

C.M.A(MD)No.724 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 31.08.2026

DELIVERED ON : 30.09.2026

CORAM :

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

CMA(MD) NO. 724 of 2022

{CNR: HCMD010522922022}



Case QR

... Appellant

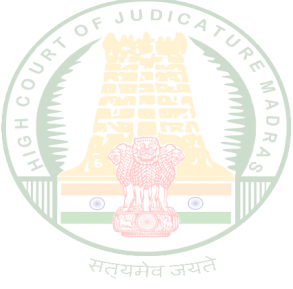
- Vs. -

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to set aside the Judgment and Decree order dated 01.03.2022 passed in O.P.No.154 of 2020 on the file of the Family Court, Theni.

For Appellant : Mr.R.Murali

For Respondent : Mrs.S.Vaidurya



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JUDGMENT

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

This Civil Miscellaneous Appeal has been preferred by the husband, who was the petitioner before the Family Court, Theni, challenging the judgment and decree dated 01.03.2022 made in H.M.O.P. No.1 of 2017, whereby the petition filed by him under Section 13(1)(ia) of the Hindu Marriage Act, 1955, seeking dissolution of marriage on the ground of cruelty, came to be dismissed.

2. For the sake of convenience, the parties shall hereinafter be referred to as the husband and the wife, as arrayed before the Family Court.

3. The marriage between the husband and the wife was solemnized on 18.06.2007 at Anand Mahal, Theni, according to the customs prevailing between the parties. At the time of marriage, 25 sovereigns of gold jewellery were stated to have been given to the wife and a three-sovereign gold chain was given to the husband. After

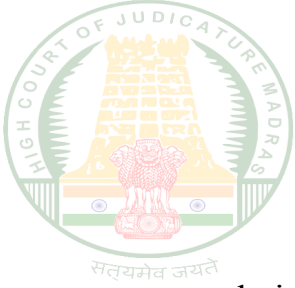
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the marriage, the parties commenced their matrimonial life at Arumbakkam, Chennai.

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4. According to the husband, the initial period of matrimonial life was peaceful for about six months. Thereafter, according to him, the conduct and attitude of the wife underwent a change and she started subjecting him to mental cruelty. It is his specific case that the wife considered herself and her family to be superior to him and his family and frequently made disparaging remarks against him and his family. He further alleged that the mother of the wife had influenced her against him and his family.

5. It is the further case of the husband that whenever he returned home late from work, the wife unnecessarily suspected him and accused him of deliberately remaining away from the matrimonial home and avoiding matrimonial life. He also alleged that the wife had informed him that she had originally intended to marry a Siddha doctor and that she had married him only because of pressure exerted by her mother and other family members.



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6. The parties had no child during their matrimonial relationship. The husband alleged that the wife had an 8 cm fibroid growth in the uterus, for which she had undergone treatment and surgery at a fertility hospital at Chennai, but that even thereafter she did not conceive. He further alleged that the wife had physical problems relating to her bones and nerves and that she used the same as a reason to avoid matrimonial life.

7. The husband further alleged that the wife repeatedly left the matrimonial home without informing him and went to her mother's residence at Dindigul. In particular, he referred to an incident dated 10.04.2015. According to him, thereafter, his family members intervened and persuaded the wife to return to the matrimonial home on 04.08.2015.

8. The husband further alleged that for about four years the wife had refused to cooperate with him in matrimonial life whenever he sought her company.

9. The principal incident relied upon by the husband is stated to have occurred on 04.06.2016. According to him, the wife abused him



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in public, called him an impotent person, assaulted him with her footwear and caused injuries to his face. He further alleged that after returning home, the wife abused him in filthy language, assaulted him with a broom and stated that she did not want to continue living with him. According to him, she removed her thali and threw it at him.

10. It is further alleged that thereafter the wife tore their photographs, took her jewels and belongings and left the matrimonial home and went to her mother's residence at Dindigul. According to the husband, she thereafter refused to return and resume matrimonial life.

