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C.M.A.Nos.1422 & 1433 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

C.M.A.Nos.1422 & 1433 of 2021
and
C.M.P.Nos.7425, 7426 & 7461 of 2021

... Appellant in both the appeals
Vs.

...Respondent in both the appeals

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act read with Order 41 Rule 1 of Civil Procedure Code against the Judgment and Decree dated 23.02.2021 made in H.M.O.P.Nos.1228 of 2014 & 423 of 2013 on the file of the Additional Principal Family Court, Coimbatore.

For Appellant : Mr. K.S. Karthik Raja in both cases.

For Respondent : Mr. T.K.S. Gandhi in both cases.



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COMMON JUDGMENT
(Delivered by Dr. A.D. Maria Clete, J)

This Civil Miscellaneous Appeals are filed by the husband who is petitioner in divorce petition challenging the common order dated 23.02.2021 passed by the Additional Family Court, Coimbatore in H.M.O.P. No. 423 of 2013 seeking divorce on the ground of cruelty, and H.M.O.P. No. 1228 of 2014 filed by the wife for restitution of conjugal rights. The Family Court negated the prayers made in both petitions and instead granted a decree for judicial separation by invoking section 13A of the Hindu Marriage Act 1955.

2. The Case in brief: The marriage between the appellant (husband) and the respondent (wife) was solemnized on 06.06.2011. It was the second marriage for both parties. The appellant/husband filed H.M.O.P. No. 423 of 2013 seeking divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty, detailing various instances of mental and physical cruelty, including false accusations, constant quarrels, humiliation in the presence of others, and unfounded allegations that affected his dignity and peace of mind. The



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respondent/wife, on the other hand, filed H.M.O.P. No. 1228 of 2014 seeking

restitution of conjugal rights under Section 9 of the Act.

3. Upon full-fledged trial, the Family Court held that the allegations of cruelty and desertion were not proved to the required standard, nor was the wife entitled to restitution. However, on the premise that the relationship between the parties had deteriorated, the Family Court, invoking its discretionary power, granted a decree of judicial separation in both matters by invoking Section 13A of the Hindu Marriage Act 1955.

4. While the Hindu Marriage Act empowers the Court to grant a decree of judicial separation in a petition filed for divorce, no such power is contemplated in a petition filed for restitution of conjugal rights. In the present case, when the Family Court rejected the prayer for restitution of conjugal rights in H.M.O.P. No.1224 of 2024, it ought to have dismissed the petition as such, rather than granting judicial separation under that petition. The Family Court, however, proceeded to grant judicial separation in both the petitions, including one where the statutory framework does not permit such relief. It is also relevant to note that



although the Family Court declined to grant restitution of conjugal rights, the respondent-wife has not filed any appeal challenging that finding.

5. The learned counsel for the appellant contended that the Family Court committed a legal error in granting a relief that was not sought by either party, namely, judicial separation, instead of adjudicating upon the specific reliefs prayed for — dissolution of marriage by the husband under Section 13(1)(ia) of the Hindu Marriage Act on the ground of cruelty, and restitution of conjugal rights by the wife under Section 9 of the Act. In examining the prayer for divorce, the Family Court noted that the appellant-husband had alleged that the respondent-wife frequently quarrelled with him without any provocation, used abusive language, and once inflicted physical cruelty by scratching his face with her fingernails. He also alleged that the respondent assaulted his aged parents, causing them physical injury, and neglected and disrespected them on multiple occasions. However, the Family Court held that the appellant failed to substantiate these allegations with cogent and independent evidence. Specifically, the Court observed that the parents of the appellant, though central to the allegations of cruelty, were not examined as witnesses, thereby weakening the appellant's case.



