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CMA No. 1155 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

CMA Nos. 1155 & 1156 of 2024

AND

CMP No. 10460 of 2024

G. Sridhar

..Appellant(s) in both
Appeals

Vs

S. Komala Kumari

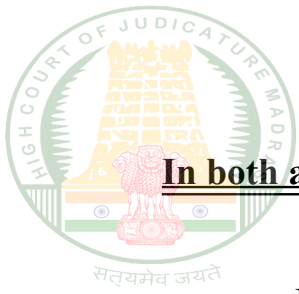
..Respondent(s) in both
Appeals

CMA No. 1155 of 2024

PRAYER: Civil Miscellaneous Appeal filed under Section 19 (1) of the Family Courts Act to allow the above CMA by setting aside the common fair and decreetal order dated 19.12.2023 made in IA No.1 of 2020 in HMOP No.2289 of 2017 by III Additional Family Court, Chennai with costs.

CMA No. 1156 of 2024

PRAYER: Civil Miscellaneous Appeal filed under Section 19 (1) of the Family Courts Act to allow the above CMA by setting aside the common fair and decreetal order dated 19.12.2023 made in HMOP No.2289 of 2017 by III Additional Family Court, Chennai with costs.



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CMA No. 1155 of 2



In both appeals:

For Appellant(s): Mr.N.Mariappan

For Respondent(s): Mr.D.Nellaiappan

COMMON JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The petitioner/husband in HMOP No.2289 of 2017 on the file of the III Additional Family Court, Chennai, aggrieved by the judgment dated 19.12.2023 dismissing the said petition has filed CMA No.1156 of 2024. The respondent in the said HMOP No.2289 of 2017/wife had filed IA No.1 of 2020 along with counter affidavit seeking restitution of conjugal rights. The learned III Additional Family Court Judge, Chennai, while dismissing HMOP No.2289 of 2017 had allowed IA No.1 of 2020 granting restitution of conjugal rights and consequently, the respondent in the said IA No.1 of 2020/husband has filed CMA No.1155 of 2024.

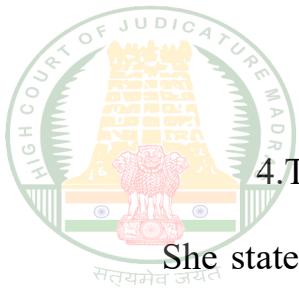
2.Since arguments have been advanced in common in both appeals and also since both the appeals arise from a common judgment and decree, a common judgment is passed.

3.It is the case of the petitioner in HMOP No.2289 of 2017/appellant herein that the marriage between him and the respondent was solemnized on



17.04.1997 at Punganur, Chithoor District, Andhra Pradesh. It was an arranged marriage. Two children were born. The first was a daughter G.S.Harshitha and

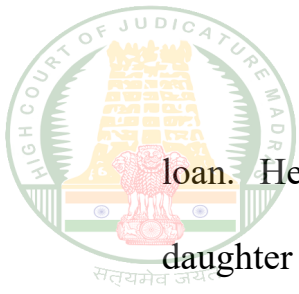
the second child was a son G.S.Jathin. After marriage, the appellant and the respondent were living at Tondiarpet, Chennai. It is contended that in the year 2016, he purchased a new house. It had been contended that on and from the date of marriage the respondent was demanding various facilities and was always concentrating on his income and wealth. It is to be noted that the appellant was employed as an Assistant Engineer in Greater Chennai Corporation. It had been contended that the respondent insulted him and often criticised him in front of others. She also did not share matrimonial relationship with him. It had been further stated that on 19.06.2017, she left the matrimonial home along with her daughter and returned a week later and when questioned, informed him that the daughter had married her brother at Bangalore. This incident was a triggering point for serious differences between the appellant and the respondent. The appellant contended that the daughter has just completed 18 years of age. The brother of the respondent was a divorcee and had actually earlier married the niece of the appellant and owing to troubles in that marriage, a complaint being lodged was taken into custody by the jurisdictional police. There was also a child born out of the said marriage. Contending that the manner in which the marriage of his daughter was conducted surreptitiously without informing him was an act of cruelty, the appellant had filed petition seeking divorce under Section 13 1 (i-a) of the Hindu Marriage Act, 1955.



