

C.M.A(MD)No.870 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 18.08.2026

DELIVERED ON : 24.08.2026

CORAM :

**THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS. JUSTICE M.D.SUMATHI**

C.M.A(MD)No.870 of 2022

Salaith Mary

... Appellant

- Vs. -

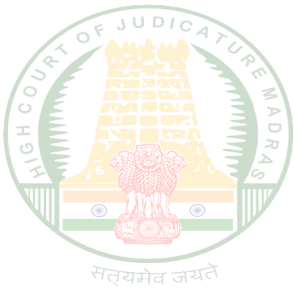
Victor

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act read with Section 19 of the Family Courts Act, set aside the fair and decreetal order dated 22.06.2022 passed in I.D.O.P.No.175 of 2021 on the file of the Family Court Judge, Sivagangai.

For Appellant : Mr.M.Saravanan

For Respondent : No appearance



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JUDGMENT

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[Judgment of the Court was made by **M.D.SUMATHI, J.**]

This Civil Miscellaneous Appeal is filed against the order in I.D.O.P.No.175 of 2021 on the file of the Family Judge, Sivagangai. The appellant is the petitioner and the respondent is the respondent in the original petition.

2. Brief substance of the petition in I.D.O.P.No.175 of 2021 is as follows:

2.1. The marriage between the petitioner and the respondent was solemnized on 16.05.2008 at Adaikala Matha Kovil, Kattannur as per the Christian rites and customs. They gave birth to a male child on 01.08.2009. At marriage 12 sovereigns jewelery, 20,000/- money and house hold items were given as Sridhana. The appellant/petitioner alleged that from the very day of marriage, the respondent/husband demanded money and jewelry inspite of her mother's ill health. He hides the fact that he was an alcoholic at the time of marriage. Whenever an issue rises, her elder sister would give some amount of money to settle the things. After the delivery of the boy child, the respondent alone



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visited them. Even after 6 months, the respondent did not come to take her back. They asked for 5 sovereign for the child. But one sovereign alone given. So, the respondent treated her with cruelty and compelled her to do all the house hold works without doing any help. During March 2012, the petitioner got pregnant again. But the respondent said “This is not my child”. On 24.03.2013, a baby girl born. At that time also, there is no support either from the respondent or their family. The respondent’s parents never came to see the grandchild. All expenses for the petitioner and the child were taken care of by the petitioner’s sister only. The petitioner returned to the matrimonial home after one month. But the respondent did not go to any work and did not give even a penny for the family expenses.

2.2. The respondent would come home with drunken mood and abused her using filthy words and beaten up her. The respondent did not allow the petitioner to go for work and kept her locked at home. The petitioner, to run the family, did tailoring work from home and managed the family expenses. The respondent, without considering the physical condition of the petitioner, compelled her for forcible physical relationship 3 times a day. The respondent beat the petitioner at least



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once every month. Because of the same, the petitioner went to her sister's house about 20 times. Each time the petitioner's mother and sister spoke to the respondent and sent her back with him. The petitioner tolerated all the cruelty done by the respondent, during the period of 2017 the respondent made the petitioner to sign in some papers for house loan. On 15.02.2018 the respondent took a house on lease in Kalaiyar Kovil for Rs.1,50,000/-. He pledged the petitioner's jewels at State Bank to settle the lease amount. He only worked there for few days. The respondent spent money whatever for drinking. So, the petitioner started tailoring work from home to run the family. The petitioner availed many loans to clear the debts availed for the children's education and family expenses. Due to the financial stress and cruelty, the petitioner was under so much mental pressure that she tried to commit suicide. Considering the future of the children, she stopped the same and spoke to the respondent many times about this and even then, there was no change. With no other option, the petitioner, on 22.02.2018, went to her sister's house. There also, the respondent did not visit the children or the wife.

2.3. On 21.06.2019, the petitioner went to Singapore for job



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considering the welfare of the children and to clear the family debts. On

31.05.2021, she returned from Singapore and went to her sister's house.

After returning to her sister's house, people started asking for loan money that the respondent had taken. Further alleged that from the date of marriage, the respondent was drinking, demanding money, jewelry and harassing the petitioner without caring her and their children and made her life difficult. On 22.12.2018, the petitioner left the matrimonial home at the insistence of the respondent. The respondent has not acted as a dutiful husband to her or father to the children. He has not cared for them. Because of this behavior, the petitioner feels that it is not possible to live with him.

