



with the case and having stood over for consideration till this day, this Court delivered the following ...

### **J U D G M E N T**

(1) This Civil Miscellaneous Appeal has been preferred by the appellant / husband under Section 28(1) of Hindu Marriage Act, 1955, challenging the fair and decretal order dated 05.04.2024 passed by the Learned Principal Subordinate Judge, Thanjavur, in HMOP No.29/2022, dated 05.04.2024 in which the appellant's divorce petition was dismissed.

(2) The petition in HMOP No. 29/2022 has been filed by the petitioner / husband under Section **13(1)(ib)(iii)**, praying to pass a decree of divorce dissolving the marriage solemnized on 06.12.2009 between the petitioner and the respondent at Sri Balaji Wedding Hall, Ayyampettai.

**(3) Brief facts in the petition in HMOP No. 29/2022 are as follows:**

(3.1) The marriage between the petitioner and the respondent was solemnized on 06.12.2009 at Ayyampettai Sri Balaji Wedding Hall according to Hindu rites and customs. The marriage expenses were borne by the petitioner's parents. After the marriage, the parties lived together at the petitioner's residence, and later in Mumbai where the petitioner was employed, for some time.

(3.2) From the date of marriage, the respondent used to behave inconsistently and contradictorily. The petitioner tolerated the same, hoping that she

would improve in future. In the said circumstances, on 08.03.2011, a female child named Aishwarya Lakshmi was born to them. The minor child is now in the care and custody of the petitioner, who is bearing her educational and other expenses.

**(3.3)** Even after the birth of the child, the respondent, due to her mental illness, failed to discharge her duties as a wife, daughter-in-law and mother, and continued to behave in an inconsistent manner towards the petitioner, his parents and the child. At times, she locked herself inside a room and attempted to commit suicide. On several occasions, she allegedly lost control and attempted to harm the petitioner. The petitioner made efforts to take the respondent for medical treatment, but she refused. Subsequently, her parents took her for treatment, assuring recovery, however, her condition did not improve.

**(3.4)** On 01.06.2016, without any valid reason, the respondent left the matrimonial home and has since been residing with her parents for the past six years. There was no fault on the part of the petitioner for the desertion of his wife. Since then, she has been living separately without performing any marital obligations.

**(3.5)** Due to her mental condition, it has become impossible for the petitioner and his child to live with the respondent. The petitioner, therefore, decided to dissolve the marriage and issued a legal notice on 31.01.2022 seeking consent for mutual divorce, but the respondent refused to receive the notice. Therefore, the marriage has irretrievably broken down, making cohabitation impossible. Hence, this petition.

**(4) Brief facts in the counter in HMOP No. 29/2022 are as follows:**

**(4.1)** The allegations made in the petition are entirely false and are denied by the respondent. The petition has been filed only to harass the respondent, causing mental agony and financial loss.

**(4.2)** The marriage expenses were borne by the respondent's family. At the time of marriage, on the demand of the petitioner's family, the respondent's family provided 20 sovereigns of gold jewellery and household articles worth about Rs. 50,000/- as dowry. The petitioner concealed the fact of having failed the higher secondary education whereas told that he is a postgraduate degree holder. A female child was born out of the marriage, whose custody is unlawfully being retained by the petitioner to avoid paying maintenance to the respondent.

**(4.3)** The allegation that the respondent suffers from mental illness and behaves inconsistently is false and fabricated for the purpose of the case. The medical records produced are fabricated. The respondent is mentally sound and does not require any medical treatment and has been a good wife and mother.

**(4.4)** Though the petitioner promised to take the respondent abroad after marriage, he left her at his parental home and went abroad alone. Thereafter, due to disputes arising from the refusal to arrange marriage between the respondent's well-educated sister and the petitioner's uneducated brother, the petitioner and his family members harassed and assaulted the respondent without cause and sent her back to her parental home on several occasions.

(4.5) Later, the petitioner, instead of going abroad, took the respondent to Mumbai and made her stay in his friend's house to take care of it. The house was in an isolated place, and even for basic needs like water and milk, one had to travel about 3 kilometers. Even during chickenpox affecting the respondent and child, the petitioner abused her verbally and caused mental distress. He remained unemployed for months, physically assaulted and caused cruelty to her. During the year 2016, the petitioner demanded and harassed that the respondent arrange to purchase her father's medical shop for him or bring Rs. 5,00,000/- as dowry. The respondent did not get enough financial support and was not allowed to take care of the child.