11. The husband further pleaded that on 27.03.2017, his relatives went to Dindigul and requested the wife to return and live with him, but that her mother threatened them. He also stated that on 11.06.2017 he personally approached the wife and requested her to resume matrimonial life, but she refused.

12. On the above pleadings, the husband contended that the cumulative conduct of the wife constituted both mental and physical cruelty and that there was no possibility of reunion between the parties.



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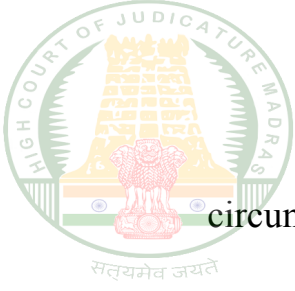
He therefore sought dissolution of the marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

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13. The wife resisted the petition and denied the allegations of cruelty. While admitting the factum of marriage and the jewellery given at the time of marriage, she disputed the manner in which the husband projected the matrimonial relationship.

14. According to the wife, the parties initially lived together at Arumbakkam only for about two months. She denied having considered herself or her family superior to the husband or his family. She also denied that she unnecessarily suspected the husband whenever he returned late from work.

15. On the contrary, the wife alleged that the husband was in the habit of consuming alcohol and returning home in a drunken condition and that her objection was only on account of his drinking habit and the danger involved in his riding a two-wheeler after consuming alcohol. She, therefore, contended that the allegation of suspicion levelled against her was a false projection of the



circumstances.

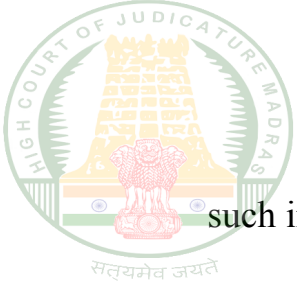
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16. With regard to the absence of children, the wife admitted that there was no child born during the subsistence of the marriage and that she had undergone surgery for fibroid growth. She specifically contended that she had undergone treatment in the hope of establishing a normal matrimonial life and that the absence of a child was not attributable to any wilful refusal on her part to lead matrimonial life with the husband.

17. The wife denied that she had repeatedly left the matrimonial home without any reason. According to her, whenever the husband had to travel outside Chennai for two or three days in connection with his work, he himself used to leave her at her sister's house for her safety. She, therefore, disputed the allegation that she used to leave the matrimonial home after quarrelling with him.

18. The wife specifically denied the alleged incident dated 04.06.2016. She denied having assaulted the husband with a slipper, called him impotent, beaten him with a broom, removed and thrown the thali, torn their photographs or left the matrimonial home pursuant to any



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such incident.

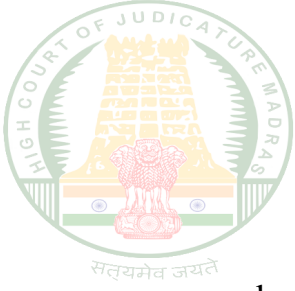
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19. She further denied that the husband's family members had brought her back to the matrimonial home on 04.08.2015 and disputed the allegation that his relatives had gone to Dindigul on 27.03.2017 or that her mother had threatened them. She also denied having refused to resume matrimonial life without justification.

20. The wife therefore contended that the allegations made against her were false, unsubstantiated and had been put forward only for the purpose of obtaining a decree of divorce.

21. Before the Family Court, the husband examined himself as PW.1 and also examined his father as PW.2. On the side of the wife, she examined herself as RW.1 and examined Selvakumar, her brother, as RW.2.

22. The husband marked the marriage invitation, family/ration card and his Aadhaar card as Ex.1 to Ex.3. On the side of the wife, the Aadhaar card of her supporting witness was produced.



