



WEB COPY

CMA No. 3566 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-06-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

CMA No. 3566 of 2019

Gausalya

..Appellant(s)

Vs

Hemanand

..Respondent(s)

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 to set aside the fair and final order order dated 01-03-2017 made in FCOP No. 471/2013 on the file of the Family Court, Salem.

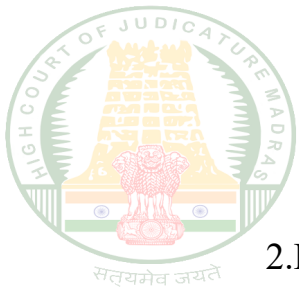
For Appellant(s): Mr.P.Valliappan, Senior Advocate
For M/s.P.V.Law Associates

For Respondent(s): Mr.Hari Hara Sudhan

JUDGMENT

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

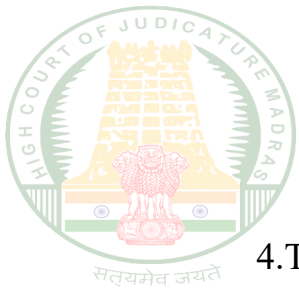
The Appeal has been filed under Section 19 of the Family Courts Act, 1984 against the fair and final order order dated 01.03.2017 in FCOP No.471 of 2013, on the file of the Family Court, Salem, by the respondent therein/wife.



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2.FCOP No.471 of 2013 had been filed by the respondent herein/husband seeking dissolution of the marriage which had been solemnised between him and the appellant herein on 28.10.2012 under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955, in short on the ground of cruelty.

3.Unfortunately, the said proceedings did not have a smooth passage. It must also be noted that quite independent of these proceedings, the appellant herein had also filed FCOP No.198 of 2015 seeking restitution of conjugal rights. Both FCOP Nos.471 of 2013 and 198 of 2015 were disposed of by the Family Court, Salem, by a common judgment dated 01.03.2017. It must however be further noted that the appellant herein had been set ex-parte in FCOP No.471 of 2013 and therefore, though the learned Trial Judge had written quite an extensive judgment, it had been done so without reference to any of the defences taken by the appellant. It is to be further noted that the appellant herein had actually filed a counter affidavit but had not tendered evidence. The learned Trial Judge had set her ex-parte and on the basis of the available records, granted dissolution of marriage in FCOP No.471 of 2013 and dismissed her petition in FCOP No.198 of 2015 seeking restitution of conjugal rights. Questioning the said judgment in FCOP No.471 of 2013, though it could be termed as an ex-parte judgment, the present appeal had been filed.

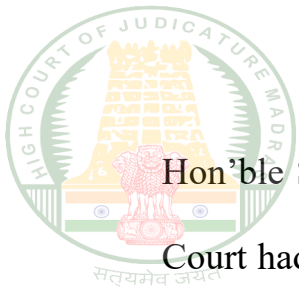


4.The law provides for an appeal to be filed as against an ex-parte judgment. It also provides for an application to be filed to set aside the ex-parte order and to seek permission to participate again before the Trial Court.

5.The appellant herein had taken up the alternative provision available to file an appeal against the judgment in FCOP No.471 of 2013, particularly because she had filed a counter affidavit and there was an obligation on the Trial Court to examine whether the respondent herein had proved in the manner known to law each one of his allegations relating to cruelty.

6.Before this Court, this Appeal had come up for consideration on 28.01.2025 before a Co-ordinate Division Bench and by judgment dated 28.01.2025, the Co-ordinate Division Bench on discovering that the respondent had not paid the maintenance as directed by the Trial Court and that there were arrears, had struck off the defence of the respondent herein or rather, the grounds raised seeking dissolution of marriage and had proceeded to allow the present Civil Miscellaneous Appeal and consequently dismissed FCOP No.471 of 2013.

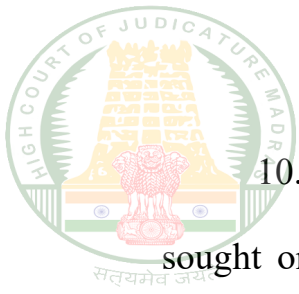
7.Challenging that particular order, the respondent herein had filed initially a Review which was also dismissed and thereafter, had approached the



Hon'ble Supreme Court. By an order dated 08.05.2026, the Hon'ble Supreme Court had noted that the entire arrears as on the date of the order had been paid by the respondent husband and therefore remanded the matter back for adjudication by this Court to examine the grounds raised, particularly, relating to the allegation of cruelty.

8.We must also point out that though the ex-parte order had technically not been set aside, the Trial Court by some strange procedure had re-opened the trial proceedings in FCOP No.471 of 2013 and had permitted cross examination of the witnesses to be conducted. We are informed that PW1 who was the respondent/husband has been now partly cross examined.

9.However, owing to the remand of the Hon'ble Supreme Court, we are under obligation to examine whether the decree passed by the Family Court is justifiable or not. A perusal of the petition in FCOP No.471 of 2013 would indicate that the petition had been filed under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 seeking dissolution of marriage under the ground of cruelty. In that petition, it had been alleged that the appellant herein had not co-operated in conjugal relationship and actually hated any sort of relationship and had stayed only for seven days. She also went over to her parents' house without permission. She finally went back to her parents' house on 10.03.2013 and did not come back.



