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CMSA No. 12 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2026

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMSA No. 12 of 2024

1. Nirmal Raj
S/o.Jagadeesan, NO.25, Block I, Pace
Anusa Apartments, 200 Feet Service
Road, West Tambaram, Chennai 45.

Appellant

Vs

1. Kayal Vizhi
W/o.Nirmal Raj, Flat No.37, Beta
Block, Jai Hind Apartments,
Gowrivakkam, Chennai 73.

Respondent

PRAYER

CMA filed under Section 100 of CPC, to set aside Judgement and Decree of the Learned Principal District Judge at Chengalpattu dated 24.2.2023 passed in CMA.No. 3/2023 dismissing the appeal, conforming the decree and judgement of Learned Sub Judge at Tambaram passed in HMOP 172 of 2017 dated 12.11.2021..

For Appellant(s): Mr.K.Perumal

For Respondent(s): Mr.S.Jayakumar



JUDGMENT

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Challenging the concurrent findings of the courts below, this CMSA has been filed by the unsuccessful petitioner/husband.

2. Before the trial court, the petitioner filed HMOP.No.172 of 2017 against respondent/wife praying for divorce on the ground of cruelty under Section 13(1)(i-a) of HMOP Act. The respondent/wife contested the case by filing written statement. The Trial court, after hearing both sides and considering the evidence let in by both sides, dismissed the HMOP filed by the petitioner/husband.

3. Aggrieved by the said dismissal order dated 12.11.2021, the petitioner/husband has filed CMA.No.3 of 2022 before the Principal District Judge, Kancheepuram District at Chengalpattu.

4. Brief facts of the case:-

The petitioner married the respondent on 01.07.1998 at Madurai. They started their life at Kancheepuram and they begotten male child on 12.05.1999. As they belong to different communities and the respondent is elder than the petitioner, there was always a misunderstanding and they had quarrel with each



other. The petitioner who submits that he adjusted her and lived for six years, alleged that the respondent has given both physical and mental harassment, so, he was forced to leave the matrimonial home and took a rented house separately. However, he paid Rs.12,000/- as maintenance and looked after his child's educational expenses. In spite of his taking efforts for reunion, all ended in vain. At one time, she thrown some unwanted elements over him and humiliated his mother who was paralysed.

5. The respondent not taken care of her husband and his mother and when he advised, she used to threaten the petitioner saying that she will commit suicide. The conduct of the respondent caused mental apprehension in the mind of the petitioner. So he left the matrimonial home and has filed HMOP.No.172 of 2017 for the relief of dissolution of marriage. However, he paid rent to the house where the respondent and their son were residing.

6. The respondent contested the case admitting the matrimonial relationship. She submits that both of them studied M.Sc., in Bharathidasan University and they loved each other and they developed love affair. Though both of them belong to different community, she is elder than the petitioner. Having known that, he agreed to marry her. After marriage, he used to nag by mentioning the community. Even after birth of the child, he has not changed his attitude; he used to harass her and he had intimacy with other woman and



therefore, he took other house and also applied for divorce in H.M.O.P.No.141 of 2008 before the Chenglepet court and the same was renumbered as H.M.O.P.No.183 of 2009 and taken up by the Sub Court, Tambaram, and the case was dismissed on 21.01.2010 for default. Again, on the same ground, the petitioner once again approached the court for dissolving the marriage in the present HMOP.

7. Both sides adduced evidence before the trial court. Both parties were examined before the trial court. Except the petitioner and the respondent, no other witness were examined.

8. According to the respondent, the petitioner was not adjusting with her and he was always quarrelling and harassing her. The respondent contended that he developed intimacy with one Bhuvaneswari. In order to live with her, the petitioner left the matrimonial home and living with that lady. While cross examination, P.W.1/petitioner impliedly admitted that when his son came to his residential house, there was dispute arose with the said Bhuvaneswari which lead to giving complaint to the police. Based on that, the trial court had observed that he had intimacy with another one lady Bhuvaneswari. The petitioner left the matrimonial home and he has approached the court with false allegations and by suppressing the fact that earlier divorce OP was dismissed in January 2010 but instead of restoring the same, he filed fresh OP for divorce



and therefore, the present petition is not maintainable under Order 9 Rule 9 CPC. Further, the averments stated in the petition is not sustainable. The Trial Judge has rightly dismissed the petition.

9. Aggrieved over the findings, the petitioner/husband filed CMA before the Principal District Judge, Kancheepuram District at Chengalpattu.

