



C.M.A(MD)No.358 of 2025

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:07.04.2026

PRONOUNCED ON:.12.06.2026

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**C.M.A(MD)No.358 of 2025**

V.Dileepkumar : Appellant/Petitioner

Vs.

KMS.Nagoorammal @ Anitha : Respondent / Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 39 of the Special Marriage Act against the Fair and Decreetal order dated 14.03.2025, in S.M.O.1 of 2018, on the file of Additional District and Sessions Judge, Srivilliputtur at Virudhunagar District.

For Appellant : Ms.K.Shwathini  
for Mr.G.Prabhu Rajadurai  
For Respondent : Mr.K.Jeyamohan



C.M.A(MD)No.358 of 2025

WEB COPY

### **JUDGMENT**

This Civil Miscellaneous Appeal is directed against the order passed in S.M.O.P.No.1 of 2018, dated 14.03.2025, on the file of the Additional District cum Sessions Court, Virudhunagar District at Srivilliputtur, dismissing the petition for divorce filed under Section 27(i)(b)(d) of Special Marriage Act.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original petition.

3. It is admitted by both parties before the trial Court that their marriage was solemnized on 24.01.1999 as per the Hindu Rites and Customs and due to their wedlock, they were blessed with two children namely a daughter, Neeraja born on 04.12.1999 and a son, Deeraj born on 13.07.2002. It is not in dispute that the petitioner-husband is a Hindu by religion and the respondent wife is a Muslim by birth.



C.M.A(MD)No.358 of 2025

WEB COPY

4. The case of the petitioner/husband before the trial Court is that the respondent had voluntarily converted herself to Hinduism prior to the marriage and was renamed as Anitha, that the respondent entertained unfounded suspicion that the petitioner was having an extra marital affair at his work place and on such suspicion, frequently picked up quarrels and caused him mental agony, that the respondent lodged frivolous complaints against the petitioner, thereby subjecting him to mental harassment and distress and that her conduct forced to him leave away from the matrimonial home. Hence, the petitioner was constrained to file a petition under Section 27(i)(b)(d) of Special Marriage Act seeking divorce on the grounds of desertion and cruelty.

5. The respondent/wife filed a counter statement specifically denying the allegation that she had converted to Hinduism at the time of marriage. The defence of the respondent/wife is that it was the petitioner who was maintained an extra marital relationship with one Akila at his work place and he failed to evince any interest in preserving the matrimonial relationship and neglected his obligation towards both the respondent and their children, that the petitioner had deserted the family



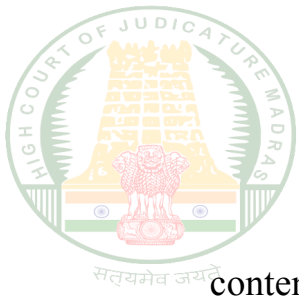
C.M.A(MD)No.358 of 2025

WEB COPY

for several years and failed to support them with adequate financial and emotional support, that the respondent was constrained to initiate proceedings under the Domestic Violence Act and also maintenance proceedings and that therefore, the petitioner is not entitled to the relief of divorce.

6. During trial, the petitioner examined himself as P.W.1 and examined one Thiru.Balasubramanian as P.W.2 and exhibited 10 documents as Exs.P.1 to P.10. The respondent examined herself as R.W.1 and one Tmt.Selvarani as R.W.2 and exhibited three documents as Exs. R.1 to R.3. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned order dated 14.03.2025, holding that the petitioner has failed to establish the grounds of cruelty and desertion, dismissed the divorce petition. Aggrieved by the said order of dismissal, the petitioner/husband has preferred the present appeal.

7. The learned counsel appearing for the petitioner-husband, virtually giving a go-by to the case originally projected by the petitioner before the trial Court, would now seek to advance an altogether different



C.M.A(MD)No.358 of 2025

WEB COPY

contention that there was, in fact, no valid marital relationship between the parties and that the alleged marriage itself is not legally sustainable.

The learned counsel would submit that the respondent, in her counter statement filed before the trial Court, has categorically admitted that she continued to profess Islam and had never converted to Hinduism.