(4.6) Further, when the respondent developed a breast tumor, the petitioner's family neglected her, and her parents spent Rs. 1,00,000/- for treatment. During counseling, doctors confirmed that the respondent had no mental illness and she only expected affection from the petitioner. The petitioner's mother and brother interfered in the marriage, creating disputes and even encouraging the petitioner to remarry. The petitioner continues to avoid the respondent even now.

(4.7) The petitioner lived with the respondent after the death of petitioner's mother for some period recently and she has been visiting and caring for the petitioner and child. She has never refused to live with them and still wishes to continue the marital relationship. It is, therefore, prayed for dismissal of the petition with costs.

(5) On the side of the petitioner, the petitioner was examined as PW1, and, three documents viz. original wedding invitation, office copy of the statutory notice, returned postal cover, were marked as Ex.P1 to Ex.P3.

(6) On the side of the respondent, the respondent was examined as RW1, and, no documents were marked.

(7) The Learned Principal Subordinate Judge, Thanjavur, after a careful consideration of the oral and documentary evidence adduced on both sides, has dismissed the petition in HMOP No. 29/2022.

(8) Aggrieved by the fair order and the decretal order, the appellant / the husband preferred this appeal on various grounds.

**(9) Grounds for preferring this Appeal are as follows:**

(9.1) The Trial Court, without properly considering the petition and applying legal principles and relied solely on documentary evidence, has erroneously passed the order and the decree, which are liable to be set aside.

(9.2) The respondent had been undergoing medical treatment and taking medication for her mental illness. The respondent has failed to discharge her duties as a wife and mother and behaved inconsistently, deliberately neglecting her responsibilities. The respondent's parents admitted that she was suffering from mental instability when informed by the petitioner.

(9.3) At some times, the respondent locked herself inside a room and attempted to commit suicide.

(9.4) The petitioner, out of love for his wife and concern for the future of his child, did not lodge any complaint regarding the cruelty inflicted by the respondent. However, the respondent has taken advantage of this restraint.

(9.5) On 01.06.2016, the respondent, without any valid reason, left the matrimonial home and has since been residing with her parents. For the past six years, the respondent has been living separately without any contact with the petitioner and her 14 year old daughter.

(9.6) Therefore, the appellant seeks dissolution of the marriage and has filed this appeal. For the above reasons, the fair order and the decretal order of the Trial Court are liable to set aside.

*(For the sake of convenience and easy reference, the appellant and the respondent in the appeal be referred hereinafter as the petitioner and the respondent respectively as they were arrayed before the trial court).*

(10) Upon a complete appreciation of the Memorandum of Appeal Grounds, Order and Decree of the Trial Court and other available materials placed on record in connection with the case, the following points that arises for consideration in the appeal:-

- (i) Whether the order and decretal order of the trial court is legally sustainable in law?
- (ii) Whether the Civil Miscellaneous Appeal is to be allowed as prayed for?

(11) This Court has carefully considered the arguments advanced by both sides and re-appreciated the entire oral and documentary evidence placed on record.

(12) The marriage between the petitioner and the respondent was solemnized on 06.12.2009 in accordance with Hindu rites and customs, and out of the said wedlock, a female child namely Aishwarya Lakshmi was born on 08.03.2011. It is not in dispute that the parties lived together as husband and wife for some period after marriage, including at the petitioner's residence and at Mumbai, and that the child is presently in the custody of the petitioner. It is further admitted that the parties are now living separately and that matrimonial discord has arisen between them, leading to the filing of the petition in HMOP No.29/2022 by the petitioner seeking dissolution of marriage, which came to be dismissed by the Trial Court, and as against which the present appeal has been preferred.

**Point No. 1: Whether the order and decretal order of the trial court is legally sustainable in law?**

(13) The petitioner has sought dissolution of marriage mainly on the grounds of alleged mental illness of the respondent and desertion.