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23. The Family Court, upon appreciation of the pleadings and oral and documentary evidence, did not accept the case of the husband that the wife had subjected him to cruelty. In particular, the Family Court considered the allegation that the wife had repeatedly called the husband an impotent person and used humiliating expressions. The wife had denied the allegation and the Family Court found that there was no independent evidence corroborating the husband's version. The Court also noted that the husband's father had not spoken about such incidents.

24. Insofar as the allegation of suspicion regarding the husband's late return from work is concerned, the Family Court found that merely questioning the husband about his late arrival at home could not, by itself, be treated as an act of cruelty. The Court found that the husband had not produced sufficient evidence to establish that the conduct of the wife in this regard amounted to matrimonial cruelty.

25. The Family Court also considered the allegation relating to the wife's repeated visits to Dindigul. On appreciation of the evidence, the Court found that there was insufficient material to establish that the wife had deliberately deserted the husband or had left the matrimonial



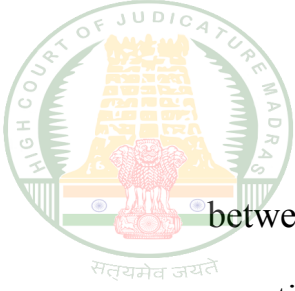
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home without justification. The explanation offered by the wife that the husband himself used to leave her at her sister's house when he had to travel for work was also taken into consideration.

26. The Family Court then considered the serious allegations relating to the alleged incident dated 04.06.2016, namely, assault with a slipper, calling the husband impotent, causing injuries, assaulting him with a broom, removing and throwing the thali, tearing photographs and leaving the matrimonial home. The Court found that these allegations were not satisfactorily corroborated by independent evidence.

27. The Family Court also noticed that neither party had lodged any police complaint against the other in respect of the alleged acts of cruelty and took the said circumstance into consideration while assessing the credibility and seriousness of the allegations.

28. With regard to the absence of children, the Family Court noted that there was no sufficient medical evidence to establish that the wife was permanently incapable of bearing a child. The Court further observed that childlessness could itself have caused emotional stress

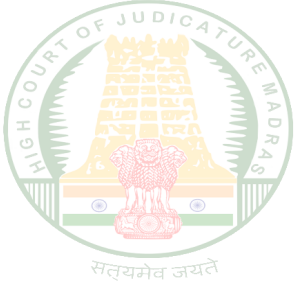


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between the parties and that the mere absence of children could not constitute a ground for divorce against the wife. Aggrieved by the said judgment and decree, the present appeal has been filed.

29. The learned counsel appearing for the appellant/husband would contend that the Family Court has failed to appreciate the evidence of the husband in its proper perspective and has placed undue emphasis on the absence of independent corroboration. According to the learned counsel, matrimonial cruelty ordinarily occurs within the four walls of the matrimonial home and cannot invariably be expected to be proved through independent eyewitnesses or police complaints.

30. It is further contended that the Family Court has considered the individual allegations in isolation instead of examining the cumulative effect of the conduct attributed to the wife throughout the matrimonial relationship. According to the appellant, the allegations of repeated humiliation, suspicion, refusal to cooperate in matrimonial life, leaving the matrimonial home and the alleged assault dated 04.06.2016 ought to have been considered together.



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31. The learned counsel for the appellant would further contend that the prolonged separation between the parties and the continued failure to resume matrimonial life are relevant circumstances while determining whether the matrimonial relationship has survived in substance.

32. Per contra, the learned counsel appearing for the respondent/wife would support the judgment of the Family Court and contend that the allegations of cruelty are bald, uncorroborated and specifically denied by the wife. According to the respondent, the husband failed to establish the alleged acts of assault, humiliation, desertion or refusal to cohabit by acceptable evidence.

33. We have carefully considered the rival submissions made by the learned counsel appearing for the appellant and the respondent and perused the pleadings, oral and documentary evidence and the judgment of the Family Court.