According to the learned counsel, the petitioner admittedly continued to be a Hindu and, therefore, the alleged marriage could not have been validly solemnized under the provisions of the Hindu Marriage Act, 1955. He would further contend that the marriage is also not recognized under Muslim Personal Law and that it is not the case of either party that the marriage was solemnized in accordance with Muslim rites and customs. It is also not in dispute that neither party is a Christian and that it is not their case that the marriage was solemnized under the provisions of the Indian Christian Marriage Act, 1872. The learned counsel would further submit that the marriage was admittedly not solemnized under the Special Marriage Act, 1954. According to him, since the alleged marriage does not fall within the ambit of any personal law governing the parties nor under the Special Marriage Act, the relationship between the parties can only be construed as a live-in relationship and not a legally recognized marital relationship. He would therefore contend that, in the



C.M.A(MD)No.358 of 2025

WEB COPY

absence of a valid marriage in the eye of law, the question of seeking a decree for divorce or dissolution of marriage, or even a declaration that the marriage is void, does not arise.

8. The learned Counsel placed reliance upon the decision of the Division Bench of this Court in ***Jeyakumari Vs. Stephen in A.S.(MD)No. 96 of 2016, dated 29.01.2025***, and would contend that a marriage between the parties belonging to different religion, without compliance with the mandatory requirements of the Special Marriage Act, cannot be treated as a valid marriage in the eye of law. The learned Counsel would further submit that this Court in exercise of its wide power under Order XLI Rule 33 C.P.C., can render complete justice between the parties by holding that no legally valid marital relationship exists between them and failure to do so would result in multiplicity of proceedings, causing unnecessary hardship to the parties and avoidable wastage of judicial time.

9. The learned Counsel for the respondent/wife would contend that the respondent throughout the proceedings expressed her willingness to resume matrimonial life, but the petitioner has made no genuine effort to



C.M.A(MD)No.358 of 2025

WEB COPY

reunite and has instead pursued litigation on false and unsubstantiated allegations, that the petitioner has admitted through his Counsel during arguments that he is presently living with the said Akhila and has begotten a child through her and that the same clearly establish the conduct of the petitioner disentitles him from seeking any equitable relief from the Court.

10. The learned Counsel would further submit that the grounds now raised by the petitioner in the present appeal that the marriage itself is void, is wholly unsustainable, that the petitioner had earlier filed a suit in O.S.No.130 of 2015 before the Subordinate Court, Srivilliputhur seeking dissolution of marriage and the same was dismissed on 16.12.2015 on the ground of lack of jurisdiction holding that the remedy was available under the Special Marriage Act, that the petitioner having accepted the said judgment and having subsequently filed the present divorce petition invoking the provisions of the Special Marriage Act, the petitioner is estopped from now contending that the marriage itself is void and the provision of the said Act are inapplicable and that the petitioner did not prefer any appeal against the earlier judgment in O.S.No.130 of 2015 and therefore, the said judgment has attained finality.

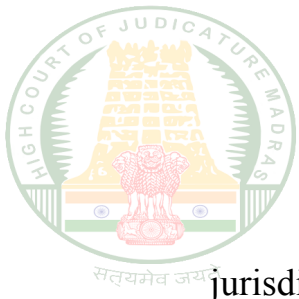


C.M.A(MD)No.358 of 2025

WEB COPY

11. The learned Counsel would further submit that the contention of the respondent that non-solemnization under the Special Marriage Act renders the marriage void is legally untenable, that Section 4 of the Special Marriage Act makes it clear that a marriage “may be solemnized” under the Act, which is directory and not mandatory, that Section 16 of the said Act deals with registration of marriages and does not stipulate that non-registration renders a marriage void, that the registration is only for evidentiary purposes, in the present case, the marriage and cohabitation are admitted and as such, the non-registration does not affect its validity, that the plea regarding invalidity of marriage is a mixed question of fact and law and requires specific pleadings, framing of issues and evidence and that in the absence of the same, such a plea cannot be entertained for the first time in the appeal.

