Renuka

..Respondent in both
Appeals

Common Prayer: These appeals filed under Sections 19 of the Family Courts Act, 1984 against the order and decretal order dated 20.04.2016 made in M.O.P.No.220 of 2006 and M.O.P.No.59 of 2007 on the file of the Family Court, Puducherry.

For Appellant(s): Mr.T.P.Manoharan, Senior Advocate
For Mr.T.M.Naveen in both appeals

For Respondent(s): Mr.R.Subramanian
for Mr.V.V.Sairam in both appeals.



COMMON JUDGMENT

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(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The petitioner in M.O.P.No.59 of 2007 on the file of the Family Court at Puducherry, who was the respondent in M.O.P.No.220 of 2006 before the same Court is the appellant herein, aggrieved by the dismissal of M.O.P.No.59 of 2007 which petition had been filed by him seeking dissolution of marriage on the ground of cruelty and desertion and further aggrieved by the decree in M.O.P.No.220 of 2006 which was filed by the respondent herein seeking restitution of conjugal rights. In effect, the husband is before this Court questioning dismissal of his petition seeking dissolution of marriage with the respondent, which petition had been filed on the grounds of cruelty and desertion.

2.The parties would be referred as petitioner and the respondent. The term petitioner would indicate the appellant and the term respondent would indicate the respondent herein. The appellant is the husband and the respondent is the wife.

3.The marriage between the petitioner and respondent was solemnized on 10.02.2000 at Puducherry. They were both close relatives. Their respective mother and father were sister and bother. It had been contended by the



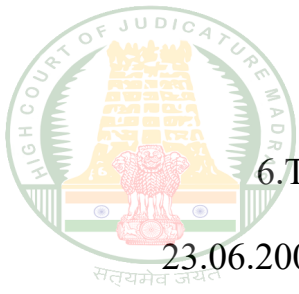
petitioner that the respondent behaved in a very strange, hostile and arrogant from the date of the marriage. It had been contended that she was in the habit of taking a knife in her hands and threatened him that she would cause injuries to herself. It had been stated that she threatened she would lodge a complaint before the police against him. The petitioner contended that in the hope that she would relent and correct herself and lead a normal and happy marital life with him, he had borne all these acts of the respondent. It was further contended that he was also in fear of the father of the respondent who had political influence. Thereafter, they had gone over to the United States of America and even there, her attitude did not change. There were two times when the respondent became pregnant once in the USA and the next time in India and on both the occasions, it was found that, it was an abnormal pregnancy and therefore, the fetus had to be aborted.

4. It had been further contended by the petitioner, in his petition seeking divorce, that the respondent, in May 2001 at USA, in the middle of the night started walking around leaving the house and returned back only after about 45 minutes. It had been contended that this act caused mental agony to him. His job prospects were also affected and his ratings were rated poorly by the employer. It had been further stated that he had constructed a house at Villupuram and in order to conduct a house warming festival had come back to India in August 2001 with return air tickets. The indifferent attitude of the respondent



continued. After about four weeks, they had to go back to USA, but however, the respondent wanted to stay back in India for a period of two weeks. She again conceived and as stated above, the fetus was aborted. The petitioner, however, hoped that the marital life would turn better and did not complain about these acts.

5.It had been contended that, in July 2002, the petitioner's family decided to celebrate the Sastipathapoorthi of his parents and they again came back to India. The petitioner alone left back to USA and the respondent agreed to come back in November 2002. It had been stated that when she came back, at the airport, according to the petitioner, she ignored him and walked separately to the car and asked him to pick up the luggage. It had been stated that these acts constituted cruelty committed by the respondent on the petitioner herein. She again continued with the habit of taking the knife and accusing him. It had been stated that the father the petitioner suffered a massive second heart attack and died on 10.04.2004. It had been stated that the petitioner and the respondent thereafter, came back to India with return air tickets scheduled to leave in May 2004. It had been contended that, however, the respondent was extremely indifferent to the pain and suffering of the petitioner. The petitioner had to join his job at USA and had to leave back to USA on 17.05.2004. The respondent had refused to accompany him and stayed back in India.