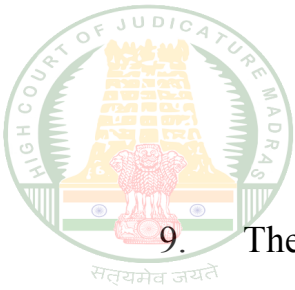
WEB COPY The Family Court further took note of the appellant's accusations that the respondent was arrogant and frequently left the matrimonial home without his knowledge or consent, and behaved in an insulting manner towards him and his family members. Nevertheless, the Court concluded that such allegations, even if assumed to be true, did not rise to the level of cruelty contemplated under Section 13(1)(ia) of the Hindu Marriage Act. It observed that minor quarrels and interpersonal friction, or incompatibility between spouses, cannot be construed as cruelty unless they cause such grave mental or physical suffering that the continued cohabitation becomes untenable.

7. In the absence of convincing proof that the respondent's conduct had caused the appellant sustained mental pain, trauma, or physical injury, the Family Court declined to grant a decree of divorce. It specifically found that the evidence on record did not establish that the conduct of the wife amounted to cruelty of such intensity as to make living together insupportable. On these findings, the Family Court rejected the husband's claim for divorce under Section 13(1)(ia) and instead,



of its own accord, granted a decree of judicial separation, which was not the relief claimed by either party.

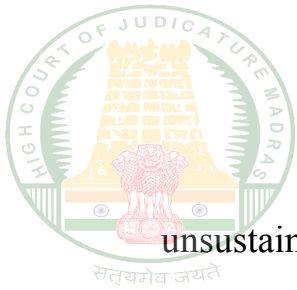
8. With respect to the petition filed by the respondent-wife seeking restitution of conjugal rights, the Family Court took note of her plea that she was willing to resume matrimonial life with the appellant-husband and accordingly prayed for a decree under Section 9 of the Hindu Marriage Act. However, during the course of proceedings, the wife made a significant admission that she was prepared to hand over custody of the minor child to the husband, without even insisting on visitation rights. The Family Court considered this admission to be telling and indicative of the absence of any sincere or bona fide intent on the part of the wife to restore cohabitation. The Court further observed that the parties had been living separately since 2013, and that the mutual accusations exchanged between them reflected a complete breakdown of the marital relationship. In light of these findings, the Family Court rejected the wife's petition for restitution of conjugal rights, holding that her conduct did not reflect a genuine willingness to resume matrimonial life.

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9. The allegations levelled by the petitioner against the respondent are that she

exhibited persistent moroseness, refused to accompany him for social outings such as dining, denied him conjugal companionship, and frequently abused him using offensive and intemperate language. It is further alleged that she physically assaulted the petitioner by scratching his face and arms with her fingernails and also assaulted his aged parents. The petitioner has additionally stated that the respondent harboured unfounded suspicions regarding his fidelity, accusing him of having contracted a second marriage, and went so far as to lodge a police complaint on that basis. However, during her examination, the respondent candidly admitted that her allegation was not based on any direct knowledge but merely on what she had heard from others. Thus, she failed to substantiate her wild and baseless allegation.

10. In support of his allegation of physical assault, the petitioner produced a photograph depicting scratch injuries on his face and deposed that the said photograph was taken by his mother. The Family Court, however, concluded that the non-examination of the petitioner's parents, particularly his mother, was fatal to his case. This reasoning, in the considered view of this Court, is legally

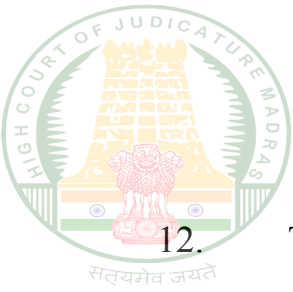


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unsustainable. The mere non-examination of family members cannot, by itself,

discredit otherwise cogent and consistent testimony of the petitioner, especially when no material contradictions or admissions were elicited during cross-examination to undermine his version. In the absence of any substantial challenge to the petitioner's credibility, his evidence could not have been discarded solely on the ground of non-examination of his parents.

