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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.10.2026

Delivered On : 03.11.2026

CORAM

THE HON'BLE DR. JUSTICE P. MURUGAN

CMA(MD) No. 720 of 2019
CNR:{HCMD010828422019}

Leopaul,
S/o Rayappan,
No.24, Ammankovil Street,
Kumbakonam,
Presently residing at Green Woods,
Marudanallur Village,
Kumbakonam Taluk. … Appellant

Vs

Lizza,
D/o Murugaiyaan,
No.89, Nanayakkara Street,
Kumbakonam … Respondent

PRAYER: This Civil Miscellaneous appeal is filed under section 55 of the Divorce Act, 1869, against the fair and decretal order dated 26.04.2019 passed in I.D.O.P.No.117 of 2015 by the Principal District Court, Thanajvur.

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For Appellant : Mr. S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

For Respondent : Mr.V.K.Vijaya Ragavan

J U D G M E N T

The husband is before this Court challenging the divorce granted by the Principal District Court, Thanjavur, in I.D.O.P.No.117 of 2015 dated 26.04.2019, filed by the wife on the ground of cruelty under section 10(1) (x) of the Divorce Act, 1869.

2. The appellant is the husband and the respondent is the wife before the trial Court. The wife filed a divorce petition against her husband. Throughout this judgment, they are referred to as the "wife" and the "husband", respectively.

3. The brief facts to dispose this appeal is as that the husband married the wife on 19.04.2005 at St.Xavier Church, Sembodai Parish, Kumbakonam, as per Christian Customs and rites. They started their matrimonial home at the husband house. After six months of matrimonial life, the husband treated the wife with cruelty and not allowed to go to her parents house. The husband is a

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drunkard and under influence of alcohol, abused the wife and also beaten her. During the pregnant time, the husband assaulted the wife, having no jobless and demanded amount from the parents of the wife. She delivered a female child and even after such delivery, the husband did not take her back. After negotiation with the elders, the husband and wife joined together. When the child was fell on 13.06.2008 and sustained bleeding injury, the wife took the child for treatment and even for the treatment, the husband made quarrel with the wife about the treatment given to the child. Thereafter, the wife left the matrimonial house on 13.06.2008 to her parental house with the child and thereby living there. The husband treated the wife with cruelty, and being unable to endure it any longer, the wife filed a divorce petition on the ground of cruelty.

4. Counter of the husband before the trial Court in brief is as that the marriage and the child born is not in dispute. He denied all the allegations levelled against him. There is no cruelty caused by the husband to the wife. In practice, the wife only made cruelty to the husband. After the death of wife's mother, her family wants to get her with the parental family and not allowing the husband to live with the wife. The husband is ready to take care of the wife with

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child and thereby pleaded to dismiss the divorce petition.

5. Before the trial Court, on the side of the wife, the wife examined herself as P.W.1 and her father examined as P.W.2 and 3 documents were marked as Ex.P1 to Ex.P3. On the side of the husband, the husband examined himself as R.W.1 and one document was marked as Ex.R1.

6. After appreciating the evidence adduced on both sides, the trial Court had come to a conclusion that the husband committed cruelty and thereby, divorce was granted under the impugned order.

7. The grounds raised in the appeal is as that the trial Court has not appreciated the evidence and mechanically had come to a conclusion that the husband has committed cruelty, which is not correct so. There is no credible evidence to hold that the husband committed cruelty. The evidence of P.W.1 and P.W.2 would not corroborate each other, even then the trial Court granted divorce. Therefore, the impugned order is to be *set aside*.

8. Heard both sides. Perused records and considered the submission raised on both sides.

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9. The points for consideration is as to:-

(I) Whether the husband committed cruelty towards the wife?

(II) Whether the trial Court decree, granting divorce, is liable to be *set aside* and this appeal is to be allowed or not?

(III) To what order?

10. From the materials placed before the trial Court that there is no dispute that the husband married the wife on 19.04.2005 and out of the wedlock, one female child born. It is the case of the wife that after six months of the marriage, the husband committed cruelty, harassing the wife not to go to parental home, the husband addicted to alcohol, abused the wife and also beaten her, therefore, the wife left the matrimonial home to her parental house. Thereafter, there was a negotiation with the elders, the wife return back to the matrimonial home.

11. During that time, the wife conceived and went for delivery in a nursing home. But, the husband did not visit there. After negotiation, the husband and wife once again re-united. When the child was fell in the house, on 13.06.2008, the wife had taken the child for treatment and at the time, the husband assaulted the wife, abused her and made cruelty to the wife, why she has taken the child

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for treatment. The wife was unable to digest the same and thereby, she left the matrimonial home and living with her parental home. In the giving circumstances, she approached the trial Court and filed a divorce petition under section 10(1)(x) of the Indian Divorce Act.