34. The question that arises for consideration in this appeal is

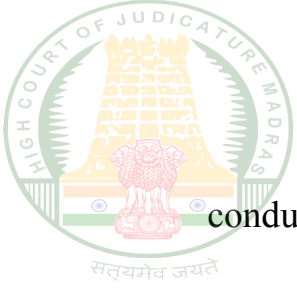


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whether the husband has established that the wife had treated him with cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955, and whether the Family Court was justified in dismissing the petition for divorce.

35. At the outset, it is necessary to bear in mind that the burden rests upon the spouse alleging cruelty to establish the same by acceptable evidence. Cruelty is undoubtedly to be assessed having regard to the entire matrimonial relationship and not by adopting a rigid or mechanical formula. However, the principle that the matrimonial relationship has to be considered as a whole cannot be converted into a principle that unproved allegations, when accumulated, would automatically become proved cruelty.

36. The judgment of the Hon'ble Supreme Court in ***Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511**, makes it clear that there can be no straitjacket formula for determining mental cruelty and that the assessment has to be made having regard to the peculiar facts and circumstances of each case. The cumulative effect of the conduct is certainly relevant; however, the foundational facts constituting such



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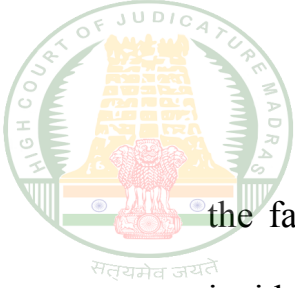
conduct must themselves be established.

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37. In the present case, the allegations of the husband regarding humiliation, suspicion, assault, use of abusive language, removal of thali, tearing of photographs and refusal to resume matrimonial life were specifically denied by the wife. The Family Court, after appreciating the oral evidence, found that the serious allegations had not been satisfactorily established.

38. We find no perversity or illegality in the said appreciation of evidence. The Family Court had the advantage of considering the evidence of the parties and their supporting witnesses. The mere fact that the alleged incidents are said to have taken place within the matrimonial home does not relieve the husband of the obligation to establish the essential facts constituting cruelty.

39. The allegation that the wife repeatedly called the husband an impotent person is a serious allegation. When such an allegation is specifically denied by the wife, the Court is required to examine whether the same has been established by reliable evidence. In the present case, the Family Court found no satisfactory corroboration. Significantly, even



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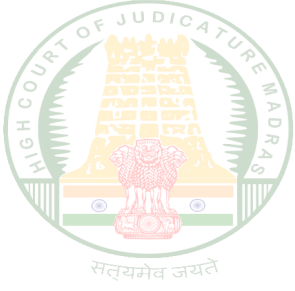
the father of the husband had not spoken in his deposition to such an incident. We therefore find no reason to interfere with the said finding.

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40. Likewise, the allegation regarding the wife's alleged suspicion whenever the husband returned late from work cannot, in the absence of further circumstances establishing oppressive or intolerable conduct, be treated as matrimonial cruelty. A matrimonial relationship necessarily involves questions, disagreements, apprehensions and differences between spouses. Every such disagreement cannot be elevated to the level of cruelty.

41. The same principle applies to the allegation relating to the wife's visits to Dindigul. The explanation offered by the wife that she was left at her sister's residence when the husband travelled for work cannot be brushed aside. The husband has not established, by convincing evidence, that such visits constituted wilful abandonment of the matrimonial home or an act calculated to cause mental cruelty.

42. The most important circumstance requiring consideration is the issue relating to childlessness.



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43. The evidence on record indicates that the parties remained childless during their matrimonial relationship and that the wife had a medical condition for which she underwent treatment and surgery. The wife did not remain passive in relation to the issue of childbearing. On the contrary, she subjected herself to medical treatment with the hope of conceiving and thereby establishing a normal family life with the husband.

44. In this context, we cannot mislay the sight of the physical and emotional burden involved in fertility treatment. Assisted reproductive treatment is not merely a medical appointment or an isolated procedure. It may involve repeated hormonal injections, repeated monitoring through scans and blood tests, invasive procedures for retrieval of eggs, medication following the procedure and, where required, embryo transfer and continued hormonal support.

