

CMSA(MD).No.3 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 13.04.2023

PRONOUNCED ON : 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.S.A(MD)No.3 of 2019

M.Narayanan

... Appellant

vs.

S.Valli Krishnaveni

...Respondent

PRAYER:- Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act read with Section 100 of C.P.C, to set aside the judgement and decree dated 12.07.2018 passed in H.M.C.M.A.No.11 of 2016 on the file of the Principal District Court, Virudhunagar at Srivilliputtur confirming the judgement and decree dated 01.07.2016 passed in H.M.O.P.No.236 of 2015 on the file of the Sub Court, Sivakasi.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondent : Mr.M.Ashokkumar

J U D G M E N T

The husband who has lost his case before the Courts below is the appellant herein.



CMSA(MD).No.3 of 2019

WEB COPY 2.The appellant/husband had filed HMOP.No.236 of 2015 before the Subordinate Court, Sivakasi for the relief divorce on the ground of mental cruelty.

3.The admitted facts are as follows:

(i).The husband is an Engineering Graduate and the wife is a B.Tech Graduate. The marriage was arranged by the elders and took place on 06.02.2012 at Tuticorin. The husband is a physically challenged person. Due to the wedlock, a son was born to the couple on 19.12.2012. The wife had left for delivery to her parental home on 04.11.2012 and thereafter, she has not returned back to the matrimonial home. The husband had sent a legal notice on 15.06.2015 and a reply was sent by the wife on 03.08.2015 citing various incidents of cruelty. Hence, the husband has filed the above petition seeking divorce.

4.The main allegations in the divorce petition are as follows:

(i).The wife was very lazy in character and she never carried out the domestic work and compelled the husband to get food and beverages from the hotel.



WEB COPY

(ii). She was very adamant in her character and she used to shout and cause mental agony to the husband.

(iii).The wife and her family members had insulted the husband citing his physical disability.

(iv).The wife used to be glued to the computer and used to chat with her friends in the face book. She had also compelled the husband to take her for a long journey to meet her face book friends despite the fact that her husband is a physically challenged person.

(v).The wife wanted to live a luxurious life and for the said purpose she had undertaken some projects for pornographic institutions.

(vi).The wife had compelled the husband to part with a sum of Rs.75,000/- to her brother and the same was not returned by her brother even at the time when the husband had underwent a surgery.

(vii).Even though the son was born to the couple on 19.12.2012, it was belatedly informed to the husband and when he attempted to see the child, he was abused by the wife and her relatives in front of the hospital staff.

(viii). The wife had refused to give the lap top belonging to the



CMSA(MD).No.3 of 2019

husband even though it was very essential for him to carry out his on-line class.

(ix).The wife had removed her Thali chain and thrown away the same on the face of the husband.

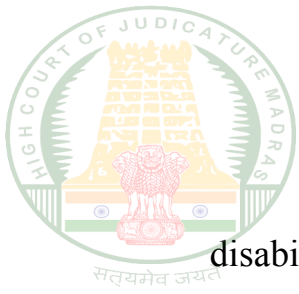
(x).The wife or her relatives have not visited the hospital when the husband had underwent surgery.

(xi).On 28.03.2013 when the husband had visited Sivakasi to meet his wife and son, the mother-in-law had insulted the husband by citing the physical disability and he was prevented from meeting his son. The wife attempted to beat the husband in the street on the said date.

5.The wife had filed a counter disputing all the allegations and she had contended as follows:

(i). Even before the marriage, she was carrying out project work through on-line and after marriage, she continues the said project work in Chennai in her matrimonial home. In fact, for the said project work, her husband and her friends have also helped. Therefore, the entire allegations that she was glued to the computer is not correct.

(ii).The wife had further contended that at no point of time she has either verbally or physically abused her husband citing the physical



CMSA(MD).No.3 of 2019

disability. She has married him only after knowing the physical disability. She had further contended that the husband can walk on his own without any walking stick. He can even drive a two-wheeler. He is having a very less percentage of disability and therefore, the question of abusing him citing physical disability is completely false.

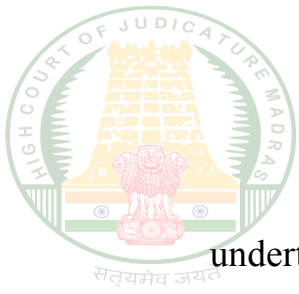
(iii).The wife had further contended that she was not informed about the surgery at Tuticorin. That apart, when the husband had underwent a surgery, she had just delivered a baby and the baby was 23 days old. Therefore, she was not in a position to go and assist him in the hospital.

(iv).The wife has also disputed the other allegations that her family members have abused the husband. As a counter allegation, she had contended that the parents of the husband had insulted her that she had not brought more jewellery and dowry.

(v). The petitioner/husband had marked Exhibits P1 to P9 and had examined himself as PW1. The wife/respondent had marked Exhibits R1 to R5 and had examined herself as RW1.