11. The respondent also lodged a police complaint alleging dowry harassment and demand of money, implicating the petitioner and his parents and causing them to be summoned to the police station. However, there is no material on record to support the allegation of any dowry demand. The absence of corroborative evidence leads to the inference that the complaint was intended more to exert pressure and cause harassment to the petitioner and his family than to address any genuine grievance. It is also noted that the respondent had independently initiated proceedings under the Protection of Women from Domestic Violence Act, further reflecting the acrimonious nature of the relationship.



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12.

The Family Court also observed that the respondent-wife expressed her

willingness to hand over custody of the minor child to the petitioner-husband without even reserving a claim for visitation rights, which was viewed as a clear indication of her lack of interest in reviving the matrimonial relationship. It was further noted that the parties have been living separately since the year 2013.

13.

Upon a careful analysis of the pleadings and evidence on record, we are satisfied that the appellant has established a clear case of mental cruelty. The respondent's conduct—marked by repeated verbal abuse, unfounded allegations, and institution of baseless complaints—amounts to cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955. Although irretrievable breakdown of marriage is not a separately enumerated ground under the Act, the prolonged separation of over 14 years between the parties is a significant factor that cannot be ignored. In **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**, the Hon'ble Supreme Court held that enduring emotional pain and continued separation may cumulatively establish mental cruelty justifying dissolution of marriage.

“79.(xiv)Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial



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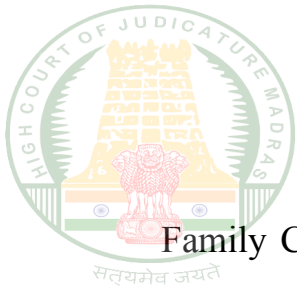
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bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

In **Shilpa Sailesh v. Varun Sreenivasan, (2023) 4 SCC 555**, the Hon’ble Supreme Court similarly held that long and irreconcilable separation, when coupled with established instances of cruelty, constitutes sufficient ground for dissolution of marriage.

14. In view of the foregoing discussion, we are of the considered opinion that the marriage between the parties has irretrievably broken down, and the conduct of the respondent constitutes mental cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act. Accordingly, the decree of judicial separation granted by the Family Court is set aside.

15. Though the petitioner initially filed G.W.O.P. No.1182 of 2013 seeking custody of the minor child, he subsequently chose not to press the petition. At present, the child continues to remain in the care and custody of the respondent/mother. The monthly maintenance of Rs. 30,000/- awarded by the



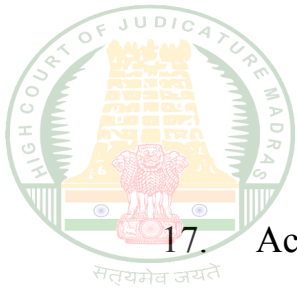
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Family Court to the respondent and the minor daughter under Section 25 of the

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16. In the result,

- The common order dated 23.02.2021 passed by the Additional Family Court, Coimbatore, is set aside.
- C.M.A. No. 1433 of 2021, filed against the dismissal of H.M.O.P. No. 423 of 2013 (divorce petition), is allowed. The marriage solemnized on 06.06.2011 between the appellant and the respondent at Kattu Vinayagar Koil, Vadavalli, Coimbatore, is dissolved by a decree of divorce under Section 13(1) (ia) of the Hindu Marriage Act.
- C.M.A. No. 1422 of 2021, filed against the order in H.M.O.P. No. 1228 of 2014 granting judicial separation, is allowed. The petition for restitution of conjugal rights is dismissed.
- The monthly maintenance of Rs. 30,000/- granted by the Family Court is enhanced to Rs. 40,000/- per month from the date of receipt of a copy of this Judgment.



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17. Accordingly, both the appeals are allowed in the above terms. No order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J) (A.D.M.C., J)

25.04.2025

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

R.SURESH KUMAR, J
and
DR. A.D. MARIA CLETE, J

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To

The Additional Family Court,
Coimbatore.

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