6. Thereafter, the younger sister's marriage of the respondent was fixed on 23.06.2004 and she stayed back for the same. It is the contention of the petitioner that her visa was valid up to 05.07.2004 and she had the option of going to USA on or before that particular date. He called her and requested her to join him in USA. It had been contended that, however, she refused and did not join him in USA. It was contended that on and from 17.05.2004, the petitioner and the respondent had been living separately. The ground of desertion had been laid, on that particular fact, that the respondent had refused to join with the petitioner on and from 17.05.2004. It had been further contended that without informing him, in 2004 she joined a two years decree course in M.Sc. (Computer Science). She did not return to the matrimonial house. It was under those circumstances that the petition had been laid by the petitioner seeking dissolution of marriage on the grounds of cruelty and desertion.

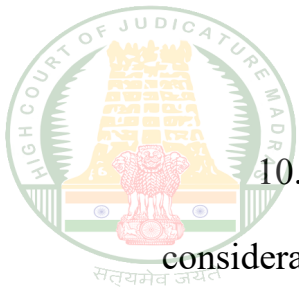
7. The respondent filed a counter affidavit denying and disputing all these facts. It had been stated that the marriage had been conducted by bestowing sufficient sreedhana and cash to the petitioner herein. She stated that she left with the petitioner to USA immediately after the marriage. They came to India in August 2001 and subsequently, for the Sastiaphthapoorthi of the parents. It was stated that in April 2004, when the father of the petitioner died, both of them came back to India with the understanding that the petitioner would take



the respondent back by arranging visa for both the respondent and his mother. It had been contended that with the knowledge of the petitioner, she was left in Puducherry in June 2004 and it was the petitioner who deserted her. The extension of visa papers were sent only for his mother and not for her. As a matter of fact, he had collected the visa papers and left the country and therefore, there was no possibility of the visa being extended by her. It had been therefore contended that having left her in India on and from June 2004, the petitioner cannot take advantage of his act of deserting her and state that the marriage should be dissolved on the ground of her deserting him. The allegations of cruelty were all specifically denied by her in her counter affidavit.

8.The respondent herein had filed MOP No.220 of 2006 seeking restitution of conjugal rights and claimed that the petitioner herein had deliberately abandoned her on and from June 2004 and claimed that she was ready and willing to lead a marital life with him and filed the petition seeking conjugal rights.

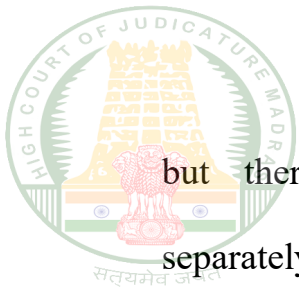
9.A counter affidavit had been filed on behalf of the petitioner again stating that it was the respondent herein who had deserted the marital house. The various acts of allegations of cruelty were again repeated.



10. Both MOP No.220 of 2006 and MOP No.59 of 2007 were taken up for consideration together by the Family Court, Puducherry and a common order was pronounced on 20.04.2016.

11. During trial, the respondent herein / wife was examined as PW-1. She examined two further witnesses as PW-2 and PW-3. The appellant herein, husband referred as the petitioner in this narration was examined as RW-1. He also examined two further witnesses as RW-2 and RW-3. The respondent / wife marked Exs.P1 to P18. She marked the Marriage Invitation as Ex.P5, the marriage photo as Ex.P6 and further photos as Exs.P7 to P9, the Marriage Registration Certificate as Ex.P10 and notices from the Court at California as Exs.P12 and P13 and the copy of her passport as Ex.P18. The appellant herein / husband marked Exs.R1 and R21. The documents again included the Marriage Invitation and Marriage Registration Certificate and the copy of the order in MC No.48 of 2006 as Ex.R7. The copy of the application to extend / change non-immigrant status of the respondent herein were marked as Exs.R11, R12 and R13. The copies of his passport were marked as Exs.R20 and R21. Exs.C1 to C4 were also marked as Court documents.

