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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 22 / 11 / 2024

JUDGMENT DELIVERED ON: 29 / 04 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.756 OF 2021

[REDACTED]

... Appellant / Petitioner

Vs.

[REDACTED]

... Respondent / Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, praying to set aside the Order and Decree dated March 20, 2020 made by the I Additional Family Court at Chennai, in O.P.No.393 of 2018, dismissing the petition filed by the appellant to dissolve the marriage held on 02.07.2014 between him and the respondent herein by a decree of divorce.

For Appellant : Ms.Sheila Jayaprakash

For Respondent : Ms.Geetha Ramaseshan

**J U D G M E N T**WEB CO **R.SAKTHIVEL, J.**

Challenging the Judgment and Decree dated March 20, 2020 passed by the 'I Additional Family Court, Chennai' ['the Family Court' for short] in O.P.No.393 of 2018, the petitioner therein has preferred this Civil Miscellaneous Appeal.

2. Initially, the Original Petition was filed on March 23, 2017 before Family Court at Pondicherry and later transferred to the Family Court as per the Order dated October 13, 2017 of this Court made in Tr.C.M.P. No.466 of 2017.

3. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Petition.

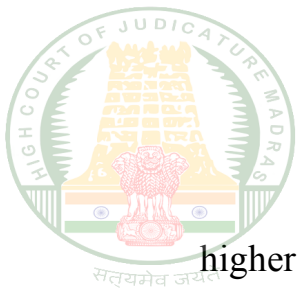
PETITIONER'S CASE

4. The petitioner (husband) and respondent (wife) got married on July 2, 2014 at Sri Rangam Srimath Andavan Ashram, Mylapore, Chennai, according to Hindu rites and customs. Their marriage was registered before the Marriage Officer, Sub-Registrar, Mylapore, Chennai.



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The respondent exhibited scornful, disrespectful, and indifferent behaviour during her brief stay at her matrimonial home in Puducherry and later in Hyderabad, where the petitioner was employed. She was sarcastic, quarrelsome, and abusive, showing no interest in their relationship beyond the petitioner's financial status. The respondent joined a job in January 2015 without informing the petitioner and misused his financial and professional status. In April 2015, the disputes escalated, prompting both sides' family intervention, during which the respondent admitted to her behaviour. Then, she withdrew from marital companionship, removed her mangal sutra and caused mental distress, leading the petitioner to resign from his job in 2015. She frequently initiated bedtime quarrels, depriving him of sleep. Further, the petitioner secured a job in Canada and attended training in the USA from September 2015 to October 2015. At that time, he arranged paying guest accommodation for the respondent as she was not willing to reside at Pondicherry with his parents. When the petitioner returned to India, the respondent refused to join him in Puducherry. Thereafter, she attended his father's 59th birthday function on October 18, 2015, but when urged to resume their marital life, she hurled abuses and left abruptly. In August 2016, the petitioner learnt that the respondent had moved to the USA for

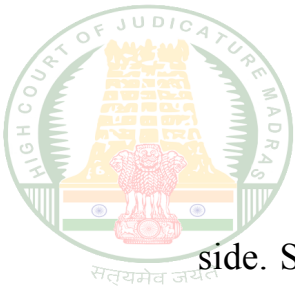


higher studies without informing him. His emails went unanswered.

Therefore, the petitioner filed a petition for divorce on the grounds of cruelty under Section 13 (1) (i-a) of 'the Hindu Marriage Act, 1955' ['H.M. Act' for short].