45. The physical burden is accompanied by considerable emotional strain. During the course of such treatment, the woman is required to live through repeated cycles of hope and apprehension. The



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treatment may involve bodily discomfort, bloating, pain, hormonal fluctuations, anxiety, loss of privacy and repeated medical intervention.

The period following embryo transfer may also involve an intense period of uncertainty until the pregnancy test is undertaken.

46. Where a treatment cycle fails, the emotional consequence cannot be understood merely as the failure of a medical procedure. For a woman who has undergone such treatment in the hope of establishing a family, the failure may involve grief, disappointment, self-blame, anxiety and a sense of betrayal by her own body. The social environment may add to such distress, particularly when she is repeatedly questioned regarding pregnancy or subjected to comparisons with other women who have conceived.

47. The Court is not required to medically diagnose such emotional consequences in the present proceedings. What is relevant is that the wife had undergone the treatment in an attempt to overcome the difficulty relating to childbearing and to preserve the matrimonial relationship. Such conduct is wholly inconsistent with the allegation that she had deliberately avoided matrimonial life or had no intention of

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continuing the marriage.

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48. Indeed, the very fact that the wife subjected herself to repeated and difficult fertility treatment demonstrates that she had not abandoned the matrimonial relationship. The treatment involved physical discomfort, repeated medical procedures, emotional uncertainty and considerable personal strain. Her willingness to undergo such treatment cannot be treated as conduct amounting to cruelty; rather, in the circumstances of the present case, it is a circumstance demonstrating her intention to preserve the marriage.

49. Matrimonial life does not consist only of companionship during periods when everything proceeds without difficulty. The true test of a matrimonial relationship also lies in the manner in which spouses face circumstances of illness, medical difficulties, childlessness, financial stress and other challenges that arise during married life.

50. Hitches relating to conception and childbearing are, unfortunately, capable of generating anxiety, misunderstandings, disagreements and emotional stress between spouses. Such difficulties may lead to differences in the manner in which the spouses react to the



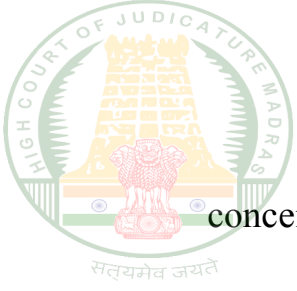
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problem. One spouse may become anxious, while the other may withdraw or react differently. Such circumstances, by themselves, cannot be treated as proof of cruelty.

51. Most importantly, the inability of the parties to have a child cannot, by itself, be converted into a matrimonial fault of the wife. Marriage cannot be reduced to the sole object of procreation. A spouse cannot be treated as having failed in the matrimonial relationship merely because the parties did not have a child.

52. If the husband has instituted the proceedings substantially in the backdrop of the parties remaining childless and the difficulties encountered in relation to conception, the Court has to be particularly cautious in examining whether the medical condition has been improperly converted into an allegation of cruelty against the wife.

53. The evidence in the present case does not establish that the wife wilfully refused to undergo treatment or deliberately prevented the parties from having a child. On the contrary, the material relied upon by the wife indicates that she underwent treatment in the hope of



conceiving.

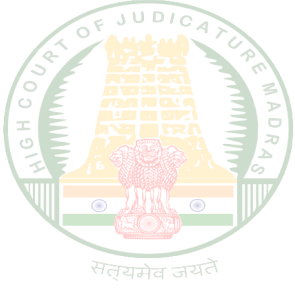
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54. The wife has consistently maintained that she is willing to resume matrimonial life with the husband. Even during interaction before the Court, she has expressed her willingness to reunite with the husband and continue the matrimonial relationship.

55. This conduct assumes considerable significance. A person who intends to abandon the matrimonial relationship would ordinarily not be expected to repeatedly express willingness to return and resume matrimonial life. The wife's expressed willingness to reunite cannot be disregarded merely because the parties have lived separately for a considerable period.

