



WEB COPY

CMA No. 987 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-06-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

CMA No. 987 of 2018

G.Edwin Mathiew,
No.4,Sundaram Colony 1st Street,
Selaiyur,
Chennai-600 073.

..Appellant(s)

Vs

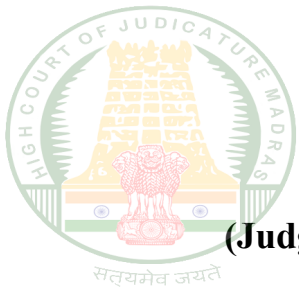
M.Monaliza
D/o M.Mani,
No.10, VOC Street,
Thiruvallur Nagar,
Pattabiram,
Chennai-600 072.

..Respondent(s)

PRAYER : Appeal filed under Section 19 of the Family Courts Act, to set aside the judgment and decree dated 06.07.2017 made in FCIDOP No.73 of 2016 on the file of the Family Court, Chengalpattu.

For Appellant(s): Mr.G.Thyagarajan

For Respondent(s): Mr.R.Rajesh Kumar



Judgment

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

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This Appeal has been filed to set aside the judgment and decree dated 06.07.2017 made in FCIDOP No.73 of 2016 on the file of the Family Court, Chengalpattu.

2. The petitioner in IDOP No.89 of 2015 which was subsequently re-numbered as FCIDOP No.73 of 2016 on the file of the Family Court, Chengalpattu, is the appellant herein. The petition had been filed by the appellant / husband under Section 10(i)(x) of the Indian Divorce Act, 1869, seeking dissolution of marriage solemnised between him and the respondent on 04.07.2014 at CSI St.Mark's Church, Selaiyur, Chennai, on the ground of committing acts of cruelty.

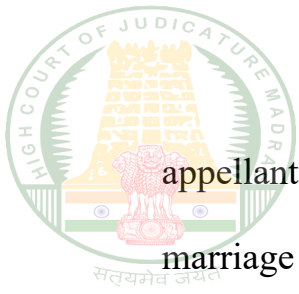
3. The marriage between the appellant and the respondent has been solemnised on 04.07.2014. Subsequently, they were blessed with a female child on 04.05.2015. It has been contended that the respondent did not perform her marriage obligations and did not permit the appellant to even touch her. Day after day, the acts of cruelty continued and he suffered mental torture. It has been stated that when she was pregnant, the doctor advised her not to travel and therefore the respondent went to her parents house. Thereafter, she did not



return back to the matrimonial house. The child was born on 04.05.2015. Even though the appellant was with the respondent every day in the hospital, she never responded to the words uttered by him. It had been stated that she had also sent an e-mail on 10.01.2015, stating that she had an affair with another boy prior to the marriage. It was further contended that the church pastor had tried to bring an amicable settlement between the parties, but the respondent never responded to the efforts of settlement. In such circumstances, the appellant had filed a petition seeking dissolution of marriage.

4. The respondent filed a counter denying all these contentions. She contended that it was the appellant who was interested in another lady who was rejected because she belonged to another religion. She came to know that the appellant was wearing a wig. It was further contended that the appellant did not take care of her during pregnancy. The appellant constantly stated that he was having relationship with his close cousin. It was the appellant who committed acts of cruelty by causing mental agony. It had been stated that the appellant had no affection when seeing the girl child as he was not interested in a girl child. However, she stated that she is willing to join with the appellant and lead a happy married life.

5. On the basis of the above pleadings, necessary issues were framed and the parties were directed to tender evidence. Accordingly, on the side of the

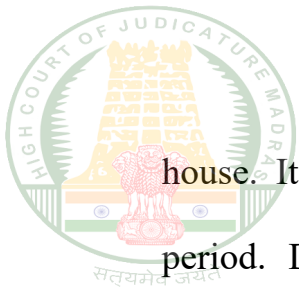


appellant, he examined himself as P.W.1 and Exs.P1 to P5 were marked. The marriage invitation and the marriage registration certificate were marked as Exs.P1 & P2 and the e-mail purported to have been sent by the respondent was marked as Ex.P4. The respondent however did not take advantage of the opportunity granted to her to tender evidence. She has chosen not to graze the witness box. She did not mark any documents.

6. The Trial Judge, on the basis of the evidence adduced, especially Ex.P4, which is the e-mail sent by the respondent, held that the appellant had not proved that the said e-mail was actually sent from the e-mail address of the respondent. With respect to the various instances of cruelty, the Trial Court was of the opinion that those were occurrences that would take place in any marital relationship and stated that they were not serious enough to consider the request for dissolution of marriage and proceeded to dismiss the petition. Questioning such dismissal, the appellant is before this Court.

7. Heard the learned counsel for the appellant and the learned counsel for the respondent.

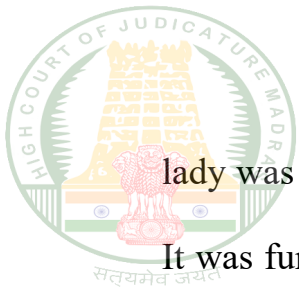
8. It is contended on behalf of the appellant that the respondent had deserted the appellant immediately after marriage and even prior to the birth of the child. She had not come back to rejoin with the appellant in the matrimonial



house. It had also been contended that they lived together only for a short period. During that time, she had continuously harassed and tortured the appellant and it was impossible for him to live with the respondent. Reliance was placed on the e-mail sent by the respondent and it was contended that as on date, the parties are living separately for more than a decade and it was urged that this Court should allow the Appeal.