RESPONDENT'S CASE

5. The respondent admitted the marriage but denied all allegations of cruelty. She claimed that she treated the petitioner with love and care, especially when he was unwell in January 2015. She joined a multinational company with his consent and fulfilled all her household responsibilities. Their first *diwali* was celebrated joyfully with her parents in Mumbai, and they had a honeymoon in *Kullu-Manali*. According to her, interference from the petitioner's parents caused disputes. On March 15, 2015, the petitioner assaulted her, later expressing regret via email. She denied any financial exploitation and claimed that she gifted clothes to her in-laws and a DSLR Camera to the petitioner. She continued to provide marital companionship and never removed her mangal sutra. The petitioner left for Canada in July 2015, staying in Puducherry while awaiting his visa, while she remained in Hyderabad for work. Further, she attended his father's birthday but denied any abusive behaviour on her



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side. She claimed that the petitioner cut off communication in April 2016 and later deserted her by moving to Canada in March 2016. She explored higher education options in Canada and the USA, eventually securing admission to a university in the USA, which her parents communicated to the petitioner's family. She also informed the petitioner via Skype. Thereafter, the petitioner lost his job in Canada, returned to India in October 2016, and later found a job in Hyderabad in April 2017. She expressed her willingness to reunite after completing her studies, provided she was assured of a violence-free and humane marital environment. Accordingly, she sought to dismiss the petition filed for divorce.

FAMILY COURT

6. The Family Court framed the following points for consideration:

“1. Whether the petitioner has proved the averments of cruelty or not?

2. Whether the petitioner is entitled for the relief of divorce on the ground of cruelty?

7. In order to prove his case, the petitioner examined himself as P.W.1 and Ex-P.1 to Ex-P.10 were marked. During cross examination of

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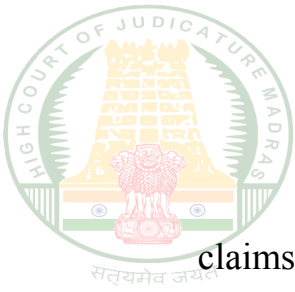
P.W.1, Ex-R.1 to Ex-R.9 were marked. On the side of the respondent, the respondent was examined as R.W.1 and Ex-R.10 to Ex-R.25 were marked through her.

8. The Family Court, after analyzing the oral and documentary evidence available on record, held that the allegations levelled against the respondent by the petitioner are not proved and finally concluded that the respondent has not committed any act of cruelty against the petitioner. Accordingly, the Family Court dismissed the Original Petition filed for divorce.

9. Feeling aggrieved, the petitioner / husband has filed the present Civil Miscellaneous Appeal.

ARGUMENTS

10. The learned Counsel for the appellant / petitioner argued that the Family Court's Order is against law and evidence. The Family Court wrongly dismissed the divorce petition failing to recognize that the marriage was unhappy. It erred in relying on photographs to conclude that the relationship was normal and also erred in accepting the respondent's

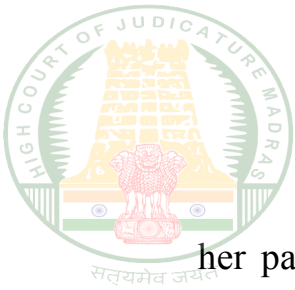


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claims about looking after the petitioner's parents. The petitioner was not informed about the respondent's job in Hyderabad, nor her decision to move to the USA for higher studies, which amounts to cruelty. The Family Court overlooked the respondent's lack of communication with the petitioner and her refusal to apply for a Canadian visa to join the petitioner, which showed her intent to abandon the marriage. It also wrongly dismissed the petitioner's emails and evidence, accepted a fabricated email sent by the respondent from the petitioner's mail address (Ex-R.24), and blamed the petitioner's mother for the marital discord. Despite acknowledging physical abuse, the Family Court dismissed the petition as a matter of ego. The respondent's actions amount to cruelty and the divorce petition should have been allowed. Therefore, it is prayed that the Family Court's Order be set aside and that the marriage be dissolved by a decree of divorce.