12. At the outset, it is pertinent to note that the petitioner has earlier filed a suit in O.S.No.130 of 2015 seeking dissolution of marriage before the Subordinate Court, Srivilliputhur and pending suit, the respondent/wife filed a petition under Order 7 Rule 11 C.P.C., seeking rejection of plaint, on the ground that the said Court was lacking



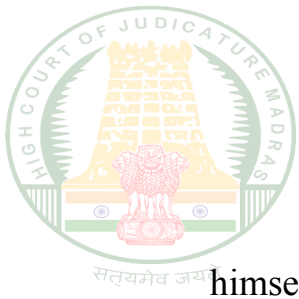
C.M.A(MD)No.358 of 2025

WEB COPY

jurisdiction, as both parties belong to different religion and that the Subordinate Court, accepting the case of the respondent/wife, has passed an order dated 16.12.2015 rejecting the plaint. Admittedly, the petitioner has not preferred any appeal challenging the order rejecting the plaint and as such, the said order has attained finality.

13. As already pointed out, subsequently, the petitioner invoking the provisions of the Special Marriage Act, filed the present divorce petition, alleging that the respondent had deserted him without any justifiable cause and that he was subjected to mental cruelty by the respondent. Considering the above, the points that arise for consideration are (i) whether the petitioner has proved the grounds of cruelty and desertion?; (ii) whether the petitioner is entitled to advance a case at the appellate stage that the marriage itself is void and non-est in the eye of law? and (iii) whether the appellate Court can invoke powers under Order 41 Rule 33 C.P.C.,?

14. It is admitted by both parties that they lived together as husband and wife for several years and due to their wedlock, they were blessed with two children. It is pertinent to mention that the petitioner



C.M.A(MD)No.358 of 2025

WEB COPY

himself approached the District Court seeking dissolution of marriage by invoking the provisions of the Special Marriage Act on the grounds of cruelty and desertion. Though the respondent denied the allegation that she had converted to Hinduism, she has consistently admitted the marital relationship and expressed her willingness to resume cohabitation and continue the matrimonial life with the petitioner.

15. It is also not in dispute that the respondent-wife has initiated the proceedings under the Prohibition of Women from Domestic Violence Act besides filing a claim for maintenance and that the said proceedings are pending. As already pointed out, the petitioner, in the petition filed ,before the District Court, Srivilliputhur, sought only a decree for divorce and admittedly did not seek any declaration that the marriage was void or non-est in the eye of law. Notably, the petitioner in his main divorce petition, has nowhere whispered about any alleged invalidity of the marriage. It is pertinent to note that the petitioner accepting the existence of their marital relationship, sought a decree for dissolution of marriage. According to the case projected by the petitioner before the trial Court, the respondent had converted herself to Hinduism and thereafter, their marriage was solemnised as per the Hindu rites and



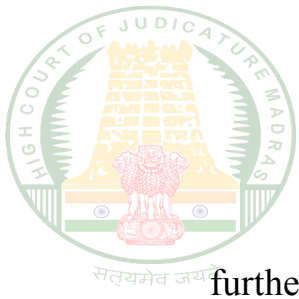
C.M.A(MD)No.358 of 2025

WEB COPY

customs. The trial Court did not frame any issue regarding the validity of the marriage. Notably, the entire trial proceeded only on the question to whether the petitioner was entitled to get a decree of divorce on the grounds of cruelty and desertion. Having taken such a specific stand before the trial Court and having invited an adjudication on that basis, the petitioner cannot be permitted, at the appellate stage, to raise a wholly inconsistent plea regarding the very existence or validity of the marital relationship, particularly after suffering an adverse judgment on merits.

16. It is a settled principle of law that a party cannot be permitted to approbate and reprobate in the same proceedings. A party who has consciously elected to pursue a particular remedy on a specific factual and legal foundation cannot subsequently take a complete "U-turn" and advance a wholly inconsistent and contradictory plea to suit his convenience. Such a course, if permitted, would strike at the very root of fairness and consistency in judicial proceedings.

17. Order XLI Rule 33 C.P.C. empowers an appellate Court to pass any decree or order which ought to have been passed and to make such

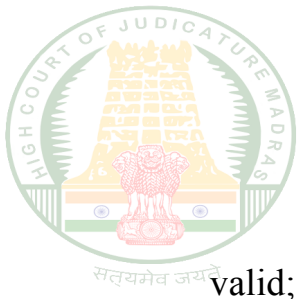


C.M.A(MD)No.358 of 2025

WEB COPY

further or other order as the nature of the case may require. The said provision confers a wide discretionary power upon the appellate Court to do complete justice between the parties, even in appropriate cases in favour of a non-appealing party. But, it is pertinent to mention that the power under Order XLI Rule 33 C.P.C. is an extraordinary and discretionary jurisdiction, to be exercised sparingly and only in exceptional circumstances to prevent manifest injustice. The said provision cannot be invoked as a matter of routine, nor can it be utilized to grant an entirely new and inconsistent relief in the absence of necessary pleadings, issues and evidence.