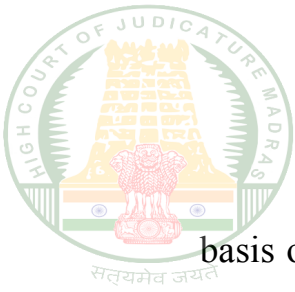
2.4. The petitioner further alleged that it is the bounden duty of the respondent to maintain the wife and children. The respondent should return the Sridhana articles given to the petitioner at the time of marriage. Without no other option, the petitioner sent a legal notice on 21.06.2021 for seeking divorce and Rs.30,000/- as monthly maintenance to the petitioner and the children and for Rs.25,00,000/- as compensation for the cruelty meted out by her. But the respondent did not choose to send any reply. That shows the disinterest of the respondent to live with the



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petitioner and hence, the petitioner would not continue the matrimonial relationship with the respondent. Hence, the petition for seeking divorce on the ground of cruelty and desertion.

3. Before the Family Court, Sivagangai, the respondent was called absent and set exparte. The petitioner filed her proof affidavit and she was examined as P.W.1 and documents Ex.P.1 to P.6 were marked. After hearing the appellant/petitioner and considering the evidence on record, the learned Judge, Family Court, Sivagangai, dismissed the petition vide its order dated 22.02.2022 pointing out that the petitioner has not proved the allegations of cruelty, the appellant/petitioner had failed to establish the ground of desertion under Section 10(1)(ix) of the Indian Divorce Act, 1869, as there was no sufficient proof to show that the respondent/husband had voluntarily deserted or withdrawn from the matrimonial relationship without reasonable cause; that the allegations of physical and mental cruelty were not satisfactorily established, particularly, the petitioner had not produced documents for the alleged injuries, no complaint lodged before the police in respect of the alleged physical assaults, no specific date and events of physical assault and therefore, the allegations of cruelty could not be accepted merely on the

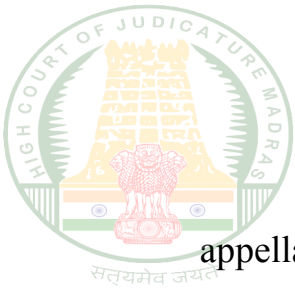


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basis of her pleadings; and that there was delay in instituting the divorce proceedings and the petitioner had failed to satisfactorily establish the alleged financial liabilities and debts incurred by the respondent, as there was no independent or documentary evidence to prove that the respondent had borrowed money or that any person had advanced money to him, and further, the exact date or specific particulars of the alleged demand for dowry had not been established. The learned Family Court also proceeded on the premise that the petitioner's entitlement to maintenance could be worked out independently and that the failure of the respondent to maintain the wife and children, by itself, would not constitute a sufficient ground for dissolution of marriage; that the petitioner had not established irretrievable breakdown of the marriage; and that the fact that the parties had two children was a circumstance which ought to have been considered while assessing the alleged delay in instituting the proceedings.

4. As against the said order of the learned Judge, Family Court, Sivagangai, the appellant/petitioner has preferred this appeal.

5. Mr.M.Saravanan, the learned counsel for the



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appellant/petitioner would submit that the petitioner made out all the grounds for divorce under cruelty and desertion in the divorce petition, however, the learned Judge, Family Court, Sivagangai, dismissed the case only on the ground that there is no specific date and events of alleged cruelty and there is a delay in instituting the divorce proceedings and the petitioner had failed to satisfactorily establish the alleged financial liabilities and debts incurred by the respondent, the exact date or specific particulars of the alleged demand for dowry had not been established and that therefore, the trial Court erred in dismissing the petition for divorce. On the side of the respondent, no one appeared on behalf of the respondent before this Court also.

6. Heard both sides and perused the records. A perusal of the case would go to show that the respondent/husband was set exparte before the Family Court. He deliberately did not appear before the trial court and there are no averments or evidence to deny the fact pleaded by the appellant-wife that the respondent did not commit any cruelty and harassment on the appellant.

7. We, carefully considered the appellant counsel's contention



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and went through the evidence on record.

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8. The point that arises for consideration is whether the trial court was justified in dismissing the O.P. even though the appellant's testimony was not controverted and whether the appellant had made out a case for the relief sought for by her.