6.Findings of the trial Court are as follows:

(i).The wife was using the computer only for the purpose of



CMSA(MD).No.3 of 2019

undertaking the project work which she was carry on even before the marriage. Therefore, the allegation that the wife is glued to the computer only to chat with her friends in the face book is not factually correct. In fact, the wife had been regularly consulting her husband with regard to the said project work and therefore, the allegations that she was undertaking project work for pornographic organisation is also false.

(ii).The wife had requested her husband to meet ISRO scientist and this cannot be considered to be a cruelty.

(iii). The wife had demanded only cot, sarees and refrigerator from her husband and the same cannot be considered to be the luxury goods.

(iv).Since the wife was on family way she had requested her husband to get food from the hotel and the same cannot be considered to be a fact that the wife wanted to live a luxury life.

(v).It is true that the husband had remitted a sum a of Rs.75,000/- to the account of the wife's brother and the non re-payment of the same cannot be considered to be a cruelty.

(vi).The allegation made by the husband as against the mother-in-law that she used to abuse him is not believable.

(vii).The husband had not visited the wife's house even after



CMSA(MD).No.3 of 2019

delivery and he used to stay in a lodge and asked his wife to come to the hospital and therefore, the husband has not expressed his love and affection to his wife and son.

(viii).The lap-top belonged to the wife and the same was taken by the husband and he had not paid the charges for the data card and therefore, the issue relating to the lap-top also cannot be considered to be forming and part of the cruelty.

(ix).When the husband had underwent surgery on 12.01.2013, the wife had delivered a baby on 19.12.2012 and therefore, the wife had not visited the husband in the hospital and the same cannot be considered to be a cruelty considering the fact that the wife had just delivered the baby.

(x).Considering Exhibit P3-letter, the trial Court found that the entire family issue was decided only by the father of the husband and therefore, the husband was completely under the clutches of his father and he has not expressed his love and affection towards his wife and son.

(xi).The husband had issued a legal notice on 15.06.2015 under Exhibit R1. In the said notice, the husband had demanded unconditional apology from the wife and she should agree for divorce by mutual consent. Therefore, the trial Court found that the husband was not



CMSA(MD).No.3 of 2019

interested in living with the wife and the contention of the husband that he made an attempt for reunion with the wife is not factually correct.

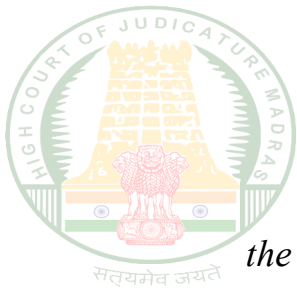
Based upon the said findings, the trial Court found that the husband has not established the plea of cruelty and dismissed the divorce petition.

7. Findings of the First Appellate Court:

The First Appellate Court confirmed the findings of the trial Court relating to the project work of the wife and non visiting of the wife to the husband during the surgery. The First Appellate Court further confirmed the other findings of the trial Court that the husband was not regularly in touch with the wife to enquire about her health and health of his son. The husband was not regularly maintaining his wife and son. The First Appellate Court further found that the entire dispute between the couple has arisen only due to the intervention of the husband's father in the family matter. In case, if the husband and the wife sit together and negotiate, the issue could be resolved. On the said findings, the First Appellate Court dismissed the appeal.

8. The second appeal has been filed by the husband on the following substantial questions of law:

1. Whether the Courts below are correct in law in dismissing



WEB COPY

the appellant's application for divorce when it is proved through various circumstances that the marriage is irretrievably broken down and the respondent caused cruelty?

2. Whether the Courts below are erred in law in not granting divorce when it is explicitly seen through depositions that the respondent has no love and affection towards the appellant?

3. Whether the Courts below are correct in law in rejecting divorce when the appellant suffered humiliation for his disability at the hands of respondent which causes cruelty?

4. Whether the Courts below is correct in law disbelieving all the instances raised in the petition as normal wear and tear of the family as no person would continue his relationship when he was taunted for his physical disability and in the case matrimonial life it would leads only harassment and nothing else?

9. The learned counsel appearing for the appellant/husband had contended that the husband had pleaded and proved various instances which would establish that the marriage had irretrievably broken down. He had further contended that all the instances will clearly prove that the cruelty caused by the wife as against her husband pointed out that the husband being a physically challenged person, the wife was regularly pointing out the said disability and abusing him. Hence, this should be considered to be a cruelty and the divorce should have been granted by



the Courts below.

WEB COPY

10. The learned counsel for the appellant had further contended that the evidence of the wife as RW1 will clearly indicate that she had never expressed her love and affection to the husband. She was always glued to the computer on the pretext she is carrying on project work. When the wife had left the matrimonial home for delivery and after delivery she has never chosen to return back to the matrimonial home. The wife and her relatives have continuously abused her husband citing his physical disability and have humiliated the husband on various occasions in public places. The learned counsel for the appellant had further contended that the Courts below ought not to have disbelieved the version of the husband relating to the incident of cruelty as a normal wear and tear of the family. He had further contended that no person with self-respect would continue the relationship when the husband is taunted for his physical disability.

