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CMA No. 2229 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-04-2026

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THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

CMA No. 2229 of 2021 and

CMP No.12306 of 2021

R.Sangamithra

..Appellant(s)

Vs

P.Sridhar Swaminathan

..Respondent(s)

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act to set aside the fair and decreetal order dated 29-03-2021 passed by the Family Court, Tiruppur in HMOP No.3 of 2020 and to allow the Civil Miscellaneous Appeal.

For Appellant(s): Ms.Geeta Ramaseshan

For Respondent(s): Mr.R.Swarnavel

JUDGMENT

(Judgment of the Court was delivered by K.Rajasekar, J.)

The respondent wife in HMOP No.161 of 2012 has come forward with this Appeal challenging the decree granting dissolution of marriage by the Principal Sub Court, Tiruppur, vide judgment dated 29.03.2021.

2.The husband/respondent herein had instituted HMOP No.161 of 2012 for dissolution of marriage by invoking the ground of cruelty. HMOP No.161 of 2012, on the file of the Principal Subordinate Judge, Tiruppur was



subsequently transferred to the Family Court, Tiruppur and renumbered as HMOP No.3 of 2020.

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3.It was stated that the marriage between the appellant and the respondent had taken place on 07.02.2011 at Kambiliyamman Temple at Ve.Kallipalayam, Palladam. After the marriage, for a period of two months, they lived together in the matrimonial house set up at the house of the husband. Thereafter, the wife used to visit the house once in two days and on the remaining days, she used to stay in her parents' house. After that she used to start quarrelling with her husband without any valid reason and also started demanding Rs.10,00,000/-. She also threatened that if he fails to pay Rs.10,00,000/-, she will commit suicide and put her husband and his family members in Jail. She had also demanded for partition of the properties and further, she had not given any respect to the mother of the husband. In spite of the husband's best efforts to resolve the issue, the issue had not been resolved and further, the wife has started behaving violently. Further, she has started threatening him by using the influence of politicians and threatened him that she will lodge a criminal complaint. Unable to bear with the same, he had come forward with the petition seeking dissolution of marriage within a period of one year.

4.The respondent wife had contested the claim and disputed all the allegations levelled against her. It is also her specific case that she was obedient



and was regularly carrying out her family activities, but the husband had continuously insulted her in the presence of his family members, which caused mental agony to her. She further stated that the petitioner had started to avoid the matrimonial life and he refused her to have conjugal relationship with him. She prayed for dismissal of the petition.

5.The Trial Court, after considering the evidence on both sides, had accepted the case of the husband and granted decree for dissolution of marriage. Challenging the same, this Appeal has been filed by the wife.

6.The learned counsel for the appellant/wife submitted that though various allegations had been raised by the husband alleging cruelty, no evidence had been placed on record to substantiate the same. Further, the Trial Court had erred in holding that there was no consummation of the marriage and that the wife has deserted the matrimonial life. She further submitted that there is no evidence to support the above ground. Further, the ground for granting dissolution of marriage is also not pleaded and it is not a ground raised by the appellant herein. Hence prays to set aside the same.

7.The learned counsel for the respondent/husband submitted that evidence recorded of the wife show that there was no consummation of marriage. Apart from that, a threat was made on the husband and criminal cases were also



lodge and other similar proceedings were also initiated only to harass him. He further submitted that the Trial Court after analysing the evidence on both sides had held that there was no consummation of marriage and that the wife had wilfully deserted the matrimonial life. Further evidence was available to show that the wife has demanded money from the family members of the husband and subsequently, due to the intervention of various politicians and other persons, it further snowballed and forced the husband to file the divorce proceedings. The learned counsel sought confirmation of the judgment and decree passed by the Trial Court.

