

IN THE COURT OF SUBORDINATE JUDGE, THIRUVOTTIYUR

**Present : Thiru. M. Vasantha Kumar, M. L.,
Subordinate Judge,
Thiruvottiyur**

Tuesday, the 12th day of December, 2023

H.M.O.P. No. 238 / 2023

(C.N.R. No.TNTR 380005032023)

Kalyani

.... Petitioner

/ Vs. /

T. Baskar

....Respondent

This Petition has been originally filed before the Principal Sub Court, Ponneri on 12.10.2022 and the same was transferred to this court as per the Proceedings of the Hon'ble Principal District Judge, Tiruvallur in D.No.653/SJ/2022 dated 08.02.2022 and taken on file on 07.09.2023 and renumbered as H.M.O.P. No. 238/2023 and it came before me for final hearing on 29.11.2023 in the presence of M/s. S. Murugesan and B. Gopinath, Learned Counsels for the Petitioner and Respondent called absent and set exparte on 20.04.2023 and this Petition having stood over under this court's consideration till this date and upon perusing the records and hearing the Petitioner's side arguments, this court delivers the following : -

ORDER

1. This Petition has been filed Under Section 13 (1) (i-a) & (i-b) of the Hindu Marriage Act, 1955 to dissolve the marriage dated 23.03.2009 held at Sri Karumariyamman Temple, Anna Nagar, Chennai, as per Hindu rites and customs between the Petitioner and the Respondent by a decree of divorce on the ground of Cruelty and Desertion.

2. Brief facts set out in the petition is as follows :-

i) The Petitioner submits that the respondent is her legally wedded husband as the marriage between them was solemnized on 23.03.2009 at Sri Karumariyamman Temple, Anna Nagar, Chennai District, Tamil Nadu as per Hindu rites and custom. It was a love marriage solemnized before the aforesaid temple against the wishes and absence of parents of both the parties. Subsequently parents of both the parties accepted the love marriage of the Petitioner and the Respondent and decided to conduct the marriage Reception between the Petitioner and the Respondent in a grand manner by inviting all of their friends, relatives and neighbours. As such the marriage of the Petitioner and the Respondent was conducted in a grand manner on 23.08.2009 at His Highness Hall, Ambica Empire, 100 Feet Road, Vadapalani, Chennai - 600 026 by inviting friends, relatives and neighbours of both sides and registered the said marriage before the Marriage Registrar, Registrar of Hindu Marriage, Anna Nagar (SRO. Anna Nagar) on 14.09.2009 in Serial Number 433 of 2009 and M.C. No. 1711/2009, on the file of SRO, Anna Nagar (Amended as per order dated 04.11.2023 in I.A. No. 1 of 2023). Immediately after the marriage the matrimonial life was set up at Villivakkam Rajeswari Kalayanamandapam, Sitco Nagar, Villivakkam, Chennai -49, there both of them were living till 2017. Out of the Wedlock, there is no child between them.

ii) The petitioner further submits that the respondent from the inception of the marriage has not been affectionate towards the petitioner. Moreover he used to proceed in his own way of life as aforesaid without adhering to the words of the petitioner herein. She has been so affectionate and dutiful in performing the household and the marital obligations to the respondent. In spite of the petitioner being proper in her duty as a wife and performing all the marital obligations properly, the respondent started ill treating her in various modes. The cruel some acts perpetrated by him on the petitioner could not be tolerable by her. She was having a fond hope originally that the respondent would mend his ways in such a manner she can lead a happy life with him. But quite contrary to her expectations the

respondent continued his inhuman and cruel some acts and created an apprehension in the mind of the petitioner that it is no longer possible for her to live with the respondent. Adding fuel to the existing woes, he abruptly deserted the petitioner on 10.09.2017 from the matrimonial home and di-die-in-diem at Madhavaram where the petitioner is residing within the jurisdiction of this Hon'ble Court.

iii) The Petitioner further submits that instead of taking care of the petitioner's wellbeing the respondent deserted the petitioner and asked her to move away separately stating that she is a big hindrance in his life and not adding any value to him and abruptly left her in lurch. Thereafter, the petitioner's parents also requested him to lead / continue the matrimonial life with the petitioner for which the respondent abruptly refused. Therefore, the petitioner moved separately to live on her own from 2017 onwards. Not only the gruesome acts but also the desertion on his part has been intentional and ill-motivated. Having taken so much of efforts at the instance of the petitioner for mending the respondent and also resorting the matrimonial ties have become meaningless because of his refusal for the same. From the all above said aspects, the petitioner has concluded the respondent's gruesome acts and desertion have been intentional, thereby creating a dent in the petitioner's life and that she realised that it is no longer possible for her to live with him and any such attempt on her part hereinafter would endanger her own life. Though she is entitled, as a matter of right to file an application seeking divorce on the ground of gruesome acts of cruelty and desertion, to avoid further embarrassment and complications, she has by sending a lawyer notice dated 05.05.2022 invited him to give his consent, for filing an application for divorce on the ground of mutual consent within a week thereof. Though he had received the said lawyer notice, he had not sent any reply therefore and thus the petitioner is constrained to file this application for divorce on the grounds of cruelty and desertion.

iv) The Petitioner further submits that thus the respondent has deserted the petitioner for no fault on her part. Even after such desertion, the respondent has not been taking care of the petitioner by providing her the basic amenities and she is

finding her difficult to pull up her own life. Thus, the desertion of the petitioner by the respondent is intentional. Thus, the petitioner is not having any other option except to seek the decree of divorce on the ground of cruelty and desertion.