11. On the other hand, the learned Counsel for the respondent / respondent denied the allegations of cruelty and submitted that she treated the petitioner with love and care, even during his illness in January 2015. She started working in Hyderabad with his consent and managed household duties. Their first *deepavali* was happily celebrated at

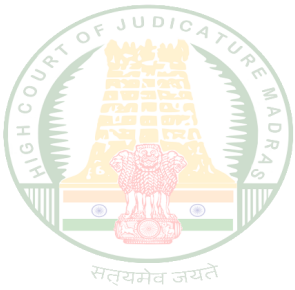
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her parents' home in Mumbai and they went on a honeymoon to *Kulu-Manali*. Differences arose only due to interference from the petitioner's parents. On March 15, 2015, the petitioner physically assaulted her, later admitting his mistake via an email (Ex-R.24). She never misused his financial status, and even gifted clothes to his parents and a DSLR Camera to him. She continued to fulfil her marital duties even after he left his job in Hyderabad. The petitioner cut off communication, moved to Canada in March 2016, and deserted her, without any reasonable cause. She explored options for higher studies in Canada and the USA, ultimately securing admission in the USA, which her parents had informed his family about. She also informed the petitioner via Skype. After losing his job in Canada, the petitioner returned to India in October 2016. The respondent is still willing to reunite with the petitioner after her studies, provided she is assured of a peaceful and violence-free environment. Accordingly, she sought to dismiss the appeal.

DISCUSSION

12. Heard on both sides. Perused the materials available on record.



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13. The petitioner (husband) and the respondent (wife) married each other on July 2, 2014. The petitioner hails from Pondicherry while the respondent hails from Mumbai. At the time of marriage, the petitioner was 24 years old and the respondent was 23 years old. Both are engineering graduates. The petitioner was originally working at Hyderabad while the respondent was working at Mumbai. After their marriage, the respondent resigned the job from Mumbai, relocated to Hyderabad and lived together with the petitioner. She also managed to secure a job at Hyderabad. While so, in March 2015, there arose some quarrel which turned into a minor scuffle between both. Nonetheless, they continued to live together thereafter. Then, the petitioner secured a job at Canada, and in September 2015, he left for the USA for some training purposes. At that time, the respondent was staying in a Paying Guest Accommodation at Hyderabad as agreed between them. Then, the petitioner returned to Puducherry in October 2015 after the training. The respondent also visited Puducherry to attend her father-in-law's birthday function. There is no dispute with the above facts and they are admitted.

14. The petitioner seeks divorce on the ground of cruelty. According to him, in March 2015, it was the respondent who attacked him

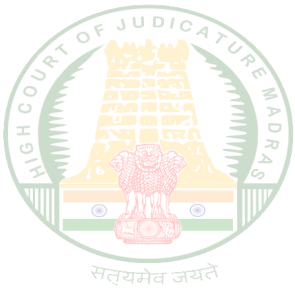
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first and he retaliated as a self-defence. He contends that the physical abuse as well as the respondent's bed time quarrels, indifferent attitude, failure as a dutiful wife, failure to inform him about the factum of her higher studies at the USA, refusal to join him in Canada, all these factors caused cruelty to him.

15. As far as the physical altercation in March 2015 is concerned, it is admitted that both parties showed some physical aggression. The incident occurred within a year of their marriage. It has to be borne in mind that the couple as newlyweds were navigating through the early phase of their marriage, during which misunderstandings, difference of opinion and minor spousal conflicts are common and expected. Though there arose some quarrel leading to a physical altercation, both parties condoned and continued to live together thereafter. Apart from the incident, they were leading a typical newlywed couple life, enjoying honeymoon at *Kullu-Manaali* and celebrating *diwali*, *pongal* and other occasions. On the basis of available evidence, this Court is of the view that the scuffle between the couple was a minor one and it can only be considered as normal wear and tear in a marriage. Such minor scuffles, though not desirable and appropriate, does not amount to cruelty.



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16. The petitioner further contends that the respondent left for the USA for higher studies without due intimation to the petitioner and his family. The respondent's contention is that she had conveyed the same to the petitioner in August 2016 via Skype and that his family members were also duly informed by her parents. The said fact has not been disputed by the petitioner. He had brought up the issue only in his Email dated January 27, 2017, while even according to him he came to know about the same on November 2, 2016. Further, it has to be noted that the respondent went there for her higher studies and even while assuming that she failed to inform the petitioner and his family, that alone cannot be termed as cruelty, considering the facts and circumstances of this case.