8. We have considered the submissions made on both sides and perused the material records.

9. The following points arise for consideration in this Appeal:

(i) *Whether the respondent/husband had established his case of allegations of cruelty by the wife?*

(ii) *Whether the Trial Court had granted the decree based on the evidence recorded?*

(iii) *Whether there is any perversity in the order passed by the Trial Court? and*

(iv) *Whether the respondent/husband is entitled for dissolution of marriage?*



10. All the points are taken up for consideration together. The date of marriage and the place where the matrimonial life started are admitted. It has also been placed on record that both the parties were already married and are divorcees. It is the specific case of the husband that for two months they lived together and subsequently, the wife started to visit the matrimonial home once in two days and continued to stay in her parents' house. There is no specific allegation that the wife had refused to consummate the marriage during such period. It is also his allegation that the wife had demanded Rs.10,00,000/- and threatened him that she will commit suicide and that she will lodge a police complaint in this regard. There is also an allegation that she demanded a share in the family property.

11. However, a perusal of the evidence of PW1 and the evidence of RW1 reveal no evidence had been adduced to support the case of the husband that the wife had demanded Rs.10,00,000/- or threatened him with various consequences including that she would commit suicide. Apart from that, the husband had also made one more allegation that she used to disrespect and abuse his mother. This fact is categorically denied by the wife. Except the oral testimony of the husband, no supporting materials have been produced by him.

12. There is also a suggestion made that the marriage was not consummated. However, the wife has categorically denied the allegation that



she did not allow the husband to even touch her. She had stated that the marriage life had not been fulfilled. This has been taken as a lead to interpret that there was non consummation of marriage. This Court is of the view that such an interpretation of the evidence that the matrimonial life was not fulfilled should not, by itself, lead to a conclusion that there was non consummation of marriage.

13.To prove non consummation of marriage which leads to causing cruelty to the husband, certain basic facts have to be proved to hold that the wife had voluntarily refused consummation of marriage. However, in the pleadings, there is no such averment that she has not allowed the husband to consummate the marriage.

14.The Trial Court has taken the view that since the purpose of the marriage was not fulfilled, as stated by the wife, there was non consummation of marriage and had granted dissolution of marriage. This reasoning is not proper. There is no proper interpretation of the evidence. No ground or pleadings have been made out by the husband that there was non consummation of marriage. We hold that the ground for granting dissolution of marriage on the ground of non consummation of marriage is not sustainable and is accordingly set aside.



15. There is one more aspect. The Trial Court has agreed with the husband that there was desertion on the part of the wife. It is specifically stated that the wife has been living separately for 10 years and had not taken any steps to rejoin with the husband. When there is a specific allegation of cruelty by the husband, the case has to be approached by the Trial Court on the ground of cruelty. Though it is stated that desertion leads to cruelty, when there is an allegation of demand of money and when more particularly, the issuance of legal notice emanated from the husband, definitely, the wife would be in a defensive state of mind and she may not show any interest immediately for initiation of proceedings to rejoin with the husband. However, it is an admitted fact that the husband had immediately resorted to seeking dissolution of marriage. In such a case, it cannot be said that the wife had no intention to resume cohabitation. In view of the same, granting dissolution of marriage on the ground of desertion is also not proper and we are of the view that the same is liable to be set aside.

16. We have also gone through the entire evidence including the admissions made by the wife. Though there are several allegations levelled against the wife, she has denied every allegation, more particularly, the serious allegations of threat, abusing her mother-in-law and demanding money. The burden is on the husband to prove such facts, particularly when he had invoked the ground of cruelty. The husband has not established his case by



preponderance of probabilities and has tried to substantiate his claim by relying on certain admissions made by the wife. Those admissions are only with regard to non joining with him and also with regard to the fact that they lived together only for a period of two months.

17.In view of the same, we are of the view that the evidence adduced on the side of the husband to prove the ground of cruelty is not substantial and that the Trial Court has erred in granting dissolution of marriage. We are of the view that the same is liable to be set aside.

18.In the result, the order dated 29-03-2021, passed by the Family Court, Tiruppur, in HMOP No.3 of 2020 is set aside and the Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

(C.V.K.,J.) (K.R.S.,J.)
02-04-2026

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

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To:

The Family Court, Tiruppur.



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

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