

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

and

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

C.M.A.NPD No.2178 of 2003

S.Chandra ..Appellant

versus

C.V.Sridharan ..Respondent

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PRAYER: Civil Miscellaneous Appeal under Section 100 of C.P.C., read with Section 19 of the Family Courts Act, dated 24.10.2002 made in F.C.O.P.No.1236 of 1997 on the file of the II Additional Family Court, Chennai.

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For appellant : Mrs.Geetha Ramaseshan

For respondent : Mr.A.S.Balaji

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JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This appeal is against the order dated 24.10.2002 made in F.C.O.P.No.1236 of 1997 on the file of the Second Additional Family Court, Chennai. The wife filed the petition against the husband for dissolution of marriage between them by a decree of divorce on the ground of cruelty and for permanent alimony under Sections 13(1)(ia) and 25 of the Hindu Marriage Act. The present appeal is by the wife against the dismissal of the petition.

2. It is seen that the marriage between the appellant and the respondent was solemnized according to the Hindu rites and customs on 30.5.1986. The petitioner/appellant's contention before the Family Court was that right from the date of marriage, the respondent had behaved in an abnormal manner and never showed any love or care towards her. She further stated that there was no communication between them as a normal husband and wife. The appellant also submitted that the respondent abused her all the times and she was also physically manhandled and verbally abused. It is also stated that the respondent neglected the wife/appellant herein. The indifferent attitude and rude behaviour of the respondent all the times made the appellant herein a nervous wreck and she could not concentrate on her work. The allegation of the appellant is that she was

treated as a domestic servant and that on several occasions, the respondent told the appellant to leave the matrimonial home and to live by herself. The appellant also alleged that the respondent refused to cohabit with the appellant and was totally disinclined to have children. Consequently, she has stated that the marriage has come to a total break. She stated that the respondent was employed in the Railways and was earning a sum of Rs.15,000/- per month. It is also stated that he had investments and had a total income of Rs.25,000/- per month and hence, the appellant claimed permanent alimony of Rs.15,00,000/-.

3. The allegations of the appellant were countered by the respondent. He stated that the marriage was celebrated in a very ordinary manner; that the appellant was the daughter of the second wife of the appellant's father; this information was kept away from the knowledge of the respondent and his parents. He also stated that she had concealed the fact that the appellant was hard of hearing. He denied the allegation that there was no communication between the appellant and the respondent in a normal manner. He also denied the allegation of mental cruelty. He stated that the allegations are borne out of her guilty conscience for having suppressed some of her defects which existed even prior to the marriage. He submitted that he was suffering from diabetes, high cholesterol and migraine; hence, under the advise of the Doctors, he had to maintain strict diet. He denied her allegation as regards his temperamental behaviour. He also stated that they consulted the Doctor who advised that they were normal people and the appellant would conceive at any time. He also stated that the respondent wanted to have children but the appellant showed total disinclination to have children. The respondent submitted that he allowed the appellant to visit her maternal home or other relatives or friends and there was no restriction on her movements. He denied the allegation of indifferent and rude behaviour and gross negligence. He also stated that contrary to the allegations, on one occasion, when a tricycle carrying goods hit the scooter and since the appellant became panicky, the respondent hired an auto to take her back home. The sum and substance in the counter affidavit is that he denied all the allegations of cruelty and that the appellant was unwilling to have any relationship with the respondent. He stated that his take-home pay was Rs.8,000/- per month and the appellant was employed, receiving a salary of Rs.3,000/- per month. He stated that there were no compelling reasons for the appellant to seek divorce. He also stated that the income that he earned was sufficient to meet the needs of himself and his mother. Hence, he submitted that the plea for permanent alimony was to be rejected. He also stated that in view of the conduct of the appellant in feeling guilty of desertion, she was not entitled to alimony. Apart from that, he stated that the appellant claimed the rent from the flat purchased from his funds; he had also given jewels worth about Rs.5,00,000/- and that she had taken away his share certificates and deposits. He further alleged she had all accounts for the cash taken from the joint account. In the light of the submissions made, he prayed for rejection of the claim for alimony. He had also stated that he had taken her on L.T.C. to various places such as Badrinath, New Delhi, Bombay, Bangalore, Madurai, etc. Adverting to the evidence of the parties herein and the allegations made therein, the Court below came to the conclusion that the appellant had not established the allegation of cruel behaviour on the occasions cited by her. In the circumstances, the prayer for divorce was dismissed.

