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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.09.2026

PRONOUNCED ON : 16.10.2026

CORAM

**THE HON'BLE MR JUSTICE G.R.SWAMINATHAN**

**AND**

**THE HON'BLE MRS.JUSTICE M.D.SUMATHI**

**CMA(MD) No. 22 & 23 of 2022**

CNR:{HCMD010010542022}

**AND**

**CMP(MD) NO. 199 OF 2022**

**CMA(MD)No.22 of 2022:**

..Petitioner(s)

Vs

..Respondent(s)

**CMA(MD) No. 23 of 2022:**

..Petitioner(s)

Vs

..Respondent(s)



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**CMP(MD) No. 199 of 2022:**

..Petitioner(s)

Vs

..Respondent(s)

**PRAYER IN CMA(MD) No. 22 of 2022:**

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, to set aside the Fair and Decreetal Order dated 06/12/21 in H.M.O.P. No. 327 of 2019 on the file of Family Court, Sivagangai and pass such further or other orders as this Honourable Court may deem fit and proper in the circumstances of this case and render justice.

**PRAYER IN CMA(MD) No. 23 of 2022:**

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, to set aside the Fair and Decreetal Order dated 06/12/21 in H.M.O.P. No. 290 of 2019 on the file of Family Court, Sivagangai and pass such further or other orders as this Honourable Court may deem fit and proper in the circumstances of this case and render justice.

**In both cases:**

For Petitioner(s): Mrs.T.Margaret Skeda
for G.Prabhu Rajadurai

For Respondent(s): Mr.R.Rajaramalingam Sethupathy
for Mr.C.Rajagopal



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**COMMON JUDGMENT**

**(Judgment of the Court was made by M.D.SUMATHI J.)**

These Civil Miscellaneous Appeals have been filed challenging the common order and decree dated 06.12.2021 passed by the learned Judge, Family Court, Sivagangai, in H.M.O.P.Nos.290 of 2019 and 327 of 2019.

2. Since both the appeals arise out of the same matrimonial dispute between the same parties and the Family Court had considered both the petitions jointly and disposed of them by a common order, thereby they are taken up together and disposed of by this common judgment.

3. For the sake of convenience, the parties will be referred to as per their ranking before the Family Court.

4. The marriage between the appellant and the respondent was solemnised on 23.08.2018 at Kaalapur village according to Hindu rites and customs. At the time of marriage, gold jewellery and other articles were exchanged between the parties. The parties thereafter commenced



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their matrimonial life in the house of the appellant's parents.

5. According to the appellant, the respondent did not conduct herself in a manner expected of a wife, refused to perform ordinary household responsibilities, and treated him with disrespect. He further alleged that the respondent was unwilling to establish a normal marital relationship with him and had refused to consummate the marriage.

6. The appellant also alleged that the respondent had suppressed material particulars concerning her age and the identity and relationship of the person described as her father. He further alleged that the respondent was maintaining an illicit relationship with a person named Viji, whom he described as her stepfather. According to him, these circumstances caused him mental agony and constituted matrimonial cruelty.

7. On the above allegations, the appellant instituted H.M.O.P. No.290 of 2019, seeking dissolution of marriage under Sections 13(1)(i) and 13(1) (i-a) of the Hindu Marriage Act, 1955. The respondent denied the allegations made by the appellant and contended that the divorce petition was founded on false and baseless accusations.



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8. According to her, the marriage was solemnised with the consent of both families, and the parties lived together as husband and wife after the marriage. She denied having refused marital relations or having neglected the appellant.

9. The respondent further alleged that the appellant had an illicit relationship with his paternal uncle's wife, and that this relationship had adversely affected their matrimonial life. She contended that the appellant, instead of discharging his marital obligations, had subjected her to ill-treatment and demanded additional jewellery and money from her family. She also denied having suppressed her age or the relevant particulars concerning her family background. According to her, the appellant had made unfounded allegations against her and her family to avoid his matrimonial responsibilities. The respondent maintained that she was willing to continue the matrimonial relationship and had not withdrawn from the society of the appellant without reasonable cause.