9. It is true and correct that the legal burden is upon the appellant/petitioner to prove her case. In the present case, the appellant/wife examined herself as P.W.1. She had specifically pleaded and narrated the acts of cruelty such as the respondent was addicted to alcohol, that he frequently came home in a drunken condition, abused and assaulted her, failed to contribute towards the family expenses, and compelled the appellant to shoulder the financial responsibilities of the family. The appellant had further stated that the respondent did not take care of the wife and children and that she was compelled to undertake tailoring work and obtain loans in order to meet the family and educational expenses. The evidence of the appellant further disclose that the respondent had pledged the appellant's jewels and incurred financial liabilities, while the appellant was left to discharge the burden of

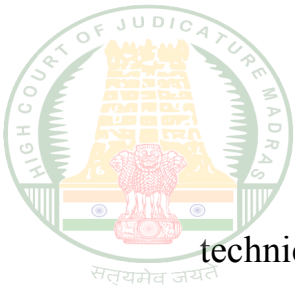


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maintaining the family. These allegations form a continuous course of conduct and cannot be discarded merely because the appellant not filed any police complaint or any wound certificate regarding the physical harassment. The appellant's evidence has remained wholly un rebutted.

10. It is also significant that the respondent, despite service of notice, chose not to enter appearance and contest the proceedings. He did not enter the witness box to explain his conduct, did not produce any evidence to show that he was maintaining the wife and children, did not produce any materials to establish that he had made any genuine attempt to resume cohabitation, and did not rebut the specific allegations of alcoholism, neglect, financial irresponsibility and cruelty. The respondent also failed to issue any reply to the legal notice issued by the appellant. The continued silence of the respondent, when specific allegations were made against him and when he had an opportunity to deny the same, assumes considerable significance in the facts of the present case.

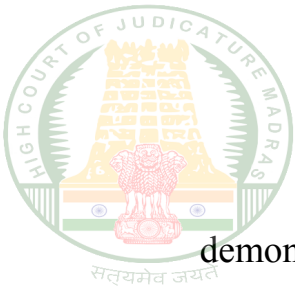
11. The trial Court approached the evidence in a hyper-



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technical manner by examining each allegation in isolation instead of considering the cumulative effect of the conduct of the respondent/husband. The absence of wound certificate for sustained injuries or a contemporaneous police complaint cannot to prove the grounds of cruelty by itself, be treated as conclusive proof that the alleged physical and mental cruelty did not occur. Matrimonial cruelty is not confined only to acts which result in visible bodily injuries or which are reported to the police. The consistent course of conduct of one spouse, when viewed cumulatively, may constitute mental cruelty and may render the continuation of matrimonial life impossible.

12. The appellant/petitioner filed the main petition in I.D.O.P. of 175 of 2021 on the file of Family Court Judge, Sivagangai. The family court concluded that the appellant/petitioner herein had not established her allegation that the respondent herein had deserted her for more than 2 years. In the present case, the parties have admittedly been living separately from 22.12.2018 for several years and there has been no effective attempt on the part of the respondent to restore matrimonial life. The respondent has not filed any proceeding for restitution of conjugal rights, has not approached the appellant for reunion, has not

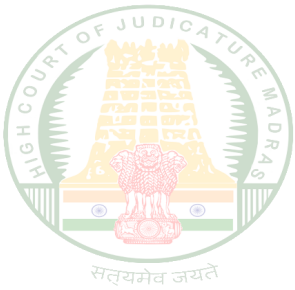


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WEB COPY demonstrated any bona fide attempt to resume cohabitation and has remained absent not only before the Family Court but also in these appellate proceedings. The prolonged separation, coupled with the respondent's complete indifference towards the wife and children, is a strong circumstance supporting the appellant's case. Further the respondent has not been maintaining the appellant and the children. This constitutes desertion on the part of the husband.

13. The Hon'ble Supreme Court in ***Shri Rakesh Raman Vs.Kavitha 2023 LiveLaw (SC) 353***, has held as follows:-

“18. ... The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under [Section 13\(1\)\(ia\)](#) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple



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Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other".

14. When the parties are not in touch with each other for a long period & when the respondent is not maintaining the appellant or the children, we can safely come to the conclusion that this would constitute cruelty. Keeping the marriage will not serve any purpose.

