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SooperKanoon Citation : sooperkanoon.com/828146

Court : Chennai

Decided On : Apr-09-1996

Reported in : (1997)1MLJ588

Appellant : Jayarani

Respondent : Rajamanickam

Judgement :

Srinivasan, J.

1. The petition for divorce is filed on the ground of adultery combined with cruelty. The wife is the petitioner. The District Judge after having found that adultery is not true has granted a decree for divorce on the ground of cruelty alone. That decree cannot be sustained in view of the provisions of the Indian Divorce Act. Under that Act, divorce can be granted under Section 10 of the Act, only when the adultery is combined with other acts mentioned therein. For mere cruelty, divorce cannot be granted. If at all, the court can grant only judicial separation under Section 32 of the Act. This principle is laid down in a Full Bench decision of this Court in Maria Mercy Virginia v. Lazar (1992) 1 L.W. 43. On a perusal of the records, we are convinced that the evidence is overwhelming to prove the cruelty on the part of the husband which will justify a decree for divorce a menea et toro, in other words, a decree for judicial separation. The petitioner's counsel draws our attention to the judgment of the Kerala High Court in Ammini EJ v. Union of India (1995) 1 K.L.J.

624, which struck down the words 'adultery coupled with' as unconstitutional and contends that mere cruelty is sufficient to enable the petitioner to get a decree for divorce. The question of constitutional validity has not been raised in this case. The ruling cannot help the petitioner in this case as we have our own doubts whether the effect of striking down those words in the Section will be that as contended by the counsel.

2. We must also point out that the respondent has not yet been personally served in this case though affixure was made as early as in 1984. The court has directed fresh notice in the view that he can be served in person. The respondent appears to be a person serving in Navy and, notices have been taken to various Ports like Visakhapatnam, Bombay, etc. But, till now, service has not been effected.

3. On the facts and circumstances of the case, in the exercise of our power under the Proviso to Section 50 of the Act, we dispense with the personal service on the respondent taking note of the fact that there was already an affixure in the year 1984.

4. For the reasons stated earlier, the decree for divorce is set aside. Instead, there will be a decree for judicial separation in favour of the petitioner. No costs.