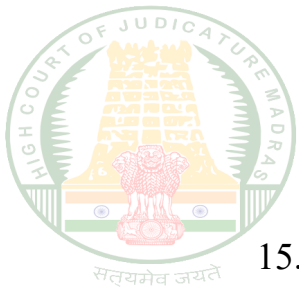
12. On analysis of the oral and documentary evidence and of the pleadings, the Family Court, Puducherry held that the allegations in the petition had not been proved. It had been stated that both of them were well educated,



but there were differences of opinion in the marriage life. They had lived separately from May 2004. It was held that it was the petitioner who had driven out the respondent from the matrimonial home. It had been stated that the respondent had filed a petition for restitution of conjugal right. The petitioner had also filed a case for dissolution of marriage at USA. He had not taken any steps to live with her. The Family Court rejected the evidence of petitioner that there was bonafide on his part. On the other hand, it had been stated that it would not be possible for the respondent to join with him particularly, since the visa had expired and the onus was on him to extend the visa. The status of the case at Family Court, California had also not been disclosed in entirety by the petitioner. Holding that there had been no deliberate desertion on the part of the respondent, the Family Court dismissed the petition for divorce and granted restitution of conjugal rights.

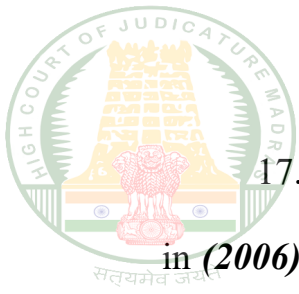
13.Challenging the same, the appellant herein / husband is before this Court.

14.It must also pointed out that incidentally in a separate Maintenance Case, on and from October 2006, the appellant herein is paying maintenance of Rs.25,000/- every month to the respondent. The learned Senior Counsel for the appellant contended that till May 2026 a sum of Rs.59,00,000/- had been paid to the respondent herein.



15. We heard extensive arguments advanced by the learned Senior Counsel on behalf of the appellant and the learned counsel for the respondent.

16. The learned Senior Counsel for the appellant/petitioner took the Court through the facts of the case. He pointed out that the marriage between the parties had been solemnized in the year 2000 and they are living separately from 17.05.2004. The learned Senior Counsel contended that they had both come back from the USA in April 2004 owing to the death of the father of the petitioner with an understanding that they would return back after the ceremony. However, the respondent did not come back and stated that, she would remain back in India for a further period of time. The visa was to expire on 17.05.2004. It was contended that she should have joined back on or before that particular date. She did not. It was therefore contended by the learned Senior Counsel that on and from 17.05.2004, it must be deemed that the respondent had deserted the appellant herein. The acts of cruelty had also been pointed out by the learned Senior Counsel and it was contended that all these acts would indicate that the respondent had committed continuous acts of cruelty on the petitioner. It was therefore contended that this Court should dissolve the marriage solemnized between the parties.



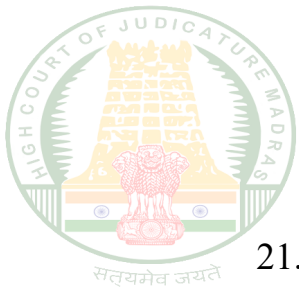
17. The learned Senior Counsel placed reliance on the judgment reported in **(2006) 4 SCC 558, Naveen Kohli Vs. Neelu Kohli**. A careful reading of the

judgment shows that the Hon'ble Supreme Court had based their conclusion on irretrievable breakdown of marriage, which is not a ground, on which this Court could grant dissolution of marriage, since that particular ground is not incorporated in the Statute.

18. The other precedents relied were also on similar lines.

19. The learned counsel for the respondent contended that it was the petitioner who had deserted the respondent and had not taken any efforts to renew the visa. It was specifically pointed out that the petitioner had left the country with the visa papers and unless the visa was renewed, there was no possibility of the respondent ever joining the petitioner in USA or even leaving this country. It was contended that the petitioner cannot take advantage of his own wrong in not extending the visa of the respondent and cannot lay the blame on the respondent and state that she had deserted the marital life. With respect to the acts of cruelty, the learned counsel stated that the same had been specifically denied and disputed by the respondent.

20. We have carefully considered the arguments advanced and perused the material records.



21. The marriage between the petitioner and the respondent had been conducted on 10.02.2000. The grounds on which the petitioner sought divorce were that the respondent had committed acts of cruelty and had deserted him on and from 17.05.2004.