4. Going by the evidence of the parties herein, referring to the conduct of the respondent herein that he had not shown any love and affection towards the wife, the Tribunal noted that as a wife, the appellant was to take care of the health of her husband who was diabetic and adjust with him to have a peaceful married life. On the question of the allegation that there was no possibility of getting a child, the Tribunal noted that there was no proper evidence, particularly for the appellant to show that there was any medical evidence to that end. On the question of her being hit by the tricycle and the respondent driving the scooter without caring about her, and in another occasion when the saree was on the wheel of the scooter and that she was left almost without a saree, the Tribunal noted that the appellant had not proved them through reliable evidence as to the dates on which the incidents had taken place and as to when she had gone to the hospital for treatment. The Court below noted that admittedly, the appellant had not taken any steps to substantiate any of her allegations. However, the Tribunal felt that there was a misunderstanding between the appellant and her mother-in-law, which could not be a ground for granting a decree of divorce. Noting that the respondent had taken her on L.T.C. to several places, the Tribunal viewed that the allegations were disproved. On the question of permanent alimony, it was observed that she had not moved a petition under Section 25 of the Hindu Marriage

Act, and in the absence of any such application, the appellant was not entitled to the said relief.

5. Aggrieved of this order, the petitioner-wife is on appeal before this Court, contending that P.W.2, sister of the appellant, had spoken about the respondent's behaviour. Further, the lower Court had failed to consider the preponderance of probabilities on the aspect of cruelty. She also alleged that the lower Court had failed to take note of the marital obligations and the responsibilities that the respondent had and that the Court below had ignored the written submissions made in this regard.

6. Learned counsel for the appellant submitted that the Court below overlooked several specific instances of cruelty, both physical and mental, mainly, the absolute indifference to the requirements of the appellant, failure to discharge the matrimonial obligation, disinclination for cohabitation with her, etc. Taking note of this, learned counsel submitted that the Court below ought to have granted the plea of the appellant for a divorce. Touching on the aspect of permanent alimony, learned counsel submitted that there is no requirement that there should be a separate application, as Section 25 of the Act does not mandate a separate application. She pointed out that even in the absence of pleadings, Courts have the power to pass orders for alimony. She also questioned the correctness of the Court below not permitting the appellant to cross-examine the respondent. She submitted that the marriage had broken or had become irretrievable, considering the fact that the marriage was solemnized as early as 30.5.1986, and at this distance of time, there was no ground for settling the differences. As held by the Supreme Court, the proper order would be to grant the plea of the appellant herein.

7. Heard both sides.

8. It is seen that as early as 13.7.2006, at the request of the parties, the matter was referred to the Tamil Nadu Mediation and Conciliation Centre. However, the same was returned back by the Tamil Nadu mediation and Conciliation Centre, noting the fact that the respondent was not interested in the mediation, nor did he attend any session. The papers were returned back to the Court by its proceedings dated 27.9.2006. In the course of the hearing before us, we attempted to reconcile the differences. However, noting the irreconcilability of the differences, and the unwillingness of both the parties to come over for a peaceful matrimonial life, we have no other option except to grant a decree of divorce to the parties herein. The order of the Court below is set aside and the decree of divorce is granted to the parties herein.

9. On the question of alimony, the Court below has rejected the plea solely on the ground that there was no separate petition. We do not find any justification to accept this line of thinking. However, in view of the divorce granted as above, the appellant wife is at liberty to work out her plea of alimony and the same shall be disposed of expeditiously, in any event, within six months from the date of such claim. In the result, the order of the Court below is set aside and the appeal is allowed, granting a decree of divorce to the parties herein.

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To:

The II Additional Family Court,

Chennai.