10. It must be immediately noted that dissolution of marriage was not sought on the ground of desertion but rather on the ground of cruelty. The petition thereafter proceeded that since the appellant had gone back to her parents' house, the marital tie had been cut off and that she had not discharged her duties as a "dutiful Hindu woman". It had been further contended that the parents of the respondent are also not coming out of the house to avoid comments from the neighbourhood. It was under those circumstances, contending that the appellant herein had committed acts of cruelty, the petition had been filed. The crux of the petition was that the appellant had left to her parents' house on 10.03.2013 and had not come back. Again it should be pointed out that the petition had not been filed on the ground of desertion.

11. The appellant herein had filed a counter affidavit denying and disputing the said facts. It had been stated that the petition was initially filed on 01.04.2013, within a year of marriage and the application seeking permission to file it within one year of marriage had been dismissed and thereafter, the petition was numbered as FCOP No.471 of 2013. It was therefore contended that there were material defects in the said petition itself. Even otherwise, all the allegations of the respondent had been denied specifically. It had been stated that she never deserted the respondent either on 10.03.2013 or on any other date. She contended that she was actually locked in a room by the mother of the respondent and thereafter was forcefully driven away from the house. It



was contended that the respondent did not question the acts of his mother. She contended that she performed all her marital obligations.

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12. When presented with pleadings of this nature, naturally, evidence has to be recorded to determine whether the allegations had been proved in manner known to law or not. During trial, the respondent examined himself as PW1 and examined three other witnesses as PW2, PW3 and PW4. Their statements have not been tested through cross examination. The statements therefore remained as statements. Unfortunately, what had been stated in the petition had been repeated by the witnesses.

13. The learned Trial Judge on examination of statements made during trial had proceeded to grant divorce. It is also to be noted that it is the very specific case of the appellant that during the trial she had serious medical issues and had also represented this fact before the Trial Court. We hold that the Trial Court should have taken that fact into consideration and could have granted some leverage to the appellant to participate in the trial proceedings.

14. A perusal of the judgment shows that the appellant herein was initially set ex-parte. The same was set aside on 09.02.2017. Within four days, on 14.02.2017, the matter was posted for cross examination of all the witnesses examined on behalf of the respondent herein. Thereafter, it was adjourned to



16.12.2017 giving just two further days. On that date, it had been represented on behalf of the appellant that she was not well. The Trial Judge had granted

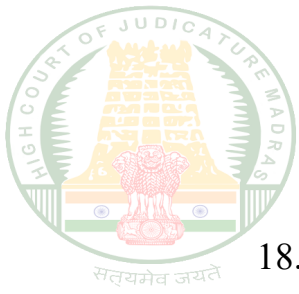
another very short date till 20.02.2017 for cross examination of all witnesses.

The case was thereafter adjourned again immediately to 22.02.2017. It had then been represented that the annual ceremonies of mother of the Senior Advocate had to be performed and therefore, time was sought for cross examination of the witnesses. The matter was adjourned within two days to 24.02.2017 and again it was further adjourned to 01.03.2017, on which date judgment was pronounced.

15.It is thus seen that very short dates had been given as adjournments though credible reasons were advanced that the appellant was not well and that the ceremonies of the mother of the Senior counsel had to be performed.

16.We hold that the very purpose of establishment of Family Courts was to attempt reconciliation between the parties. It is also to be noted that if a ground of cruelty had been raised, it must be determined whether the ground alleging cruelty had been established. The grounds alleged is that the appellant had left to her parents' house which fact has been denied in the counter.

17.Even otherwise as no date, we are informed that cross examination of PW1 had commenced before the Trial Court, though we still wonder how that step had been undertaken by the Family Court.



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18. We are also informed that as on date, the respondent herein had not paid the arrears of maintenance after the payout tendered and noted by the Hon'ble Supreme Court and a statement had been presented before us on behalf of the appellant that as on date, the total arrears of maintenance payable is Rs.27,50,000/-. It is thus clear that the appellant had been left high and dry. She had not been paid maintenance by the respondent. She had stated before the Family Court that she was not well but the said representation had fallen on deaf ears. She had sought time for cross examination and the Family Court had granted very short intervals of two days only and finally on 01.03.2017 had proceeded to deliver judgment dissolving the marriage.

19. We are of the firm opinion that the appellant herein should be granted opportunity to put forth her case, particularly since she had contested the case of the respondent and had denied and disputed each and every allegation in her counter statement. We would therefore set aside the judgment dated 01.03.2017 and direct the Family Court, Salem to conduct trial after affording an opportunity to both parties. We would place an obligation on the appellant to participate in the trial proceedings and not take unnecessary adjournments. We would direct the Family Court to dispose of FCOP No. 471 of 2013 as early as possible.



20.The judgment under appeal is set aside. The matter is remanded for trial from the stage of continuation of cross examination of PW1. The issue of arrears of maintenance may also be examined by the Family Court and necessary orders in accordance with law may be passed.

21.The appeal stands allowed. No costs. Consequently, connected miscellaneous petition, if any, is also closed.

(C.V.K.,J.) (K.R.S.,J.)
16-06-2026

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

SLI

To
The Family Court, Salem.



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

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