15. Further, the Family Court also erred in attaching undue importance to the absence of independent evidence regarding the debts allegedly incurred by the respondent. The appellant's case was not that the respondent's alleged indebtedness, standing alone, constituted a statutory ground for divorce. Rather, the financial conduct of the respondent was relied upon as one of the circumstances forming part of the continuing course of cruelty and neglect. The respondent was the person best placed to explain his financial position, his employment, his income and the circumstances in which the alleged borrowings were incurred. Having chosen not to contest the proceedings and not to enter the witness box, he cannot seek to derive advantage from the absence of



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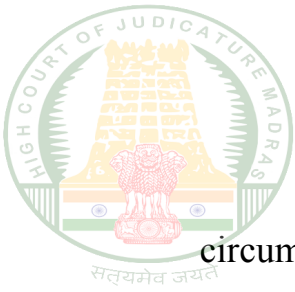
evidence which could have been specifically rebutted by him.

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16. The right of a wife and children to claim maintenance is an independent statutory right and the availability of such remedy does not obliterate or neutralize the cruelty, neglect or desertion pleaded and proved in matrimonial proceedings. The question before the Court is whether the conduct of the respondent has made it unreasonable or injurious for the appellant to continue the matrimonial relationship. In the present case, the failure of the respondent to maintain the wife and children, when considered along with his alcoholism, financial irresponsibility, failure to provide any income or support, and prolonged absence from the matrimonial relationship, constitutes a relevant and material circumstance in assessing cruelty.

17. The exact date of every demand for money and dowry has not been mentioned cannot, in the facts of the present case; by itself defeat the matrimonial claim. The allegations in the petition disclose a continuing course of demand for money and jewellery from the inception of the marriage and repeated harassment in connection therewith. Matrimonial cruelty is required to be assessed from the totality of the

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circumstances and not by applying the standard applicable to a criminal prosecution to each individual matrimonial incident.

18. As regards the allegation of delay, the same also cannot be treated as an absolute bar to the maintainability of the matrimonial petition. The appellant has furnished a specific explanation for the period relied upon by the respondent. Since the respondent failed to maintain the wife and children the appellant returned to her sister's home on 22.12.2018 and thereafter she had gone to Singapore on 21.06.2019 for the welfare of the children and to clear the family debts and returned on 31.05.2021. After her return, she issued the legal notice on 21.06.2021 she instituted the proceedings. Thus, the chronology of events itself demonstrates that, after her return to India, the appellant took immediate steps to seek legal redressal. The Family Court therefore ought not to have mechanically treated the period during which the appellant was in Singapore for the welfare of the family and children as an unexplained or improper delay. The relevant dates are borne out by the pleadings in the present record.

19. The decision in ***G.Ramakrishna Pillai vs.J.Vijayakumari***

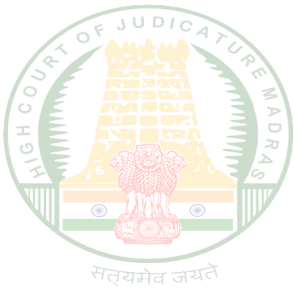


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Amma and Ors AIR 1990 KER 55, it is observed as follows:

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“8.It is necessary to consider the aspect of unreasonable or improper delay in view of the fact that according to the trial court there has been such delay on the part of the husband in approaching the court. We notice that such delay is not an absolute but only discretionary bar under the English Law and the Divorce Act 1869. But Under Section 23(1)(d) of the Hindu Marriage Act it is an absolute bar. Where there is delay petitioner has to come forward with the explanation for the delay and satisfy the court that the explanation is reasonable. Then and then only the court can hold that the, delay is not unnecessary or improper. At the same time it is not any and every delay which will be of consequence. The basis of the rule is that delay is material factor because if unexplained it may lead to the inference that there was collusion between the parties, or acquiescence in the injury or indifference to the same or some wrong motive for seeking relief after slumbering over the matter in sufficient comfort for an inordinate period after the ground for relief had arisen. See page 866 of the Principles of Hindu Law by Mulla 15th Edn. Mere delay by itself is not fatal”.



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20. The decision in *Chandrika v. M. Vijayakumar, 1996 (1)*

CTC 496, our Madras High Court held that delay in presenting a divorce petition is not necessarily fatal, particularly in a case of desertion; the Court agreed that the petitioner should be given an opportunity to explain the delay.