**Section 101** - *Burden of proof:*

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.”

**Section 102** - *On whom burden of proof lies:*

“ The burden lies on the person who would fail if no evidence is given.

Since the petitioner /husband is alleging cruelty, mental illness, and desertion, he must prove those allegations with proper evidence. As per Sections 101 and 102 of the Indian Evidence Act, the burden of proof lies heavily upon the petitioner to establish the allegations made by him.

(14) In the present case, except for the testimony of PW1, no independent or cogent evidence has been produced to substantiate the claim that the respondent was suffering from any mental disorder as to make marital life impossible. To prove the above said fact, there is no medical records, prescriptions, or expert evidence have been produced to prove the alleged mental illness. During the course of cross-examination of PW1, he stated as follows:

“நானும், எதிர்மனுதாரரும் மும்பையில் 2 வருடங்கள் வசித்தோம். மும்பையில் நான் எதிர்மனுதாரர், எனது குழந்தை ஆகிய மூவர் மட்டுமே வசித்து வந்தோம் என்றால் சரிதான். மும்பையில் நான் வேலைக்கு சென்றேன் என்றாலும், குழந்தையை எதிர்மனுதாரர் பார்த்து வந்தார்

என்றாலும் சரிதான்.....

எதிர்மனுதாரருக்கு சிகிச்சை அளித்ததற்கான ஆவணங்கள் எதுவும் தாக்கல் செய்துள்ளேனா என்றால் இல்லை. எதிர்மனுதாரர் முழு கட்டுப்பாட்டையும் இழந்து கொலை முயற்சி செய்தது சம்மந்தமாக புகார் எதுவும் கொடுத்துள்ளீர்களா என்றால் இல்லை. எதிர்மனுதாரர் பிரச்சனை செய்தார் என்பதை பொறுத்து புகார் எதுவும் கொடுக்கவில்லை என்றால் சரிதான். எதிர்மனுதாரருக்கு மனநிலை சரியில்லை என சொல்லியுள்ளதில் எந்த மருத்துவர் மற்றும் மருத்துவமனையில் எதிர்மனுதாரருக்கு சிகிச்சை அளிக்கப்பட்டது என்பதை குறிப்பிட்டு சொல்லவில்லை என்றால் சரிதான். எதிர்மனுதாரருக்கு மனநோய் எதுவும் இல்லை என்றாலும் சரியல்ல. அதனால்தான் மேற்சொன்ன விவரங்கள் மனுவில் குறிப்பிடவில்லை என்றால் சரியல்ல. எதிர்மனுதாரருக்கு மனநிலை சரியில்லை என்று நான் எனது குடும்பத்தாரிடமோ எதிர்மனுதாரரின் குடும்பத்தாரிடமோ சொல்லியுள்ளேனா என்றால் இல்லை. ....

எதிர்மனுதாரருடன் சேர்ந்து வாழ நான் முயற்சி எடுத்துள்ளேனா என்றால் இல்லை. எதிர்மனுதாரர் எந்த வகையில் மிரட்டினார் என்று குறிப்பிட்டு சொல்லவில்லை என்றால் சரிதான். அசல் மனுவை எதிர்மனுதாரருக்கு எதிராக தாக்கல் செய்யும்பொழுது காப்பாளர் யாரையும் நியமனம் செய்து தாக்கல் செய்துள்ளேனா என்றால் இல்லை. நான் அனுப்பியதாக சொல்லும் அறிவிப்பு மைதிலி பெயருக்கு அனுப்பப்பட்டுள்ளது என்றால் சரிதான். மைதிலி என்னுடன் சேர்ந்து வாழவேண்டும் என அனைத்து மகளிர் காவல் நிலையத்தில் புகார் கொடுத்தார் என்றால் சரிதான். புகாரின் அடிப்படையில் நாங்கள் சிறிது காலம் சேர்ந்து வாழ்ந்தோம் என்றால் சரிதான்.....

