

CMA(MD)No.899 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2026

CORAM

**THE HON'BLE MR JUSTICE N. ANAND VENKATESH  
AND  
THE HON'BLE MR JUSTICE P.DHANABAL**

**CMA.(MD)No.899 of 2023**

~~XXXX~~

... Appellant

Vs

~~XXXXXXXXXX~~

... Respondent

PRAYER :-Civil Miscellaneous Appeal filed under section 19 of the Family Courts Act against the decree and judgment dated 24.05.2023 in HMOP No.192 of 2021 and counter claim in HMOP No.192/2021 on the file of the Family Court, Pudukottai.

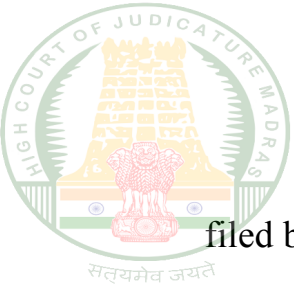
For Appellant : M/s.A.Mohan

For Respondent : Mr.S.Premkumar

### **JUDGMENT**

(Judgment of the Court was delivered by N. ANAND VENKATESH, J.)

The husband has assailed the order passed by the family Court, Pudukottai in HMOP No.192/2021 dated 24.05.2023, wherein, the petition



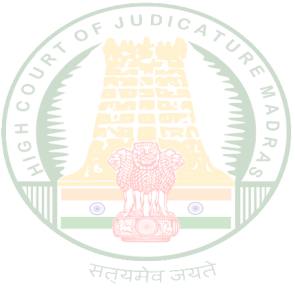
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filed by the husband seeking for the dissolution of the marriage was rejected and the counter claim filed by the wife seeking for restitution of conjugal rights was ordered.

2. We have heard the learned counsel for the appellant and the learned counsel for the respondent.

3. The appellant was married to the respondent on 08.07.2019 as per Hindu Rites and Customs. After the marriage, they resided in the matrimonial home for hardly few months. According to the appellant, even during the short period, the respondent was talking ill of the appellant and disrespected his parents and she went to her parents house and never returned back to the matrimonial home. The respondent gave birth to a child and the appellant was not even invited to the parents house to see the child.

4. It is under these circumstances, divorce petition came to be filed by the appellant on the ground of cruelty under Section 13(1) (i-a) of the Hindu Marriage Act for dissolving the marriage.



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5. The respondent filed counter and also made a counter claim for restitution of conjugal rights. The respondent made several allegations against the appellant to the effect that she was treated with cruelty and the appellant used to move closely with his brother's wife and the appellant did not even care to visit the hospital or the house of the parents of the respondent, after the child was born. Even when the respondent's parents took the child to the appellant's house, neither the appellant nor his parents spoke anything. Thus, the respondent took a stand that she was forced to move out of the matrimonial home and that in spite of the deficiencies on the part of the appellant, she wanted to live with the appellant considering the future of the child. Hence, the respondent sought for the relief of restitution of conjugal rights.

6. PW1 and PW2 were examined on the side of the appellant and Ex.P1 to Ex.P3 were marked. RW1 to RW4 were examined on the side of the respondent and Ex.R1 was marked.



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7. The family Court, on considering the facts and circumstances of the case and on appreciation of evidence, proceeded to dismiss the divorce petition filed by the appellant and allow the counter claim filed by the respondent seeking for restitution of conjugal rights. Aggrieved by the same, the present appeal has been filed before this court.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. Even at the outset, we enquired the learned counsel for the appellant as to how a single appeal is maintainable as against two distinct reliefs that were granted by the family Court – one by rejecting the divorce petition and the other allowing the counter claim and granting the relief of restitution of conjugal rights. We put this question on the ground that counter claim has to be considered as an independent suit/petition filed by the respondent and the relief granted in the counter claim must be considered as an independent relief, which must also be put to challenge.



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10. The learned counsel for the appellant submitted that the family Court passed a common judgment and common decree and therefore, single appeal is maintainable.

11. We have our own reservations on the above stand taken by the learned counsel for the appellant. In our considered view, counter claim made by the respondent has to be considered as an independent petition since an independent and distinct relief is sought for by the respondent by filing a counter claim. Therefore, even though a common judgment has been passed by the family Court, considering the fact that the issues involved were common and it was between the same parties, appeal must be filed independently as against the dismissal of the divorce petition and allowing counter claim by rejecting the relief of restitution of conjugal rights. To render such a finding, we are relying upon the ratio in the judgment in *Rajeswari v. Perumal and another* reported in **2018 (4) LW 536**. We are also placing reliance upon the judgment of the Apex Court in *Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others* reported in **2015(3) SCC 624**.



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12. In the light of the above discussion, the single appeal filed by the appellant against two distinct reliefs granted by the family Court – one dismissing the divorce petition and the other granting the relief of restitution of conjugal rights, may not be maintainable.

13. In view of the above, we will confine this appeal only with respect to the dismissal of the divorce petition filed by the appellant and see if the order requires the interference of this Court.

14. On a careful reading of the divorce petition filed by the appellant, it is seen that the appellant and the respondent were not able to come to terms and adjust themselves to lead a happy married life. The only redeeming factor in this marriage was the child that was born to the respondent. Even this child was not able to create a common ground to enable the appellant and the respondent to live together. The only allegation regarding cruelty is that the respondent continued to live with her parents and in spite of the best efforts, she did not join with the appellant.



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15. The learned counsel for the appellant submitted that the nature of allegations that have been made by the respondent in the counter by questioning the character of the appellant clearly constitutes cruelty.

16. In the considered view of this Court, the cause of action for filing the divorce petition alone can be taken into consideration and what stand was taken in the counter will not create a new cause of action for the appellant to take advantage of the same and make an attempt to establish the ground of cruelty.

17. The family Court has carefully considered the evidence adduced by both sides and has rendered a finding that the respondent had stayed with the appellant only for a very short time in the matrimonial home and that the appellant has not made out a case for cruelty. This finding rendered by the family Court is perfectly in order. The bickering that takes place between a husband and wife and more particularly during the initial stage of marriage is a common phenomenon that invariably takes place in every marriage relationship. If the same is attempted to be projected as cruelty, most of the marriages will have to be dissolved. A stable relationship of a husband and



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wife is a long drawn process that requires patience and lot of adjustment.

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18. In the case in hand, the appellant and the respondent hardly lived together for a couple of months and the initial bickerings were not properly sorted out and both of them are living separately. Unfortunately, the child has been caught in the crossfire. As rightly held by the family Court, the appellant certainly has not made out a case for cruelty either physical or mental and therefore, the dismissal of the divorce petition by the family Court does not warrant interference of this Court.

19. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

(N.A.V.,J.) (P.D.B.,J.)  
12.03.2026

NCC : Yes/No

Index : Yes/No

**RR**

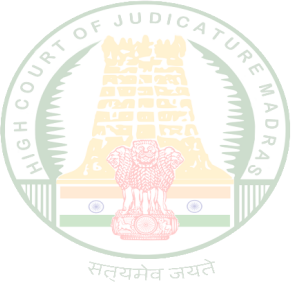
To

1.The Family Court, Pudukottai.

2.The Section Officer

VR Section Madurai Bench of Madras High Court,  
Madurai.

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**RR**

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