

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2023
(Arising from SLP(Civil)No(s).11761-11762/2022)

V.E. MAYA

APPELLANT(S)

VERSUS

K.S. VETRIVEL

RESPONDENT(S)

O R D E R

Leave granted.

Heard learned counsel for the appellant-wife and the respondent-husband.

The present appeals arise out of a matrimonial proceeding in which the Family Court, Erode had granted an order of judicial separation instead of decree for divorce. This was asked for by the husband (K.S. Vetrivel) in the petition filed before that Court. The husband's plea for divorce was not accepted by the Family Court. The said Court, however, had found certain acts of the wife which emerged from evidence to come within the "purview of cruelty." Both the husband and wife (V.E. Maya) preferred appeals against the said order, which were disposed of by the jurisdictional High Court in a common judgment delivered on 23.03.2022. In the husband's appeal, main ground was that decree of divorce ought to have been granted upon find of cruelty whereas the wife had founded her appeal on the basis that the Family Court ought not to have ordered judicial separation.

The High Court has dealt with the evidence in detail but there is no finding that cruelty was meted out by the appellant-wife to the respondent-husband. That aspect of the judgment of the Family Court was not addressed to in the judgment under appeal. On the other hand, the High Court has applied the principle of irretrievable breakdown of marriage to grant decree of divorce by dissolving the marriage between the parties. This would be apparent from the following passages of the judgment under appeal:-

"23. In the instant case, the parties are living separately for more than 12 years. The endeavour to bring re-conciliation between the parties failed, resultantly, the marriage is dead, both emotionally and practically. Continuance of the relationship for namesake is prolonging the agony and affliction would be a cruelty to both the parties. Therefore, we are of the considered opinion that the marriage between the parties has broken down irretrievably and the parties could no longer live together as husband and wife.

24. In the light of the decisions referred supra and our discussion and finding, we find no merit in the appeal preferred by the wife, hence, C.M.A.No.2821 of 2015 stands dismissed and the C.M.A.No.2072 of 2018 stands allowed.

25. The order of the Family Court, Erode, made in H.M.O.P.No.465 of 2014 dated 08.09.2015 is hereby set aside and the marriage solemnized between the parties on 27.08.2007 is hereby dissolved by granting a decree of divorce. No costs. Consequently connected miscellaneous petition is closed."

We are of the opinion that the High Court has committed error of law by relying on the principle of irretrievable breakdown of marriage to dissolve the marriage between the parties in a contested divorce proceeding. The High Court, however, did not return any finding on allegations of cruelty on the part of the

wife, on which the Family Court came to a specific conclusion. A decision on that count was necessary for proper adjudication of the appeals. Hence, the judgment of the High Court, to the extent it decreed divorce by dissolving the marriage between the parties, shall stand set aside. We, however, remand the appeals to the High Court for fresh hearing.

The appeals stand disposed of in the above terms.

Pending application(s), if any, shall stand disposed of.

.....J.
[ANIRUDDHA BOSE]

.....J.
[BELA M. TRIVEDI]

New Delhi;
September 11, 2023.

ITEM NO.60

COURT NO.6

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) Nos.11761-11762/2022

(Arising out of impugned final judgment and order dated 23-03-2022 in CMA No. 2821/2015 & CMA No. 2072/2018 passed by the High Court Of Judicature At Madras)

V.E. MAYA

PETITIONER(S)

VERSUS

K.S. VETRIVEL

RESPONDENT(S)

(FOR ADMISSION and I.R. and IA No.92031/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.92032/2022-EXEMPTION FROM FILING O.T.)

Date : 11-09-2023 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. S. Thananjayan, AOR
Ms. Promila, Adv.
Ms. Merlyn Rachel, Adv.

For Respondent(s) Mr. P.R.Kovilan Poongkuntran, Adv.
Ms. Jubli Momalia, Adv.
Mrs. Geetha Kovilan, AOR
Mrs. K.Priya, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals stand disposed of in terms of the signed order, which is placed on the file.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI)
COURT MASTER (SH)

(VIDYA NEGI)
ASSISTANT REGISTRAR