56. The husband himself pleaded that attempts were made to bring the wife back. The fact that attempts were made for reunion, therefore, cannot be treated as an admission that the matrimonial relationship had become impossible of restoration. On the contrary, it demonstrates that there continued to be an effort to preserve the marriage.



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57. The appellant seeks to rely upon the prolonged separation between the parties. No doubt, long separation is a relevant circumstance in matrimonial adjudication. However, prolonged separation cannot, in every case, be mechanically converted into a statutory ground of divorce under Section 13(1)(ia).

58. The question before this Court remains whether cruelty within the meaning of Section 13(1)(ia) has been established on the facts of the present case.

59. We are unable to accept the contention of the appellant that the mere fact of separation, coupled with the failure of reconciliation, establishes cruelty. Particularly so when the respondent-wife has not abandoned the marriage and continues to express her willingness to resume matrimonial life.

60. The position would be entirely different where both spouses have unequivocally demonstrated that the marriage is dead, there is no possibility of cohabitation and the continuation of the relationship



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has itself become a source of cruelty. But that is not the factual position before us.

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61. In the present case, the wife has expressed her willingness to live with the husband. The wife had also undergone medical treatment relating to conception. There is no acceptable material to establish that she had deliberately refused matrimonial companionship or had intentionally frustrated the matrimonial relationship.

62. The Court must also be conscious of the fact that a matrimonial relationship cannot be assessed by applying the standard of a relationship which has never encountered difficulties. A marriage may pass through periods of disagreement, misunderstanding, emotional strain and even temporary separation. Such difficulties, particularly when connected with childlessness and medical treatment, cannot automatically amount to cruelty.

63. The allegations regarding the alleged assault dated 04.06.2016 are undoubtedly serious. However, seriousness of an allegation cannot substitute proof. The Family Court, after appreciating



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the evidence, found that the allegations were not satisfactorily corroborated. We do not find any perversity in such conclusion warranting appellate interference.

64. Similarly, the allegations concerning the alleged removal of the thali, tearing of photographs and refusal to return to the matrimonial home were specifically denied by the wife and have not been established to the standard required for granting a decree of divorce.

65. We are therefore of the considered view that the appellant has failed to establish a continuous course of conduct of such a nature as would satisfy the legal test of matrimonial cruelty.

66. We are also unable to accept the contention that the prolonged separation, by itself, establishes that the marriage has irretrievably broken down. Irretrievable breakdown of marriage is not, by itself, a statutory ground available to the husband under Section 13(1)(ia) of the Hindu Marriage Act.

67. The matrimonial relationship cannot be held to have broken



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down merely because the parties have experienced difficulties in having a child. Nor can the emotional strain arising from infertility treatment be treated as proof that the wife was responsible for the breakdown of the marriage.

68. On the contrary, the wife's conduct in undergoing fertility treatment and expressing her willingness to resume cohabitation demonstrates that she had not given up on the marriage.

69. We therefore find that the Family Court has correctly appreciated the evidence and has rightly concluded that the husband failed to establish cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act.

70. The findings recorded by the Family Court are based upon appreciation of evidence and do not suffer from perversity, illegality or material irregularity warranting interference by this Court in exercise of appellate jurisdiction.

71. We may also observe that the purpose of matrimonial

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adjudication is not merely to identify a spouse upon whom blame can be placed. The Court has to determine whether the statutory ingredients for dissolution have been established. Where the evidence demonstrates that the matrimonial differences arose in the backdrop of childlessness, medical treatment, misunderstandings and ordinary matrimonial disagreements, and where the wife continues to express willingness to resume matrimonial life, the Court cannot grant a decree of divorce merely because the parties have lived separately for a considerable period.