10. Accordingly, she filed H.M.O.P. No.327 of 2019 under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights.



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She also contested the husband's divorce petition and sought its dismissal. The appellant denied the allegations of illicit intimacy with and contended that the respondent had raised those allegations only as a counterblast to his divorce petition. He maintained that the respondent's conduct, alleged refusal to discharge matrimonial responsibilities and the circumstances surrounding her family background justified the dissolution of marriage. He further contended that the respondent's alleged relationship with Viji and the suppression of material particulars before marriage had caused him mental cruelty.

11. The Family Court considered the following issues:

1. Whether the appellant had established his allegation that the respondent was living in adultery?

2. Whether the respondent had established her allegation that the appellant was maintaining an illicit relationship with Kalarani?

3. Whether the appellant was entitled to a decree of divorce under Section 13(1)(i) of the Hindu Marriage Act, 1955?

4. Whether the appellant was entitled to a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955, on the ground of cruelty?

5. Whether the respondent was entitled to restitution of conjugal



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rights under Section 9 of the Hindu Marriage Act, 1955?

6. What other reliefs were the parties entitled to?

12. The Family Court conducted a joint trial of both petitions. The appellant examined himself as P.W.1 and examined as P.W.2 and marked PW-1 to PW3 as exhibits. The parties also gave evidence concerning their matrimonial life, the alleged illicit relationships and the circumstances leading to their separation.

13. The Family Court examined the pleadings and oral evidence, including the admissions made by the appellant during cross-examination. The Family Court found that the appellant had failed to establish the allegations of adultery against the respondent. The Court noted that the appellant alleged that, on a particular evening in July 2019, he returned home and found inside the matrimonial house. However, the appellant had not established that the respondent and were engaged in any sexual relationship. His own evidence showed that he had entered the house after the door was opened and had not witnessed any act of adultery.



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14. The Court further observed that the house in which the parties resided had no separate rooms and was occupied by several members of the appellant's family. The appellant had not explained where the other family members were at the relevant time. None of those family members had been examined to corroborate his version. The evidence of P.W.2 was also found insufficient to establish the alleged incident. The witness had not clearly established that he was present at the relevant place and time or that he had personally witnessed the alleged adulterous conduct. The particulars concerning the alleged panchayat were also insufficiently established.

15. With regard to the allegation that the respondent had concealed her age and family particulars, the Family Court found that the appellant had not produced adequate documentary evidence to establish the alleged misrepresentation. Even assuming that the respondent was older than the appellant, the appellant had not satisfactorily demonstrated how the alleged difference in age, by itself, constituted matrimonial cruelty. The Family Court also found that the allegations relating to cooking, serving food and telephone conversations were vague and unsupported by sufficient evidence to establish cruelty within the meaning of Section 13(1)(ia) of the Act. The Court further noted that the respondent had



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sought restitution of conjugal rights, which supported her pleaded willingness to resume matrimonial life.

16. Consequently, the Family Court dismissed H.M.O.P. No.290 of 2019 and allowed H.M.O.P. No.327 of 2019, directing the appellant to resume matrimonial life with the respondent. The parties were directed to bear their respective costs. Aggrieved by the common judgment the appellant has challenged the common judgment and decree on the grounds that the findings of the Family Court are contrary to law, the evidence on record and the probabilities of the case. It is contended that the Family Court ought to have granted a decree of divorce and dismissed the petition for restitution of conjugal rights. According to the appellant, the Court failed to appreciate the evidence relating to the respondent's conduct, her alleged illicit relationship with and the alleged concealment of material particulars concerning her family background.

17. The appellant further contends that the respondent subjected him to mental cruelty by her words and conduct and by failing to discharge her matrimonial responsibilities. He alleges that the respondent's counter-allegations concerning his alleged relationship with were made only to protect herself from the allegations raised by him. It is also contended that the testimony of P.W.1 was corroborated by



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P.W.2 and that the Family Court failed to give due weight to their evidence. On these grounds, the appellant seeks reversal of the judgment and decree passed by the Family Court.

18. Upon consideration of the pleadings, the evidence, the findings of the Family Court and the grounds urged in appeal, the following points arise for determination:

1. Whether the Family Court was justified in holding that the appellant had failed to establish adultery as a ground for divorce?