v) The respondent for the reasons best known to him did not have cordial relationship with the petitioner. The respondent sharing his facial deformity refused to move with the petitioner in a casual manner and always he was moving with her in a troublesome manner. Her matrimonial life has been miserable as she was ill-treated mentally and physically by the respondent.

vi) The comprehensive act of the respondent would show that he has resolved to live in agony only to make life a miserable hell to the petitioner as well. This type of adamant and callous attitude in the context of the facts narrated leaves no manner of doubt in the mind of the petitioner that the respondent is bent upon treating the petitioner with mental cruelty. Thus it is obviously mean that the marriage between the petitioner and the respondent had broken down irretrievably and there is no chance of their coming together or living together again.

vii) The parties have been living separately from the date of the desertion made by the respondent. The endeavour to bring reconciliation between the parties ultimately failed, resultantly the marriage is dead, both emotionally and practically. Continuance of such marriage between them for name sake is nothing but prolonging the agony and affliction would be further cruelty to the petitioner. With all these acts of cruelty she is not in a position to continue her conjugal relationship with the respondent.

viii) The above said misbehaviour and incompatibility would also establish the existence of cruelty at the instance of the respondent to the petitioner.

ix) The Petitioner is residing at No.13/7, Bhavani Nagar, 1st Street, K.K. Thazhai, Madhavaram, Madhavaram Milk Colony, Ponneri, Tiruvallur, Tamil Nadu 600 051, which falls within the territorial jurisdiction of the Hon'ble Court. Hence this Hon'ble Court has got territorial jurisdiction to entertain the O.P.

3. Point for Consideration is :

Whether the Petition is liable to be allowed or not ?

Point :

This Petition has been filed by the Petitioner / Wife under Section 13 (1)(i-a) & (i-b) of the Hindu Marriage Act, 1955 seeking divorce against the Respondent / Husband on the ground of cruelty and desertion. Originally the above divorce petition was filed before Sub Court, Ponneri. Since this court was constituted, the above case was transferred to this court on the point of territorial jurisdiction. In spite of receipt of summons, the Respondent failed to appear before this court. Hence the Respondent was called absent and set exparte on 20.04.2023. On the side of Petitioner, the Petitioner herself was examined as P.W.1 and the Marriage Registration Certificate is marked as Ex. P-1, Copy of Petitioner's Aadhar card is marked as Ex. P-2, Marriage Photograph is marked as Ex. P-3, Postal receipt is marked as Ex. P-4, Legal notice is marked as Ex. P-5, Marriage Invitation is marked as Ex. P-6.

4. On perusal of records and the oral evidence of the Petitioner it found that the marriage between the Petitioner and the Respondent was took place on 23.03.2009 held at Sri Karumariyamman Temple, Anna Nagar, Chennai, according to Hindu rites and customs. The above marriage was performed by the petitioner and respondent without the consent of the parents. Thereafter the parents of the petitioner and respondent accepted their marriage and thereafter a function was conducted by the family members and the marriage was also registered.

5. The Respondent is the competent person to deny the allegations leveled against him. But, in this case notice was sent to the respondent was served. The Respondent was not chosen to contest the Proceedings for the reasons best known to him. The respondent was called absent and there was no representation on behalf of the respondent. Hence the respondent was called absent and set exparte. In the

absence of any other contra evidence, this Court is inclined to accept the case of the Petitioner. The oral evidence of the Petitioner categorically established the cruelty committed by the Respondent on the Petitioner. There is no possibility of reunion. Hence this court finds that the Petitioner has satisfactorily established that the Respondent had committed cruelty on the Petitioner and he deserted the company of the petitioner from 2017 i.e., for the past 6 years and above the Petitioner is living separately. In view of the above discussion, this court feels that the marriage between the Petitioner and Respondent had irretrievably broken down and there is no possibility of reunion between the Petitioner and Respondent. Therefore, the Petitioner is entitled to get a decree for divorce.

In the result, this Petition is allowed and the marriage held on 23.03.2009 at Sri. Karumari Amman Temple, Anna Nagar, Chennai by the Petitioner and the Respondent in the absence of and against the wishes of their parents and subsequently on 23.08.2009 at His Highness Hall, Ambica Empire, 100 Feet Road, Vadapalani, Chennai – 600 026 by the consent of the parents of both the parties and registered before the Marriage Registrar, Registrar of Hindu Marriage, Anna Nagar (S.R.O., Anna Nagar) on 14.09.2009 in Serial Number 433 of 2009 and M.C. No. 1711/2009 on the file of SRO, Anna Nagar (Amended as per order dated 04.11.2023 in I.A. No.1 of 2023) between the Petitioner and Respondent, as per Hindu rites and customs is dissolved on the ground of Cruelty and Desertion. No costs.

Dictated by me to the typist, typed by him, corrected and pronounced by me in the open court on this the 12th day of December 2023.

**Subordinate Judge,
Thiruvottiyur.**

PETITIONER'S SIDE EVIDENCE :-

P.W. - 1 - Tmt. Kalyani

PETITIONER'S SIDE EXHIBITS :-

Ex. P-1 14.09.2009 Marriage Registration Certificate (Copy)

Ex. P-2 - Petitioner's Aadhaar Card (Copy)

Ex. P-3 - Marriage Photograph (Original)

Ex. P-4 - Postal Receipt (Original)

Ex. P-5 - Legal Notice (Original)

Ex. P-6 23.03.2009 Marriage Photograph (Original)

RESPONDENT'S SIDE EVIDENCE & EXHIBITS :- - NIL -

**Subordinate Judge,
Thiruvottiyur.**

Draft / Fair Order

H.M.O.P. No. 238 / 2023

**Subordinate Court,
Thiruvottiyur.**

D.D. 12.12.2023.