4. The respondent in her counter had denied and disputed all these claims.

She stated that she performed her matrimonial obligations and denied that she had abused the appellant herein or had spoken disparagingly about him to others. With respect to the marriage of the daughter, she stated that the daughter had developed relationship with her brother and in the interest of both parties, she had conducted the marriage. She stated that when she came back from Bangalore, she was prevented from entering into the matrimonial home necessitating lodging of the complaint before the jurisdictional police. She further contended that when she was finally able to enter the house, she found her certificates and all her personal belongings had been removed. She then filed a petition seeking a direction to register an FIR. It was also contended that she had given all her jewels and also obtained money from her parents on the demand of the appellant herein. It was further contended that the appellant had stalled payment of the housing loan. It was contended that the appellant had not bothered to find out the whereabouts of the daughter. She stated that she wanted to reside with the appellant and it was under such circumstances, apart from the counter statement, she also filed an interlocutory application in IA No.1 of 2020 seeking the relief of restitution of conjugal rights.

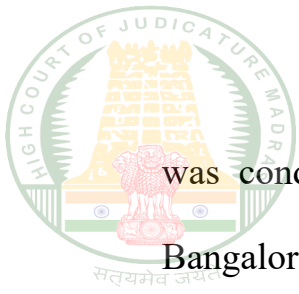
5. A reply statement was filed by the appellant again reiterating the statements made earlier. He stated that he had purchased a flat by pledging his mother jewels and out of the retirement benefits of the father and by taking



loan. He again reiterated that the respondent had arranged the marriage of her daughter without informing him. He further stated that he had never prevented the respondent from meeting his son. He had also stated that she had also issued notices to the place of his birth and thereby compounded the acts of cruelty. He therefore reiterated that divorce should be granted on the ground of cruelty.

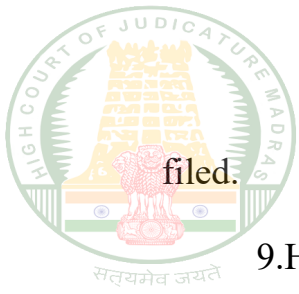
6. During the course of Trial, the appellant had examined himself as PW1 and marked Exs.P1 to P11. Ex.P5 was the copy of the home loan sanction letter. Ex.P6 were the copy of the booking form and payment receipts. Ex.P7 were also copies of payment receipts. Ex.P8 was the copy of handing over of flat letter. Ex.P9 was the copy of the demand drafts to show payment of sale consideration. The respondent examined herself as RW1 and she marked Exs.R1 to R5. Ex.R1 was the copy of the complaint given by her against the appellant. Ex.R2 was the copy of cheques issued by her relating to home loan. Ex.R3 was the receipt for payment to the Flat Owners Association. Ex.R4 was the notice issued by the banker for non payment of EMIs.

7. On the basis of the evidence adduced and the pleadings, the learned Trial Judge had observed that the primary ground on which cruelty was alleged was the surreptitious manner in which the marriage of the daughter of both parties and the own brother of the respondent who was a divorcee at Bangalore



was conducted. It was also noted that after the respondent returned from Bangalore, she was not allowed inside the matrimonial home necessitating lodging of complaint. It had been further observed that the appellant herein had not lodged any police complaint till 21.06.2017 with respect to the earlier relationship of the daughter with the brother of the respondent. It was also pointed out that no documentary evidence had been produced to show that the brother of the respondent was a divorcee. With respect to the allegations that she had co-operated with the matrimonial relationship, it had been stated that these allegations were only stated and had not been established during the course of trial. It was also noted that the daughter had completed the age of 18 years and had every right to choose her partner and therefore, the lamentations of the appellant were rejected. It was also noted that the flat which the appellant had complained about, had been purchased in the name of the respondent. Both parties had lodged complaint against each other relating to the possession of the flat. It was also noted that the respondent had sent a complaint to the superior officer of the appellant. At the same time, it was also noted that she had also lodged a complaint with the Deputy Commissioner of Police requesting protection of her interest from her husband. In view of all these reasons, the petition seeking divorce was dismissed and on the other hand, the interlocutory application seeking restitution of conjugal rights was allowed.

8.Challenging the said impugned orders, these two appeals have been

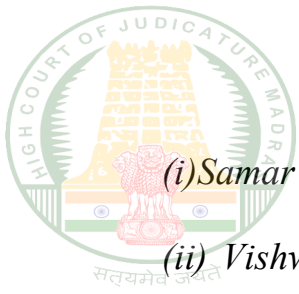


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9. Heard arguments advanced on either side.