12. The contention of the husband that the evidence of P.W.1 and P.W.2, viz., wife and her father is not corroborated. Based on the trial Court record, it is found that Part-II and Part-III records have already been destroyed as per the Gazette Notification No.2, dated 11.07.2023. Only Part -I records are available and the same was submitted before this Court, which are the divorce petition, counter and the fair order and decretal order. Therefore, there is no evidence of P.W1, P.W.2 and R.W.1 from the trial Court orders. The trial Court has considered the evidence of both sides. In such view of the matter, this Court is of the considered view that the husband had committed cruelty towards the wife.

13. Having the cruelty ground has been established by the wife against the husband, the trial Court granted divorce decree. As per this Court view that the decision of the trial Court is correct to the facts and circumstances of the case and, therefore, the appeal is liable to be dismissed.

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14. When the matter was initially argued before this Court, the learned counsel for the husband submitted that through this appeal challenging the divorce order and before expiry of limitation period of 90 days, the wife had re-married and, therefore, the appeal is questioned the validity of the second marriage. There is no such ground raised in the ground of the appeal.

15. The learned counsel for the wife also submitted that after granting divorce by the trial Court she remarried with one Mr.Muthu Vaithiyanathan on 11.07.2019. The records reveal that the trial Court passed impugned order on 26.04.2019 and the husband filed a copy application to avail fair and decretal order on 27.04.2019. The trial Court fair and decretal order was made ready on 20.06.2019 and the appeal paper was presented before this Court on 06.09.2019 and the same was taken on file on 27.09.2019.

16. As per section 55 coupled with section 45 of the Divorce Act, 1869, for the divorce petition proceeding the Code of Civil Procedure, 1908 is applicable. Though the divorced spouse has right to remarry under section 57 of the Divorce Act, but, as per section 55 of the Divorce Act and Article 116 of the Limitation Act, the

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affected person, out of a divorce decree, has appeal remedy to the High Court with 90 days from the date of the decree.

17. It is also settled law that once the decree is made ready on applying certified copy from that moment, the limitation starts. Here, in our case, the trial Court decreed the case on 26.04.2019 and immediately, the husband filed the copy application on 27.04.2019, it was made ready on 20.06.2019 and the appeal paper was presented before this Court on 06.09.2019, viz., within the 90 days of the limitation period prescribed under Article 116 of the Limitation Act. The facts reveal that the wife got remarriage on 11.07.2019 i.e. within the limitation period of 90 days, before filing the appeal much less before expiry of the limitation period of 90 days.

18. In such view of the matter, the learned counsel for the husband submitted that though technically the wife has no right to remarriage before the expiry of the appeal limitation period and having she got remarriage, the learned counsel for the husband left it to the Court's decision.

19. The learned counsel for the wife submitted that though the arguments of the husband counsel may not be disputed, but, the facts reveal that the wife got remarriage on 11.07.2019 under the

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impression that the appeal time is 30 days, wherein as per the Family Court Act, limitation period for the appeal to the High Court is 30 days and, therefore, this Court may pass any suitable orders.

20. In view of the above discussion and submission of both sides, though the wife has right to remarry under section 57 of the Divorce Act, 1869, she is required to wait until the expiry of the period prescribed for filing an appeal, namely 90 days, as provided under section 55 of the Divorce Act, 1869, and Article 116 of the Limitation Act. Since the divorced wife got remarriage, before the appeal limitation period is over technically the remarriage of the divorced wife is not valid as per law, however, the divorced wife may take a better decision to work out remedy in the manner known to law.

21. Having discussed the case coupled with the evidence as considered by the trial Court and submission of both sides, this Court is of the firm view that the act of the husband towards the wife amounts to cruelty. Therefore, the trial Court decree is not required to be interfered. In such view, the Point Nos.I and II are answered against the husband. Taking note of the fact, there is no order as to costs. The Point No.III is answered accordingly.

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22. In the result:

(i) This Civil Miscellaneous Appeal is dismissed;

(ii) The divorce decree dated 26.04.2019 made in I.D.O.P.No.117 of 2015 by the Principal District Court, Thanjavur, is confirmed; and

(iii) There shall be no order as to costs.

03.11.2026

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

LS

To

The Principal District Court,
Thanajvur.

Copy To :
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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DR. P. MURUGAN, J.
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