17. As regards the other incidents which according to the petitioner caused cruelty to him, the petitioner has failed to substantiate the same through proper evidence. On the other hand, the photographs and other evidence available on record, more specifically Ex-R.1 to Ex-R.9, would suggest that the respondent and the petitioner were leading a typical and happy life, and that the respondent was being a dutiful wife. In these circumstances, this Court is of the view that the petitioner has failed to establish his case of cruelty.



18. In Ex-P.6 – Email sent by the petitioner to the respondent suggesting divorce as the best option after narrating various issues between them, he has stated thus:

“Further, your mother has asked for the return of your belongings, including all the valuables, when she along with your father made a surprise and unscheduled visit to Pondicherry on the late night of Nov 2, 2016. My father informed that we will be returning everything that belongs to you, as soon as the 'key' for the suitcase is given to us through your mother / parents.

During the above visit only, your parents informed us (that is to my parents, grand parents and relatives) that you have left for USA for higher studies in Aug 2016 itself. It is a big shock to me, and to all our family elders, who were present on that day. Thus, it has been confirmed that you have even left the country on your own, keeping me in darkness intentionally and without even informing me. Therefore, it is absolutely certain and proved beyond doubt that you have deserted me and taken an unilateral decision to lead your own life, far away from normal family / married life and has reached a point of no return.



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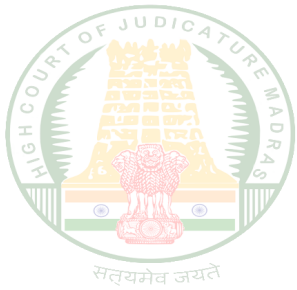


All these actions and behavior which are irresponsible and not expected of a lady who in a marital. relationship, have caused severe mental stress, loss of reputation to me and to my family and to me in the eyes of public, serious health problems, severe financial loss, substantial mental agony, irrecoverable loss of marital rights and happiness at the prime of my age and personal life.

All these have led to a situation of irreconcilable difference of opinion of no return, at any point of time.

In these circumstances, considering the future welfare of both of us, it is better that our marital relationship is terminated at the earliest, by initiating the legal proceedings of 'divorce. Hence, am seeking 'divorce' from you, and I wish that we should part gracefully and peacefully and with dignity, and thereafter lead each one's rest of life in their chosen way and on their own chosen terms, to their liking forever, without ever interfering in whatsoever manner."

19. In response, the respondent vide Ex-R.19 – Email, has replied as hereunder:

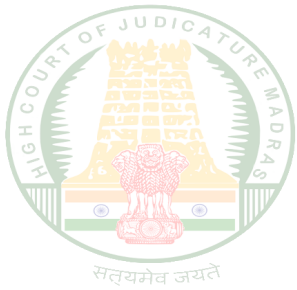


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“...These allegations are totally wrong and cheap. In reply to your emails, I had also replied mentioning I am willing to come and stay with you wherever you will be permanently until you provide a humanitarian environment. For which you have not given any commitment. Also till April, 2016, we were in touch through chat in Skype/hangout/WhatsApp. Even at that time you had not even informed me that you had already left for Canada in Mar 2016 itself. Further I had also contacted you over Skype in August 2016 informing you that I had come to US for higher studies. Then also you neither told me that you are in Canada nor made efforts to meet me. Even now I have tried to contact you and wish you well in spite of all the harassment and torture I have faced from you and your family in the past years.

... Regarding my belongings in Pondicherry, including some of the valuables (gold / silver articles, vessels) given by my parents, in case you want to return them, you may do so. They are all packed in suitcases, you don't need keys for the same as even the suitcases are mine. Also there are around 5 necklaces and other gold and silver articles in your bank locker in Pondicherry which you may return back. Hence you may return them just like they are whenever you



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can, Your 2 items can be returned to you once we receive the suitcases.