எனது தம்பி மனைவி எனது குழந்தையை கடந்த 6 மாத காலமாகதான் பார்த்து வருகிறார் என்றால், சரிதான். அந்த பெண் குழந்தை தற்போது

பூப்பெய்யும் நிலையில் உள்ளார் என்றால், இதுநாள் வரை ஆகவில்லை. இதுபோன்ற நிலையில் உள்ள ஒரு பெண் குழந்தைக்கு தாயின் ஆதரவு தேவை என்றால், சரிதான். மனுவில் எதிர்மனுதாரரின் எந்த செயல் குறைபாடு உடையதாக இருந்ததென குறிப்பிட்டு சொல்லவில்லை என்றால் சரிதான். எதிர்மனுதாரருக்கு மாற்பகத்தில் தசைநார்கட்டி இருந்தது என்றால், எனக்கு தெரியாது. அதன் தொடர்பாக எதிர்மனுதாரர் எடுத்துக்கொண்ட மருத்துவ சிகிச்சைக்கு எனக்கு தொடர்பில்லை என்றால் சரிதான். எனக்கும், எதிர்மனுதாரருக்கும் இடையே சமரச பேச்சு வார்த்தை நடந்தது என்றால் சரிதான்.....

எதிர்மனுதாரருக்கு மனபிறழ் நோய் சம்மந்தமான மருத்துவ சான்றிதழ் எதையும் தாக்கல் செய்யவில்லை என்றால் சரிதான்.

(15) A careful reading of the above cross-examination of PW1 clearly reveals that the petitioner has admitted that no medical records or documentary evidence have been produced to prove the alleged mental illness of the respondent. He has further admitted that no complaint was lodged with the police regarding the alleged acts of cruelty or attempt to commit suicide by the respondent. It is also evident from his own admission that the respondent had been taking care of the child while they were residing together in Mumbai, which contradicts his allegation that she was incapable of discharging her duties as a mother.

(16) Further, the petitioner has admitted that he has not taken any sincere steps to resume cohabitation with the respondent and has not even specified the particulars of the alleged threats. He has also admitted that no guardian was appointed while filing the petition, which would have been necessary had the

respondent been suffering from any serious mental incapacity. The admissions of PW1, therefore, go against the very foundation of the case put forth by the petitioner.

(17) Further, with regard to the allegation of cruelty, the instances narrated by the petitioner are vague, general, and not supported by any independent witness or documentary evidence. The petitioner has also admitted that no police complaint or legal action was initiated at any point of time regarding the alleged acts of cruelty or suicide attempts, which creates serious doubt about the genuineness of such allegations.

(18) As far as the ground of desertion is concerned, it is to be established that the respondent left the matrimonial home without reasonable cause and with an intention to bring cohabitation permanently to an end. In the present case, the respondent has specifically contended that she was subjected to harassment and was compelled to leave the matrimonial home. The petitioner has failed to prove that the separation was without reasonable cause. Hence, the essential ingredients of desertion are not satisfied.

(19) On the other hand, the respondent has consistently denied all allegations and expressed her willingness to resume cohabitation. During the course of cross-examination, she stated as follows:

“ திருமணத்திற்கு பின்பு எனது கணவர் எத்தனை ஆண்டுகள் வெளிநாட்டில் வேலை பார்த்தார் என்றால் 7 ஆண்டுகள். அவர் வெளிநாட்டில் தொடர்ந்து

வேலை பார்க்காமல் வீட்டிற்கு வந்துவிட்டதால் எனக்கு வருத்தம் என்றால் ஆமாம். அதன் அடிப்படையில் எனக்கும், மனுதாரருக்கும் அடிக்கடி பிரச்சினை என்றால் பேசியுள்ளோம். வன்முறை இல்லை. மனுதாரர் வெளிநாடு சென்று வேலை செய்யாததால் எனக்கு சமூக அங்கீகாரம் இல்லை என்று நான் குடியிருந்த வீட்டின் அறையை பூட்டிக்கொண்டு தற்கொலை செய்யப்போவதாக சொல்லியுள்ளேன் என்றால் இல்லை. நான் மனநலம் பாதிக்கப்பட்டவர் என்றும் அதனால் மனுதாரர் என்னை சிகிச்சைக்கு அழைத்து சென்றுள்ளார் என்றால் இல்லை. தற்பொழுதும் நான் மனநலமருத்துவ சோதனை செய்ய ஒப்புக்கொள்கிறேனா என்றால் செய்யலாம். நானும், மனுதாரரும் எத்தனை வருடமாக பிரிந்து வாழ்கிறோம் என்றால் ஒரு சில மாதங்கள்தான்.....