2. Whether the appellant established matrimonial cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955?

3. Whether the respondent was entitled to restitution of conjugal rights under Section 9 of the Act?

4. Whether the common judgment and decree warrant interference by this Court?

19. The principal allegation raised by the appellant is that the respondent was maintaining an illicit relationship with . The appellant relies upon the alleged incident in July 2019, the subsequent panchayat and the circumstances surrounding the respondent's family background. Adultery is a serious matrimonial allegation and must be established by



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cogent and convincing evidence. Although direct evidence may not always be available, the circumstances relied upon must be sufficiently compelling to support a reasonable inference of adulterous conduct.

20. In A.Hemamalini v. A.Pankajanabham, **(1994) 3 ANDH LT 30,** the Court discussed the nature of proof required in allegations of adultery and emphasised the need for careful evaluation of circumstantial evidence. The principle emerging from such decisions is that mere suspicion, however strong, cannot substitute for proof.

21. The Supreme Court in **Dr.N.G.Dastane v. Mrs.S.Dastane, (1975) 2 SCC 326**, held that matrimonial proceedings are governed by the standard of preponderance of probabilities rather than proof beyond reasonable doubt. Nevertheless, the Court must evaluate the evidence as a whole and determine whether the alleged matrimonial ground has been established on that standard.

22. In the present case, the appellant's evidence does not establish that he personally witnessed the respondent engaging in any adulterous act. His case rests principally upon the presence of in the house and the circumstances in which the appellant claims to have found that person



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there. The Family Court has specifically considered the nature of the house, the presence of several family members and the absence of testimony from the appellant's parents and brothers. These circumstances were relevant to the reliability of the appellant's version. Further, P.W.2 did not provide satisfactory direct evidence of the alleged incident. The particulars of the alleged panchayat were also insufficient to establish the charge. The appellant did not examine the persons who allegedly participated in the panchayat, although their evidence could have assisted the Court in determining whether any admission had actually been made.

23. The appellant's allegations concerning the respondent's family background and the identity of her father cannot, by themselves, establish that the respondent was maintaining an illicit relationship. The alleged suppression of family particulars and the allegation of adultery are distinct matters and must be assessed on their respective evidence. The Family Court was therefore justified in concluding that the appellant had failed to establish adultery on a preponderance of probabilities. The mere presence of another person in the matrimonial house, without reliable evidence of an adulterous relationship, cannot sustain a decree of divorce under Section 13(1)(i) of the Act.



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24. The next question is whether the respondent's alleged conduct amounts to cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. Cruelty is not confined to physical violence. Depending upon the facts and circumstances, sustained mental harassment, serious unfounded accusations, humiliating conduct and other behaviour that makes it unreasonable to expect a spouse to continue matrimonial life may constitute mental cruelty. At the same time, ordinary differences of opinion, isolated disagreements and general allegations concerning household responsibilities do not automatically amount to matrimonial cruelty. The Court must examine the nature, seriousness, frequency and overall effect of the conduct complained of.

25. In **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511,** the Supreme Court explained that mental cruelty must be assessed in the context of the parties' circumstances and the cumulative effect of their conduct. The Court also observed that no exhaustive definition of mental cruelty can be formulated for every matrimonial dispute. Similarly, **in A.Jayachandra v. Aneel Kaur, (2005) 2 SCC 22**, the Supreme Court reiterated that the question of cruelty must be decided by evaluating the facts and circumstances of each case.



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26. Applying these principles, the allegations in the present case require careful examination. The appellant has alleged that the respondent refused to cook food, failed to serve him, frequently spoke on the telephone and did not conduct herself as expected of a wife. However, the pleadings and evidence, as considered by the Family Court, do not establish sufficiently specific incidents or a sustained course of conduct of such gravity as to constitute cruelty. The appellant has also alleged that the respondent refused to consummate the marriage. However, the Family Court did not find sufficient evidence to establish the alleged refusal as a deliberate and unjustified course of conduct constituting cruelty. The parties' competing versions must be considered in the context of the evidence actually adduced and not merely on the basis of the allegations in the pleadings.

27. The alleged concealment of the respondent's age and family background has also not been established by adequate documentary evidence. The appellant has not demonstrated that the alleged difference in age, or the particulars concerning the respondent's family, were proved to have caused such serious matrimonial injury as would justify



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dissolution of the marriage. The appellant's contention that he suffered mental cruelty cannot be accepted merely because the matrimonial relationship became strained. The Court must be satisfied that the conduct complained of has been proved and that it satisfies the statutory threshold.