72. It is equally important for this Court to recognise the deeply personal and emotional burden that a woman bears when she undergoes treatment for conception. The desire to have a child may be shared equally by both spouses, but the journey towards achieving that desire is not borne equally by both. The woman has to place her own body through repeated injections, hormonal medication, scans, blood tests, medical procedures and, at times, painful and invasive treatment. Every such procedure is accompanied by the anxiety of whether she would conceive, the hope that the next attempt would succeed, and the silent fear and disappointment when it does not. What may appear to



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others as merely a medical procedure is, for the woman, a repeated physical and emotional battle fought within her own body.

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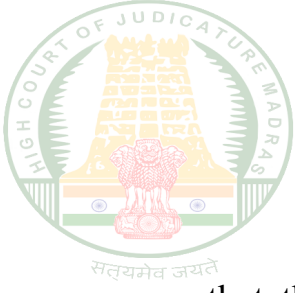
73. There is also a pain which cannot always be seen or measured. With every unsuccessful attempt, a woman may be left wondering whether her body is at fault, whether she has failed in fulfilling her husband's expectations, and whether the marriage itself may suffer because of something over which she has no control. She undergoes the physical pain of treatment while simultaneously carrying the emotional weight of expectation, disappointment, uncertainty and fear. The husband may certainly share the emotional anguish of remaining childless; however, the physical consequences of the treatment are borne by the woman herself. Therefore, when a wife, despite knowing the physical and emotional hardship involved, willingly undergoes such treatment in the hope of bearing a child and preserving the matrimonial relationship, that conduct cannot, by any stretch of imagination, be treated as a rejection of the marriage or as cruelty towards her husband.

74. On the contrary, such conduct speaks of her hope, her

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patience and her continued attachment to the matrimonial relationship. A woman who repeatedly subjects herself to painful treatment in the hope of building a family with her husband cannot simultaneously be portrayed as a person who has abandoned the matrimonial bond. Matrimonial life is not a journey without difficulties; it is a shared life in which illness, childlessness, financial difficulties, misunderstandings and emotional disappointments may arise. The tears shed in a hospital corridor, the anxiety before a medical report, the pain endured during treatment and the hope carried from one attempt to another are not matters that can be reduced to allegations in a matrimonial proceeding. If, in the midst of all these difficulties, the wife continued to undergo treatment with the hope of having a child and expressed her willingness to resume life with her husband, such circumstances, viewed in their proper humanoid and matrimonial perspective, would indicate an earnest attempt to preserve the marriage rather than an intention to cause cruelty or bring the matrimonial relationship to an end.

75. In such circumstances, we find that the learned Family Court was justified in dismissing H.M.O.P. No.154 of 2020.



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76. In the ultimate analysis, the husband has failed to prove that the wife treated him with cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955.

77. In the result, this Civil Miscellaneous Appeal is **dismissed**. The judgment and decree dated 01.03.2022 passed by the learned Judge, Family Court, Theni, in H.M.O.P.No.154 of 2020, dismissing the petition filed by the husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955, is hereby confirmed. There shall be no order as to costs.

[G.R.S., J.] & [M.D.S., J.]
30.09.2026

Index : Yes/No
Internet : Yes/No
NCC : Yes/No

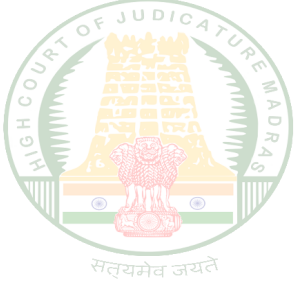
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To

1.The Judge, Family Court, Theni.

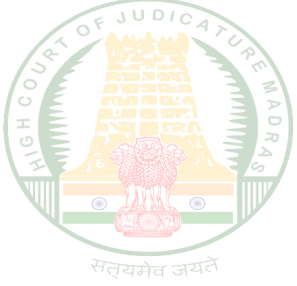
2.The Section Officer,

V.R Section, Madurai Bench of Madras High Court, Madurai.



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AND

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