21. The mere fact that the parties have children cannot operate as a perpetual bar against a spouse seeking dissolution of a marriage which has ceased to function in substance. The existence of children is undoubtedly a relevant circumstance, but it cannot compel a spouse to continue an oppressive matrimonial relationship indefinitely where the statutory grounds for divorce are otherwise established. Indeed, the welfare of the children is itself a relevant consideration while determining whether the matrimonial relationship has become completely dysfunctional. Here in this case the appellant alone taking care of the children. Further the respondent's failure to appear and explain his conduct assumes particular importance. Where a party has personal knowledge of the facts alleged against him, yet deliberately chooses not to file his counter, enter the witness box and does not subject himself to cross-examination, the Court is entitled to consider the evidentiary

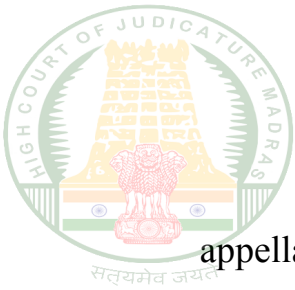


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consequences flowing from such abstention. In the present case, the appellant entered the witness box and supported her pleadings, whereas the respondent did not adduce any contra evidence. The evidence of the appellant, therefore, remains unrebutted. The learned Family Court failed to give due weight to this aspect. The appellate record itself recognises that there was no contra evidence from the respondent to disprove the evidence of P.W.1.

22. The cumulative effect of the aforesaid circumstances establishes that the respondent's conduct was not a mere matrimonial disagreement but a continuing course of neglect, indifference, financial irresponsibility, alcoholism and failure to discharge his responsibilities as husband and father, causing the appellant considerable mental agony and rendering the continuation of matrimonial life practically impossible. Physical violence is not an indispensable requirement for establishing mental cruelty.

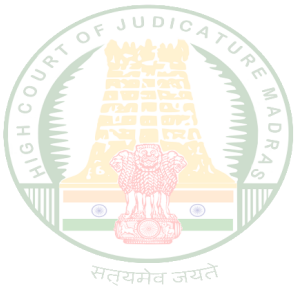
23. Substantiating the above contentions, the petitioner has proved his averments with regard to cruelty through evidence and documents. It can be inferred that the treatment meted out to the



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appellant/wife and the sufferings experienced by the appellant/wife amounts to mental cruelty. Hence, it is concluded that the petitioner has established and proved that the respondent has caused the above-mentioned cruelties in the manner mentioned supra. Further, the Appellant/petitioner has also proved the averments with regard to desertion through evidence and documents. The appellant/wife returned to her sister's house on 22.12.2018. The respondent never turned up and also not filed any case for restitution of conjugal rights. Hence, the appellant/petitioner has proved the averments of desertion, the appellant/petitioner is also entitled to divorce on the grounds of desertion and points are answered accordingly.

24. As decided above, as the appellant/petitioner has proved the averments of cruelty and desertion, the appellant/petitioner is entitled to divorce on the grounds of cruelty and desertion and the points are answered accordingly. Therefore, under these circumstances, this court is of the view that the appellant/ petitioner is entitled to decree of divorce on the grounds of cruelty and the point is answered accordingly.



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25. Therefore, for the reasons stated above, the fair and decretal order dated 22.06.2022, passed in I.D.O.P.No.175 of 2021, by the learned Judge, Family Court, Sivagangai, is hereby set aside and the Civil Miscellaneous Appeal stands allowed. The marriage between the appellant/petitioner and the respondent/respondent solemnized on 16.05.2008 stands dissolved. There shall be no order as to costs.

[G.R.S., J.] & [M.D.S., J.]

24.08.2026

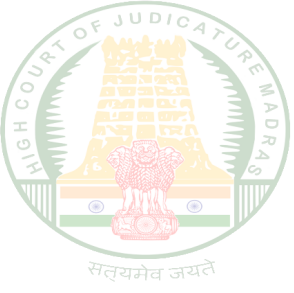
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To

1.The Judge,
Family Court,
Sivagangai.

2.The Section Officer,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

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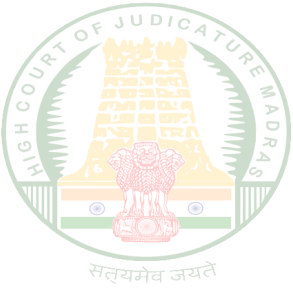


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**G.R.SWAMINATHAN, J
AND
M.D.SUMATHI, J**

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Judgment made in
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24.08.2026