28. The Family Court considered the evidence and found that the allegations were either insufficiently specific or unsupported by reliable corroboration. No material has been demonstrated in the appeal to show that this assessment was perverse or that the Court ignored any decisive evidence. The appellant contends that the respondent's allegation of an illicit relationship with Kalarani was false and had been made as a counterblast to the divorce petition.

29. The Family Court observed that the respondent had not established the alleged illicit relationship. However, it also considered that the respondent had sought restitution of conjugal rights rather than dissolution of marriage on that ground. The mere failure of one spouse to prove an allegation against the other does not automatically establish the truth of the opposing party's allegations. Each matrimonial ground must be assessed independently on the evidence adduced.



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30. The appellant has not established that the respondent's allegation was made in circumstances that, in the present case, independently satisfy the legal requirements for a decree of divorce on the ground of cruelty. The Court cannot infer cruelty merely from the existence of competing accusations without examining their context and evidentiary foundation.

31. Section 9 of the Hindu Marriage Act, 1955, provides for restitution of conjugal rights where either spouse has withdrawn from the society of the other without reasonable excuse, subject to the statutory requirements. The essential considerations are whether there has been withdrawal from the society of the other spouse and whether such withdrawal is supported by a reasonable excuse.

32. In **Saroj Rani v. Sudarshan Kumar Chadha, (1984) 4 SCC 90,** the Supreme Court upheld the validity of Section 9 of the Hindu Marriage Act and explained that the remedy is intended to provide an opportunity for the spouses to resume matrimonial life, subject to the safeguards under the Act. The remedy is not intended to punish either



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spouse or to compel a finding that one party is necessarily at fault in every respect. The Court must consider whether the party seeking restitution genuinely desires to resume matrimonial life and whether any legally sufficient reason prevents the other party from returning to the marital relationship.

33. In the present case, the respondent has consistently maintained that she is willing to live with the appellant. She filed H.M.O.P.No.327 of 2019 seeking restitution of conjugal rights and contested the allegations raised in the divorce petition. The appellant, on the other hand, has sought dissolution of marriage primarily on the basis of allegations that the Family Court found unproved. He has not established a legally sufficient ground that would justify denying the respondent the relief sought under Section 9. The evidence and circumstances considered by the Family Court support the conclusion that the respondent is willing to resume matrimonial life and that the appellant has not established a sufficient legal basis for refusing restitution.

34. This Court has carefully considered the submissions advanced by the appellant and the findings recorded by the Family Court.



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35. The grounds raised in appeal substantially seek a different appreciation of the same evidence. However, the appellant has not demonstrated any material misreading of the evidence, application of an incorrect legal principle or other error warranting interference. The mere possibility of another view is insufficient to displace findings that are reasonably supported by the evidence on record.

36. This Court finds no sufficient ground to interfere with the conclusions reached by the Family Court. The appellant has failed to establish adultery as a ground for divorce under Section 13(1)(i) of the Hindu Marriage Act, 1955. The allegations of cruelty under Section 13(1)(ia) have also not been established by sufficient evidence.

37. The respondent's request for restitution of conjugal rights was rightly allowed, as the appellant failed to establish a sufficient legal ground to deny that relief. The common judgment and decree dated 06.12.2021 passed by the Family Court, Sivaganga, in H.M.O.P. Nos.290 of 2019 and 327 of 2019 are well founded and do not warrant interference by this Court.

38. In the result,

(I) The Civil Miscellaneous Appeals are **dismissed.** The common



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judgment and decree dated 06.12.2021 passed by the Family Court, Sivaganga, in H.M.O.P. Nos.290 of 2019 and 327 of 2019 are confirmed.

(ii) The dismissal of H.M.O.P. No.290 of 2019 seeking dissolution of marriage is confirmed. The decree allowing H.M.O.P. No.327 of 2019 seeking restitution of conjugal rights is confirmed.

(iii) There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

**(G.R.S.,J.) (M.D.S.,J.)**
**16.10.2026**

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

PJL

To

1. The Judge,
Family Court,
Sivagangai.

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



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

PJL

**Pre-delivery Judgment made in**

**CMA(MD).Nos. 22& 23 of 2022**
**AND**
**CMP(MD) No. 199 of 2022**

**16.10.2026**



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