11. The learned counsel for the appellant had further contended that the cruelty has gone to such an extent that it would be impossible for the husband to live with the wife. Not only the wife but also her family members are in inimical terms to the husband. They are not even



CMSA(MD).No.3 of 2019

permitting the husband to meet his son. All these put together would result in the conclusion that the wife has caused mental cruelty as against her husband and it is no longer possible to the husband to live with the wife. Hence, he prayed for allowing the appeal.

12.Per contra, the learned counsel for the respondent/wife had contended that the trial Court as well as the First Appellate Court have rightly pointed out only due to the interference of the husband's father in the family matters, all these disputes have arisen. The wife has not made any allegation as against her husband either in the counter or in her deposition before the Courts below. She had only pointed out that the husband's parents have tortured her and harassing her for not bringing more dowry. The letter written by the husband's father to the wife will clearly indicate that all the decisions relating to the family affairs were taken only by the husband's father and he has been interfering in the matrimonial matters. The husband is fully under the clutches of his father and therefore, he is acting against the interest of his wife and son.

13.The learned counsel for the respondent had further contended that the husband has not immediately visited the wife at the time of delivery and used to stay in the lodge and directed the wife to come to



CMSA(MD).No.3 of 2019

the hospital. This would clearly show the nature of love and affection that was expressed by the husband. The learned counsel had further contended that the husband had underwent a surgery at Tuticorin within a month from the date of delivery. The said surgery was underwent by the husband without informing the wife or her relatives. Therefore, they were not in position to take care of the husband. Therefore, this incident could never be cited as a cruelty.

14.The learned counsel for the respondent had further contended that the wife as a dutiful lady is earning income by undertaking various project works through on-line and she was sharing the income with her husband. This has been wrongly projected in the divorce petition as if the wife is chatting with her friends in the face book. This would clearly establish the mental attitude of the husband as against her wife. In fact, the husband's family members had taunted and humiliated the wife demanding more dowry. The fact that the wife has never chosen to file any criminal complaint would clearly establish that she is ready and willing to live with the husband. The husband has absolutely failed to establish the plea of cruelty and the Courts below have rightly dismissed the divorce petition.

12/16



CMSA(MD).No.3 of 2019

15.I have considered the submissions made on either side and perused the materials available on record.

16.A careful perusal of the divorce petition filed by the husband would indicate that he was being humiliated by his wife, her friends and relatives citing his physical disability. As a counter blast, the wife had contended that the relatives of the husband have demanded more dowry. All the allegations of the husband in the divorce petition relate to the fact that the wife was not carrying out the domestic activities and she was glued to the computer. She has been abusing the husband citing physical disability. The relatives and friends of the wife were humiliating him citing the physical disability. The wife had not visited the hospital when he underwent his surgery. The trial Court as well as the Appellate Court have discussed all these issues and arrived at a finding that these allegations are not factually correct.

17.On the other hand, the wife has not made any allegation as against his husband and she has made allegations only against the parents of the husband that they had demanded more dowry. The wife had never lodged any police complaint or initiated any other proceedings as against her husband. But the wife has continuously expressed her willingness to



CMSA(MD).No.3 of 2019

live with the husband. In fact, the wife has been carrying out project work only under the advise and guidance of her husband and she was also sharing the income from the said project work. The husband has chosen to make false allegations in the divorce that the wife is undertaking some project work for pornographic organisation.

18.A perusal of Exhibit P3-letter written by the husband's father to the wife would clearly indicate that the husband's father has interfered with regard to the matrimonial life between the husband and wife. It also establishes the fact that the husband is completely within the clutches of his parents.

19.In the light of the above said deliberations, it is clear that the trial Court as well as the Appellate Court have rightly arrived at a finding that the husband has not established the plea of cruelty to such an extent that it is impossible for him to live with the wife. This Court does not subscribe to the contention of the learned counsel for the appellant that the marriage has irretrievably broken down.



CMSA(MD).No.3 of 2019

20. In view of the above said facts, there are no merits in the appeal

and all the substantial questions of law are answered as against the appellant. This Civil Miscellaneous Second Appeal stands dismissed. No costs.

21.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
mas

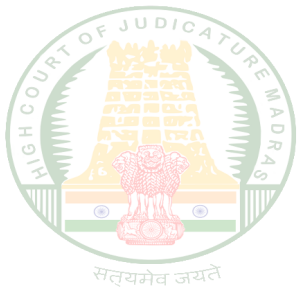
To

1. The Principal District Judge,
Virudhunagar at Srivilliputtur

2. The Subordinate Judge, Sivakasi.

3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

15/16



WEB COPY



CMSA(MD).No.3 of 2019

R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgement made in
C.M.S.A(MD)No.3 of 2019

21.04.2023