...This is again totally wrong. My parents personally visited your grandfather (your father's father-Eldest in your family) at his residence at Chennai on 11 August 2016 and informed him that I will be joining US University for higher studies and asked him to inform you and your parents too. Further my father had sent an email on 20 August 2016 to your father with copy to you und me, informing that I will be joining US University in August 2016 for higher studies. The main purpose of my parents visiting your parents at Pondicherry on 2 Nov 2016 is to request your parents to restore normalcy in our relations forgoing their ego and to meet you personally for the same. Moreover your parents did not express any shock regarding me being abroad. Neither did your grand father to whom my parents had spoken personally had any surprises. They were all well aware of it. This is the umpteenth time you are falsely accusing me and my family. However your parents did not allow my parents to even see you and physically evicted them out of the house forcibly.



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We have various evidences to substantiate all the above points which are facts. Throwing dirt on me neither will make you look clean nor can make you feel better.

...The real issue is the false pride and ego of your parents, which has caused considerable agony and mental torture to me and my family and destroyed our marital peace and also all the above problems you have mentioned. In fact as a lady I have suffered the irreparable loss. I firmly believe that once your parents forego their ego and stop harassing me, things will sort out automatically amicably. Even now, you can always come and stay with me at US while am studying for a happy marital life. To come and live with your lawfully wedded wife chosen by your parents, the door is always open but the decision is entirely up to you. It is my conjugal right too. Pondering over past will only lead to more misery. Lessons can be learnt from past and we can move ahead. Instead of blaming me for everything, I suggest it's high time you take up some responsibility for your actions and start acting as a sensible and dutiful husband.

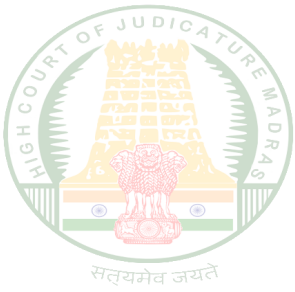


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...Asking and emphasizing about the divorce has become a true harassment to me and my family. As I had mentioned to you time and again, I am not at all agreeable for Divorce under any circumstances. Again I reiterate that I am not at all agreeable for Divorce under any circumstances. I am only earnestly praying to God for reason to dawn and for a happy resolution of this problem. Marriage is a lifelong commitment in front of the Fire God, not a park where you can have a jolly time and leave a lady according to your convenience.

Sending these kinds of emails with false allegations and accusations is not going to be entertained. My standpoint and reply will remain the same and you can refer the above for your future clarifications. I am deeply saddened by the fact that even after me doing all my duties as a wife and as a daughter in law of the house, I am considered the culprit. I had thought at least you as my husband would understand my predicament. I am tired and vexed of not having a proper marital life because of the influenced domestic violence meted out against me. I just hope and pray to god that we both come out of this madness soon and live a peaceful life."

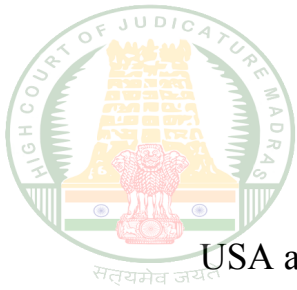


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20. From a cumulative reading of all the communications between the parties that are placed on record, including the above extracted ones, it could be inferred that the parties are equally educated and qualified, and they both aspire to stand on their own legs and desire to focus on their career. The petitioner is not ready to sacrifice his career, and wants the respondent / his wife to come and live with him. Similarly, the respondent wants to focus on her academics and career as well. Both are not ready to compromise on each other's priorities and consequently, have some spousal conflicts. Since both are equally qualified and educated and pursuing their careers as they desire, this Court cannot find fault with act of the respondent in prioritizing her academics or career. Therefore, this Court is of the view that the ground of cruelty for dissolution of marriage has not been made out in this case.