10. It is the contention of the learned counsel for the appellant that the appellant and the respondent married on 17.04.1997, and were blessed with a daughter and a son. It was contended that immediately after the daughter had attained the age of 18 years, the respondent had taken her to Bangalore to marry her own brother who is a divorcee. It is contended by the learned counsel that this act had deeply affected the appellant and by this act, the respondent had committed mental cruelty to the appellant. The learned counsel further pointed out that the appellant had purchased a flat in the name of the respondent and he himself was prevented from entering his flat. It was contended that complaints were lodged against each other. Further, the respondent had also lodged a complaint before the superior officers of the appellant. The learned counsel contended that all these acts when cumulatively viewed would indicate that the respondent had continuously committed the acts of mental cruelty on the appellant herein. The learned counsel therefore contended that this Court should set aside the order of the Trial Court and grant the relief sought by the appellant.

11. In this connection, the learned counsel placed reliance on the following judgments:



(i) *Samar Ghosh Vs. Jaya Ghosh* reported in (2007) 4 SCC 511

(ii) *Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal* reported in (2012) 7

SCC 288

(iii) *Sapna Vs. B. Pradeep Kumar* reported in 2012-2-LW.623.

12. In *Samar Ghosh Vs. Jaya Ghosh* reported in (2007) 4 SCC 511, the Hon'ble Supreme Court had examined the concept of mental cruelty as a ground for divorce and held that there cannot be a comprehensive definition of the term mental cruelty. It had been further stated that it had to be adjudicated on case to case basis taking all factors, particularly, the suffering of either party at the hands of the other.

13. In *Vishwanath Agrawal* referred supra reported in (2012) 7 SCC 288 Hon'ble Supreme Court had again examined the term cruelty and mental cruelty. It had been held that cruelty has an inseparable nexus with human conduct and is always depended on social strata or milieu to which parties belong. With respect to mental cruelty, it had been stated that any act which ultimately cause deep mental pain, agony, suffering and frustration can be termed as mental cruelty.

14. In *Sapna Vs. B. Pradeep Kumar* reported in 2012-2-LW.623, it had been held that when the parties were living separately for a considerable period



of time, the Court should examine whether it would be possible to make them live together. It must be pointed out that the Division Bench in this case placed reliance on the irretrievable breakdown of marriage which ground is not available in statute and cannot be invoked by this Court.

15. The learned counsel for the respondent however pointed out that the marriage of the daughter conducted by the respondent was only after the daughter had completed the age of 18 years and when the daughter had attained age of majority. The learned counsel contented that the daughter had been married to the own brother of the respondent and the appellant should have participated in the said event as a father. The learned counsel further stated that the other issues which had been stated by the appellant as acts of cruelty with respect to the flat and non grant of permission to enter into the flat and complaint to the superior officers of the appellant and complaint to the police were incidents which happened subsequent to the filing of the petition seeking divorce. The learned counsel pointed out that immediately the petition for divorce had been filed. The respondent had returned back from Bangalore after the marriage of the daughter. It was therefore contended that it cannot be stated that they are living separately for a considerable period of time. With respect to the allegation of trespassing into the house and other aspects, the learned counsel pointed out the evidence, wherein, the specific allegations were denied by the respondent. The learned counsel further sought dismissal of the appeals

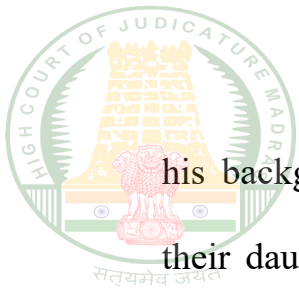


and the other hand contended that this Court should confirm the directions of the Trial Court for restitution of conjugal rights.

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16. We have carefully considered the arguments advanced and perused the material records.

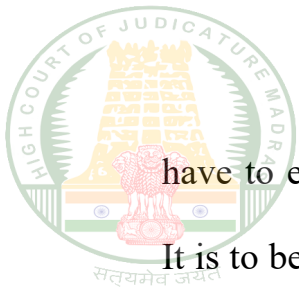
17. The marriage between the appellant/husband and the respondent/wife took place on 17.04.1997. It was an arranged marriage. They both were blessed with a daughter and a son. The appellant had complained that continuously from the date of marriage, the respondent had acted with much cruelty and had abused him, spoken disparage about him to the neighbours and that the respondent did not perform her matrimonial duties. But however, it is to be noted that they had to continue their matrimonial life and a daughter and son were also born to them. Till the daughter and son had grown up, differences could only be scratches in the marital life. The trigger point was the marriage of the daughter. This happened after she turned 18. It is the case of the appellant that without his knowledge, the respondent took their daughter to Bangalore and got her married to the respondent's own brother. It is the case of the appellant that this brother of the respondent was a divorcee and as a matter of fact, had earlier married the niece of the appellant. Police complaints have been lodged against him owing to his conduct and he had actually been taken into custody. It is the case of the appellant that to such an individual, knowing



his background, the respondent had deliberately participated and encouraged their daughter to marry her own brother. It was also contended that he was never informed about the marriage. He was not even invited to the marriage and he only knew that the respondent and his daughter were missing. Thereafter, the respondent came home and after about a week, she informed him about the marriage. In his cross examination, PW1 has stated as follows:

"..... 19.06.2017 அன்று 18 முடிந்து 3 மாதங்களே ஆன எனது மகள் என்னுடைய விருப்பமில்லாமல் ஏற்கனவே எனது அக்கா மகளை திருமணம் செய்து அவரிடமிருந்து விவாகரத்து பெற்ற 33 வயதான எனது மைத்துனருடன் ஓடி விட்டாள்."

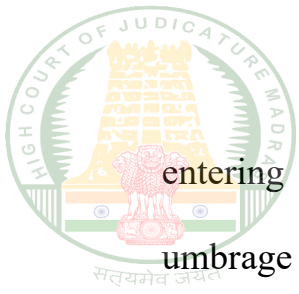
18.It is to be determined whether this act of marriage of the daughter without informing the appellant could be considered as an act of mental cruelty. The fact that the daughter was married at Bangalore and further fact that the appellant was not informed had neither been denied nor disputed by the respondent. The fact that the respondent played a very important role in the marriage was neither denied nor disputed by the respondent. The fact that the daughter had been married just a few months after she completed the age of 18 years was again neither denied nor disputed by the respondent. The fact that the daughter had married her own brother, who was a divorcee was also neither denied nor disputed by the respondent. When this being the case, the Court will



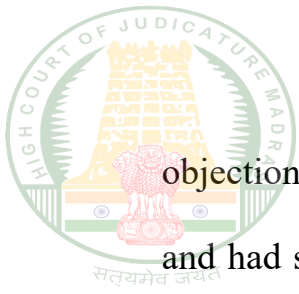
have to examine whether this act of the respondent constituted mental cruelty.

It is to be noted that when the respondent had intention to marry the daughter to her brother, it would only have been appropriate that she had informed the appellant who as a father would like to be present when the daughter gets married. There is no reason why the respondent had acted surreptitiously in a very important event in the life of a daughter and also of a father. The pain of the appellant as a father could be visualised by us. He had never known that the respondent and daughter had gone away. Thereafter, after about a week, the respondent came back home and informed about the marriage. After the marriage is performed, the appellant can never take any step. It is only natural that this aspect has agitated him since the husband of the daughter was a divorcee earlier and that marriage had broken down with much animosity and as a matter of fact, as against the brother of the respondent, police complaint had been lodged and he had also been taken into custody. At that particular point of time when the marriage of the daughter had occurred, as a parent he would have undergone extreme mental agony, pain and suffering which can never be compensated.

19. The case of the respondent is that the appellant had sent the respondent to Bangalore for their daughter's marriage. But the evidence of the appellant was that he was never informed about the marriage. Subsequently, for the conduct of the respondent, when she came back, she was prevented from

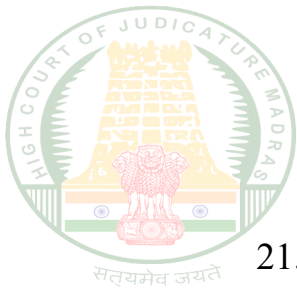


entering into the home which also shows that the appellant had taken serious umbrage on the conduct of the respondent herein. If he had consented for the marriage and he had voluntarily sent the respondent to the marriage, then he would have not prevented her. The minor issue of preventing her from entering into the house had happened only owing to the mental scar which the appellant had suffered as the marriage of his own daughter was not informed to him. It is not an issue of whether the marriage was for the welfare of the daughter or not. This entire issue to be viewed purely from the eyes of the appellant herein and as a father, the agony he suffered that his daughter who has just completed 18 years was given in marriage to a person who was aged about 32 years, who was already divorced and against whom police complaint was lodged by his former wife. It is also in evidence that the respondent had further justified the marriage by stating that the daughter had eloped to Bangalore to get married. But admittedly, in the evidence, it had been stated that on and from 2013, the brother of the respondent had not visited the house and therefore, there is no possibility of the daughter knowing him earlier or forging relationship with him earlier. It is therefore very clear that the respondent had taken an independent decision to marry their daughter who had just completed 18 years to a person who had crossed 32 years and who was also a divorcee. It is therefore very probable that the respondent had arranged the marriage and her role in such an arrangement of the marriage is very much evident. On an over all view of the entire issue, it is only because she knew that the appellant might raise



objections, she deliberately did not inform about the marriage to the appellant and had surreptitiously married away their daughter. At that point of time, the future of the daughter would have pained the appellant. He would have been in agony that his own daughter was married to an elderly person who is also a divorcee and at that time, the mental agony caused would be irreparable and assuaged by acts of the respondent. It is also to be noted that during trial, PW2 his son was also examined and he also stated that the respondent and his sister had departed from the house and after that the respondent alone came back to the house and his sister had been married in Bangalore without informing any one. All these evidence point out that the marriage had been actually conducted deliberately by the respondent without informing the appellant and had caused serious mental agony to the appellant herein.