22. We would take up the ground of desertion first. The date of desertion is said to be 17.05.2004. The petitioner is admittedly residing in USA. He is employed there. They both came back to India in April 2004 to perform the ceremonies owing to the death of the father of the petitioner. The visa of the respondent expired on 17.05.2004. It is the case of the petitioner that the respondent did not join him on and from 17.05.2004. But however, it is the case of the respondent that the visa having expired, she could not leave the country. It had been very specifically stated by her that the petitioner had taken back the visa papers with him to USA, but had taken care to extend the visa of his mother. She was left in Puducherry high and dry. When that stand had been taken by the respondent, the onus was on the petitioner to show that he taken constructive steps to extend the visa of the respondent. There is no evidence produced on that aspect. Unless the respondent has a visa to enter USA, she can never enter the country. She cannot live with him. The petitioner cannot thereafter blame that she deserted him. It was the responsibility of the petitioner to extend the visa. Having not taken that particular step, the petitioner cannot



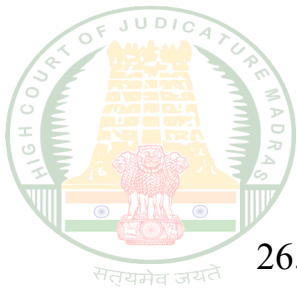
rely on his own wrong and allege that the respondent had deserted him. We therefore reject the ground of desertion asserted by the petitioner.

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23. With respect to the issue of cruelty, we would place reliance on the judgment of the Hon'ble Supreme Court in *Samar Ghosh V. Jaya Ghosh reported in (2007) 4 SCC 511* which was also cited by the learned Senior Counsel for the petitioner.

24. We would place specific reliance on paragraph No.101 where instances of human behaviour which could be attributed as acts of cruelty had been stated. Though, in sub clause No.14 of paragraph No.101, it had been stated that long period of continuous separation may be concluded that the matrimonial bond is beyond repair, the reason for separation should be examined by the Court.

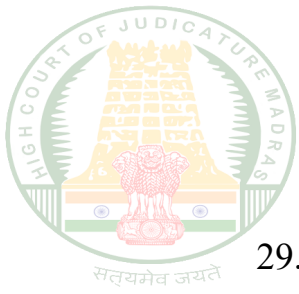
25. In the instant case, the reason for separation is the impossibility of the respondent ever going to USA in the absence of the visa papers. The visa could be extended only by the petitioner. It is the specific contention that he had taken the papers back to USA. There is no contra evidence produced by the petitioner on this regard. There is no further evidence that he came to India within the period of expiry of the visa and took efforts to extend the period of visa and took efforts to take back the respondent to USA.



26. The instances of cruelty mentioned are immediately followed by staying together by the petitioner and the respondent. To a little extent, the acts could be stated as having been condoned by the petitioner. But the last act contended was that, when she went to USA, she ignored him in the airport and walked away. But thereafter, they continued to stay in USA and came back to perform the ceremonies of his father who had died. Therefore, every act which were complained as an act of cruelty stood condoned by subsequent cohabitation between the parties.

27. Mere scratches in the marital life for a short and brief period of three years cannot be considered as continuous cruelty. There has been a cessation of relationship on and from May 2004, but however, the reason for the same as repeatedly pointed out by us, was that the appellant had not taken sincere efforts to extend the visa and in the absence of such evidence, we are unable to hold that the respondent had deserted the petitioner.

28. With respect to the acts to cruelty, as stated, they had been subsequently condoned by living together and even these allegations had not been admitted by the respondent herein. She had very specifically denied each and every allegation made by the petitioner. The allegations therefore remained only allegations and not proved in manner known to law.



29. We are therefore not inclined to interfere with the common order passed by the Family Court Puducherry in MOP Nos.220 of 2006 and 59 of 2007 dated 20.04.2016. Accordingly, these Appeals stand dismissed. No costs.

(C.V.K.,J.) (K.R.S.,J.)
17-06-2026

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

To

1. The Family Court, Puducherry.
2. The Section Officer,
VR Section, Madras High Court.



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CMA Nos. 2431 & 2432 of 2



**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

smv

CMA Nos. 2431 & 2432 of 2016

17-06-2026