எங்கள் குழந்தை மனுதாரரிடம் உள்ளார் என்றால் ஆமாம் ஒரு வருடமாக உள்ளார். அதற்கு முன்பு குழந்தை என்னிடம் இருந்ததா என்றால் ஆமாம். குழந்தை என்னிடம் இருந்ததை காண்பிக்க ஆவணம் உள்ளதா என்றால் உள்ளது.....2016க்கு பின்னிட்டு சேர்ந்து வாழ்வதற்கு நான் ஏதேனும் நடவடிக்கை எடுத்தேனா என்றால் பஞ்சாயத்துதான் பேசினோம் நான் கேஸ் போடவில்லை.....

A careful consideration of the above cross-examination of RW1 would clearly show that the respondent has consistently denied the allegations of mental illness, cruelty and desertion. She has categorically deposed that no act of violence was committed by her and that she never attempted to commit suicide. She has further stated that she is not suffering from any mental illness and has even expressed her willingness to undergo medical examination, which strengthens her stand and makes her defence likely to be true.

(20) It is also evident from her testimony that the child was in her custody for

a considerable period and only recently came under the care of the petitioner, which contradicts the case of the petitioner that the respondent was incapable of taking care of the child. Further, the respondent has stated that she had taken steps through panchayat to resume cohabitation and had not initiated legal proceedings, thereby indicating her intention to continue the marital relationship with the petitioner.

(21) Thus, the evidence of RW1 is reliable and consistent, whereas PW1's evidence contains contradictions and is not supported by other evidence. Hence, this Court finds that the petitioner has failed to prove the grounds of cruelty, mental illness and desertion as required under law.

(22) In this regard, this court reliance upon the Hon'ble Supreme Court Judgement reported in “ **Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511**”, wherein it has been held that

“ mere trivial irritations, normal wear and tear of married life, and vague or general allegations do not constitute cruelty, and the conduct complained of must be grave and weighty, supported by clear evidence.

Further the another Hon'ble Supreme Court Judgment reported in “ **Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558**”, wherein it has been held that

“ For granting a decree of divorce on the ground of cruelty, the conduct must be such that it becomes impossible for the parties to live together, and such allegations must be proved by cogent

and convincing evidence.”

(23) In view of the above discussion and the settled legal principles, it is evident that the petitioner has failed to prove the allegations of cruelty, mental illness, and desertion against the respondent. The evidence on record does not show any serious behavior that would make living together impossible. Upon careful consideration of the entire materials available on record, this Court finds that the fair order and decretal order passed by the learned Principal Subordinate Judge, Thanjavur, in HMOP No.29/2022, dismissing the petition for dissolution of marriage, are legally sustainable and do not warrant interference. Accordingly, Point No.1 is answered.

**Point No.2 Whether the Civil Miscellaneous Appeal is to be allowed as prayed for?**

(24) In view of the findings in Point No.1, this Court is of the considered opinion that the petitioner is not entitled to the relief of dissolution of marriage. The Trial Court, upon proper appreciation of the oral and documentary evidence and application of legal principles, rightly dismissed the petition. There is no illegality, perversity, or infirmity warranting interference by this Appellate Court. Accordingly, this Civil Miscellaneous Appeal is devoid of merits and is liable to be dismissed. The Point No.2 is answered accordingly.

(25) In the result, this Civil Miscellaneous Appeal is dismissed by

confirming the fair order and decretal order dated 05.04.2024 passed by the Learned Principal Subordinate Judge, Thanjavur, in HMOP No.29/2022. No costs.

This Judgment is dictated by me to Stenographer Grade – I of this Court, transcribed by him in computer directly, corrected and pronounced by me in the open Court, on this 1<sup>st</sup> day of April, 2026.

**Principal District Judge,  
Thanjavur.**

**Copy to:–** The Principal Subordinate Judge, Thanjavur.

Draft / Fair Copy of Judgment in  
CMA No. 9/2025  
Dated: 01.04.2026.