21. At the same time, coming to the factual aspects, the Family Court referred the parties to conciliation which did not yield any fruit. Even after conciliation, they were not ready to adjust and were sticking on to their own stands. Be that as it may, at the time of trial, the petitioner was working at Hyderabad and he has deposed that he is planning to shift to the USA for work. The respondent was staying in the



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USA at the time of trial. The respondent in her evidence has deposed that if the petitioner wants and desires, he may come and lead a matrimonial life with her at the USA. Further, in Ex-R.19 – Email, as regarding the return of her valuables, the respondent has stated the petitioner may return them, if he wants to return them. Except for the above, the respondent has not taken any steps towards reunion with the petitioner and has stood by her decision. Further, the respondent has not filed any petition for restitution of conjugal rights till date. Admittedly, they have no children. Now the petitioner is 35 and the respondent is 34 years old. The Family Court dismissed the Original Petition by observing that matrimonial life and personal career are like two eyes of a human being which both have to be treated equally and this would be possible only when a better understanding develops between the spouses. The relevant portion reads as hereunder:

“It is now made clear that the issues between the spouses had been blown up by the elders and but for their intervention, the spouses would not be before this Court. More particularly, this email has been sent after the email by the petitioner in Ex. R24, commenting the involvement of his mother in their life. The other allegations of removing the mangal



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sutra, abuses etc., have not been whispered by the petitioner in his email dated 27.01.2017 and remain unproved.

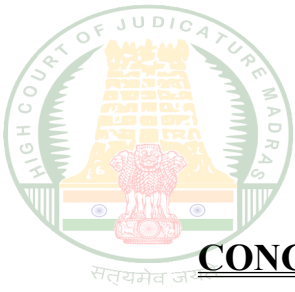
It is also pertinent to point out that the respondent had been greeting the petitioner for the ceremonies like Karthigai Deepam, Tamil New Year etc. The respondent had been making every endeavor to join the petitioner.

A complete reading of the pleadings and evidence would give an inference that there are no major issues between the spouses but for certain differences of opinion. Of course that both had some physical abuses on each other for which they are blaming the other. It is apparent that the elders of both sides should completely stay away from the spouses and both shall be provided with appropriate counseling or mediation which will lead to amicable solution for reunion and to throw away the egoistic approach. Matrimonial life and personal career are like two eyes of a human being which both have to be treated equally. This would be possible only when a better understanding develops between the spouses.”



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21.1. The learned counsel for the appellant/petitioner stressed on the point that the petitioner and the respondent have been living apart for nine years, and hence, their marriage has broken down irretrievably. On that ground also, the petitioner is entitled to a decree of divorce. It is noticed that as stated, the petitioner and the respondent have been living separately for about nine years. Further, the steps taken by the Trial Court for conciliation, for the purpose of reunion, ended in vain. Therefore, though the petitioner has not taken the ground of desertion under Section 13(1)(i-b) of the Hindu Marriage Act, for the reason that the parties lived together till October 2015 and that the Original Petition was presented on March 23, 2017, i.e., within two years, in view of the facts and circumstances of the case, this Court is of the opinion that there is no possibility of reunion between the petitioner and the respondent. Therefore, it would be appropriate to dissolve the marriage solemnized between the petitioner and the respondent on July 2, 2014. Accordingly, the marriage solemnized between the petitioner and the respondent on July 2, 2014, stands dissolved.

*CMA NO.756 OF 2021***CONCLUSION**

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22. In view of the foregoing narrative, this Civil Miscellaneous Appeal is allowed. Considering the facts and circumstances of the case, there shall be no order as to costs.

[J.N.B., J.]**[R.S.V., J.]****29 / 04 / 2025**

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No

TK

To

- 1.The I Additional Judge
Family Court, Chennai.
- 2.The Section Officer,
V.R.Section, Madras High Court, Chennai.



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CMA NO.756 OF 2021

J. NISHA BANU, J.
AND
R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
CMA NO.756 OF 2021

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