18. It is also pertinent to note that a question relating to the marital status of parties cannot be decided in a casual or summary manner at the appellate stage, particularly when such adjudication is likely to have serious civil consequences affecting not only the status of the parties but also the legitimacy and social status of the children born out of the relationship. More importantly, the issue regarding the validity of the marriage involves several disputed questions of fact and law. In the present case, questions would arise as to whether the respondent had in fact converted to Hinduism; if so, whether such conversion was legally



C.M.A(MD)No.358 of 2025

WEB COPY

valid; whether the marriage was solemnized in accordance with Hindu rites and customs; whether registration of the marriage under the Special Marriage Act is mandatory in the facts of the case; and whether non-registration under the Special Marriage Act would render the marriage void. All these issues require proper pleadings, framing of specific issues and appreciation of evidence and, therefore, cannot be adjudicated for the first time in the present appeal by invoking Order XLI Rule 33 C.P.C.

19. As rightly contended by the learned counsel for the respondent, in the absence of necessary pleadings, framing of issues and evidence, the questions raised by the petitioner regarding the validity of the marriage cannot be gone into in the present appeal. As rightly pointed out by the learned counsel for the respondent, in *Jeyakumari v. Stephen*, relied upon by the learned counsel for the petitioner, the very suit was instituted seeking a declaration that the marriage solemnized between the parties was null and void. The Division Bench of this Court, after considering the facts and circumstances of that case, held that a marriage between a Hindu and a non-Hindu, whether a Muslim, Christian or a person belonging to any other religion, solemnized as per Hindu rites and customs, would not constitute a valid marriage under the Hindu Marriage



C.M.A(MD)No.358 of 2025

WEB COPY

Act and consequently upheld the decree declaring the marriage as void.

In the present case, as already pointed out, the petitioner himself approached the Court seeking dissolution of marriage by admitting both the solemnization and validity of the marriage. Therefore, the decision relied upon by the petitioner is clearly distinguishable on facts and cannot be applied to the case on hand.

20. It is pertinent to note that the respondent has consistently admitted the marital relationship and has repeatedly expressed her willingness to continue the matrimonial life with the petitioner. As rightly contended by the learned Counsel for the respondent, the evidence available on record would indicate that it was the petitioner who withdrew from the company of the respondent, forcing her to initiate proceedings under the Domestic Violence Act and the claim of maintenance. Merely because the respondent initiated such proceedings or lodged complaints against the petitioner, the same, by itself, cannot be construed as act of cruelty, particularly when the said proceedings were initiated to vindicate her legal rights.



C.M.A(MD)No.358 of 2025

WEB COPY

21. Considering the entire evidence available on record, this Court is of the clear view that the petitioner has miserably failed to prove the grounds of cruelty and desertion, as required under law and as such, the findings recorded by the trial Court are based on proper appreciation of evidence and there is no perversity or illegality warranting interference in this appeal. This Court is further of the view that the plea now raised by the petitioner regarding the invalidity of the marriage cannot be entertained in the present appeal for the reason already stated. Hence, this Court has no hesitation in holding that the petitioner is not entitled to the relief of divorce or for declaration that the marriage itself is void in the eye of law. Consequently, this Court concludes that the Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed. Considering the facts and circumstances, this Court holds that the respondent is entitled to get costs through out.

22. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the order passed in S.M.O.P.No.1 of 2018, dated 14.03.2025,



C.M.A(MD)No.358 of 2025

WEB COPY

on the file of the Additional District cum Sessions Court, Virudhunagar

District at Srivilliputtur, The respondent is entitled to costs throughout.

**12.06.2026**

NCC : Yes : No  
Index : Yes : No  
Internet : Yes : No

SSL

To

- 1.The Additional Districxt cum Sessions Court,  
Virudhunagar District at Srivilliputtur,
- 2.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A(MD)No.358 of 2025

**K.MURALI SHANKAR,J.**

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.358 of 2025

12.06.2026