9. The learned counsel for the respondent disputed the said contentions. According to him, the instances of cruelty were mere scratches in the marital life and cannot be considered as serious acts necessitated dissolution of the marriage. He further submitted that the child is with the respondent and this Court, by taking note of all the factors, had directed monthly maintenance of Rs.10,000/- to be paid by the appellant to the child. The learned counsel contended that the respondent is ready and willing to lead the marital life with the appellant.

10. We have carefully considered the arguments advanced by both sides. We narrated the facts as stated in the petition and the counter earlier. It is the case of the appellant that the respondent has been continuously indulging in acts of cruelty by ignoring him. In her counter statement, the respondent had also alleged various grievances against the appellant herein. She had stated that the appellant had a relationship with another woman and stated that the said



lady was from a different religion and was not permitted to marry the appellant.

It was further stated that the appellant had expressed that he does not like a girl child. It was further stated that at the time of the birth of the child, the appellant had quarrelled with the brother of the respondent.

11. It is thus seen that both the parties have made allegations against each other continuously during the short period of time they lived together. One significant point we have to note is that the respondent had not grazed the witness box to deny the allegations of the appellant and to give her version of the marital life. This is very significant since she had filed a counter in which she had raised various allegations as against the appellant herein. If we have to leave out the evidence of P.W.1 and confine to the petition and counter, then both contain allegations against each other without any overture to reside together.

12. The respondent in the last paragraph of her counter, after narrating all her grievances against the appellant, had stated that she is still willing to stay with the appellant. It would have been more appropriate, if she had entered the witness box and asserted this fact by stating it through her own mouth. The reason why she did not graze the witness box is not known. Even though this appeal has been pending from the year 2018, no application has been filed before this Court and no request has been made before this Court seeking



permission for the respondent to tender oral evidence. The counter affidavit can never be termed as evidence. It is only a statement. The allegations require to be proved or rather established in the manner known to law. Even if a statement in the petition has to be denied, then, an obligation is cast on the respondent to enter into the witness box and deny the allegations raised in the petition and subject herself to cross examination. Having failed to do so, we have no other alternate, except to hold that she had admitted the allegations raised in the petition and in the evidence of the appellant herein.

13. Additionally, in her counter, she had only raised allegations after allegations as against the appellant and only towards the end, she had stated that she is willing to live with the appellant. The said statement has been made more as a mere formality with any intention.

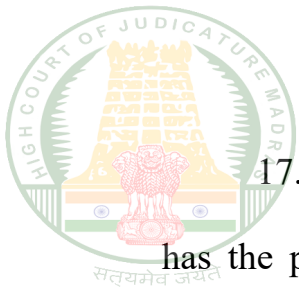
14. In view of the above stated reasons, we would set aside the judgment and decree of the Family Court at Chengalpattu and allow FCIDOP No.73 of 2016.

15. We are also under compulsion to decide the permanent alimony to be paid to the respondent and also the maintenance to the child. So far as the maintenance of the child is concerned, we are informed that as per the directions of this Court, the appellant is paying a sum of Rs.10,000/- every month to the



child who is in the custody of the respondent. Let that amount be continued to be paid till the child attains the age of 18 years. If any upward revision of the said maintenance is required, the respondent is at liberty to approach the Family Court, Chengalpattu, by taking out necessary application.

16. So far as the permanent alimony for the respondent is concerned, it is the contention of the learned counsel for the respondent that the appellant is employed in a Private Limited Company / BOSCH. He is in skilled employment. The appellant had filed a statement that he is earning Rs.78,000/- as monthly salary. It must be noted that no certificate from the employer has been produced for us to determine whether such statement is correct or not. The bank statement for the salary credited has also not been produced. Therefore, this statement by the appellant that his monthly salary is Rs.78,000/-can be taken only as a guideline amount and not as the correct amount earned by the appellant. We would also take note of the fact that the respondent has been living separately for the past 11 years. The appellant had not voluntarily come forward to extend any financial assistance to the respondent. As on date, the respondent is aged 45 years and she also has a daughter to look after. There is no evidence available that the appellant had extended any financial assistance to the respondent.



17. Section 37 of the Indian Divorce Act, 1869, stipulates that the Court has the power to order permanent alimony when a decree for dissolution of marriage is granted, according to the ability of the husband and the conduct of the parties. Even though we hold that there no relevant evidence had been produced to substantiate the amount stated as salary of the appellant as Rs.78,000/- per month, we would crystalize the total permanent alimony of Rs.10,00,000/- to be paid by the appellant to the respondent. We have taken into consideration the fact that the respondent is residing at Coimbatore where the cost of living is quite high.

18. Even though it is stated that the respondent is employed, still it is the duty of the appellant to provide permanent alimony. The salary earned by the respondent may not be sufficient to provide for herself and for the child. She would have faced difficulties in the past and she would continue to face financial difficulties in the future also. Taking all the factors into consideration, permanent alimony of Rs.10,00,000/- is ordered to be paid by the appellant to the respondent, within a period of six weeks from the date of receipt of a copy of this order. If there is failure to comply, the respondent is at liberty to take appropriate steps to enforce such payment in manner known to law. The direction to pay Rs.10,000/- per month towards maintenance for the child has to be continued till the child completes her studies and earns for herself.



19. In the result, this Civil Miscellaneous Appeal is allowed. The marriage solemnised between the appellant and the respondent on 04.07.2014 stands dissolved. The judgment and decree made in FCIDOP No.73 of 2016 dated 06.07.2017 is set aside. No costs.

(C.V.K.,J.) (K.R.S.,J.)
18-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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**C.V.KARTHIKEYAN J.
AND
K.RAJASEKAR J.**

GSK

To

The Family Court,
Chengalpattu

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