10. The 1st appellate Judge, considered the evidence and observed that both husband and wife were living together from the date of their marriage and thereafter, they were not living peacefully, thereafter, they got separated; mother of the petitioner was suffering with paralysis, but the wife is not able to adjust with him. Therefore, he got separated and therefore, the 1st appellate Judge found that wife has not taken any steps for reunion by way of filing any petition even though they got separated for more than 15 years.

11. Learned 1st appellate Judge also observed that the non-cohabitation of the wife with the husband would definitely cause mental cruelty. Further observed that findings of the trial judge that since they are living separately it would not cause cruelty is erroneous and unacceptable. The 1st appellate judge held that the petitioner and the respondent is not living together for a long time, however, the respondent is willing to live with the petitioner, so for the sake of their son, there is possibility of living together at their old age, therefore, the 1st



appellate Judge held that not inclined to allow the appeal filed by the petitioner/husband. The learned 1st appellate Judge also observed that still the respondent wife was willing to live with the appellant, so the court is also having a little hope that the appellant and the respondent will live together for the sake of their son in future and thus dismissed the CMA.

12. Challenging the said order, this CMSA is filed by the appellant/husband.

13. It is contended on behalf of the appellant that the courts below failed to take note of the fact that the petitioner and respondent are living separately and there is no possibility of reunion. Besides, wife has not taken any steps for reunion even though they were living separately for long years.

14. Heard both side submissions.

15. The appellant and the respondent got married on 01.07.1998; they begotten one son. Thereafter, as per the contention of the appellant, they are living together for six years and after that due to the misunderstanding, they got separated.

16. Admittedly, both appellant and the respondent studied together, loved



each other and got married. After some misunderstanding between them, they got separated and the appellant is living separately but the appellant/husband is paying maintenance and taking care of education expenses for the child. Nearly about 12 years, they are living separately.

17. Earlier the petitioner filed HMOP.No.141 of 2008 before the Chenglepet Court and the same was transferred to Sub Court, Tambaram and renumbered as HMOP.No.183 of 2009 and the same was dismissed for default on 21.01.2010. Thereafter, he filed fresh application for divorce. The trial court observed that Order 9 Rule 9 CPC prohibits filing of fresh petition for same cause of action. The petitioner ought to have taken steps to set aside the dismissal order, instead, he filed fresh application and the same is not sustainable.

18. The counsel for the appellant would submit that due to lack of communication, earlier HMOP was dismissed for default. Thereafter, again after two years, he has come forward with the application for dissolution of marriage. The respondent has not taken any steps for reunion, nor after the dismissal of the OP, the respondent and the petitioner are not living together. Even after dismissal of the case, status of the parties are the same as they got separated and living separately. Since the petitioner found that there is no possibility of reunion, he has come forward with the petition for dissolution of marriage.



Therefore, technicalities involved therein, need not be encouraged in the matrimonial case.

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19. The court has to see whether there is possibility of reunion. But in the case on hand, considering that the appellant and the respondent are living separately for more than 15 years, there is no possibility of reunion. The relationship between the parties is irretrievably broken down. But the 1st appellate court instead of appreciating the facts and circumstances of the case, under presumption held that there is possibility of reunion. Already the parties are separated for 15 years and there is no possibility of reunion and there is a deadlock in the relationship and in such case, continuing the marriage will not serve any purpose as both the parties have no cordial relationship and the love between them is lost which is the main ingredient for the matrimonial life.

20. Therefore, this court finds that due to long separation, the relationship is irretrievably broken down. Therefore, there is no possibility of reunion. As per pleadings, the petitioner-husband left the matrimonial home. Though the respondent alleges that she adjusted with him, she not taken any steps for reunion. Denial of conjugal rights also amounts to cruelty. The trial court erroneously dismissed the petition for divorce and the 1st appellate court also erroneously confirmed the same which is not sustainable both on facts and law.



21. For the foregoing reasons, this CMSA is allowed. The findings of the courts below with regard to marriage bond is set aside. As per the evidence, the appellant is looking after his son, therefore, this court is not interfering with that finding of the courts below. HMOP.No.172 of 2017 is allowed. Divorce is granted and the marriage between the appellant and the respondent is dissolved.

No costs.

03-03-2026

nvsri

Neutral Citation: Yes/No

To

1. The Principal District Judge at Chengalpattu

2. The Sub Judge at Tambaram.

3. The Section Officer, VR Section, High Court, Madras.



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T.V.THAMILSELVI J.

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