20. The second aspect is about preventing of entering the home by both parties. It is seen that respondent had locked the house and subsequently, the monthly loan had also not been paid. It is also to be noted that the respondent had broke open the home when the appellant was away and removed all the personal belongings and also gave police complaint as against the appellant. This had damaged his reputation in his office and she had also given complaint to the superior officers of the appellant. This act of lodging complaint to the police, to the higher officials of the appellant would also have caused serious mental cruelty to the appellant herein.

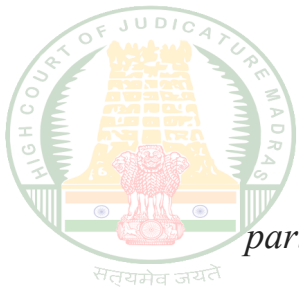


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21. In the written arguments filed on behalf of the respondent, it had been stated that the appellant had paid Rs.1,00,000/- as booking amount and not large amounts as claimed in his pleadings. Second, though the property was valued at Rs.17,75,000/- he had claimed that he had spent Rs.60,00,000/- and third, there was no documentary proof that he funded the purchase by selling the jewels of his mother and his father's retirement benefits. The main points on which the petition seeking divorce was filed are marrying the daughter surreptitiously, lodging of the complaint with superior officers of the appellant and lodging of the complaint with the police officials, breaking open of the door of the flat and taking away all the material papers to the disadvantage of the appellant and the son PW2. All these acts independently and cumulatively in our opinion would have caused serious mental agony and pain to the appellant herein.

22. In *Samar Ghosh Vs. Jaya Ghosh* reported in (2007) 4 SCC 511, the concept of mental cruelty had been explained by Hon'ble Supreme Court and some of the acts which could cause mental agony had been deduced as follows:

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:



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(i) *On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.*

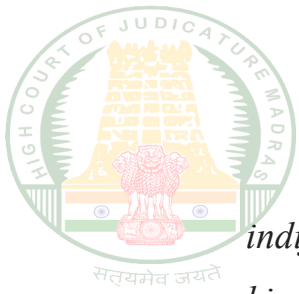
(ii) *On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.*

(iii) *Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.*

(iv) *Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.*

(v) *A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.*

(vi) *Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.*



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(vii) *Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.*

(viii) *The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.*

(ix) *Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.*

(x) *The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.*

(xi) *If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.*



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(xii) *Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.*

(xiii) *Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.*

(xiv) *Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”*

23. We hold that the continuous acts causing mental cruelty including abuse of appellant, speaking disparagingly in public and lodging of complaint to the police and superior officers had definitely caused mental agony making it difficult to live with the respondent. It is further to be noted that the complaint had been lodged with knowledge that he had reasons for raising objections for the marriage of the daughter. Further, taking away of the personal belongings by breaking open the door of the flat have created a situation wherein the appellant cannot lead a normal marital life with the respondent. It is also to be noted that the flat had actually been brought to sale and sold by the respondent for a total consideration of Rs.60,00,000/-. A sum of Rs.40,00,000/- was used to



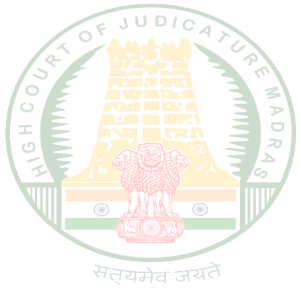
pay the loan and she had taken away the balance sale consideration of Rs.20,00,000/-, thereby completely making the matrimonial home not available as a residence.

24.In view of these reasons, we hold that the learned Trial Judge had misdirected himself in appreciating the evidence on record and we are compelled to interfere with the impugned orders. Therefore, the appeals are allowed and the order passed in IA No.1 of 2020 and in HMOP No.2289 of 2017, by the III Additional Family Court, Chennai are set aside. No costs. Consequently, connected miscellaneous petition is also closed.

(C.V.K.,J.) (K.R.S.,J.)
24-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
sli

To
III Additional Family Court, Chennai.



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**C.V.KARTHIKEYAN J.
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