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C.M.A.Nos.962 and 1002 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2024

PRONOUNCED ON : 15.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.Nos.962 and 1002 of 2024

and

C.M.P.Nos.8974, 8980 and 8982 of 2024

and

C.M.P.Nos.9285 and 9286 of 2024



... Appellant

Versus



... Respondent

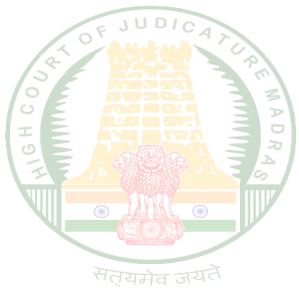
COMMON PRAYER : Civil Miscellaneous Appeal is filed against the Common Order dated 04.08.2023 made in O.P.No.3845 of 2017 O.P.No.2399 of 2018 on the file of the learned III Additional Principal Judge, Family Court at Chennai.

For Appellant : Mrs.Lita Srinivasan

For Respondent : Mr.S.Thankasivan

COMMON JUDGMENT

(Judgment of the Court was made by Mrs.R.Kalaimathi, J.,)



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These Civil Miscellaneous Appeals have been filed by the appellant/husband, being aggrieved by the common order dated 04.08.2023 passed in O.P.No.3845 of 2017 and O.P.No.2399 of 2018 on the file of the learned III Additional Principal Judge, Family Court at Chennai.

2. O.P.No.2399 of 2018 was filed by the appellant/Husband under Section 10(i)(x) of Indian Divorce Act for an order of divorce on the ground of cruelty and O.P.No.3845 of 2017 was filed by the respondent/wife under Section 32 of the Indian Divorce Act, for restitution of conjugal rights.

The trial Court by a common order dated 04.08.2023, ordered in favour of wife for restitution of conjugal rights and divorce petition filed by the husband was dismissed. Aggrieved against the said two orders, the appellant/petitioner herein has preferred these two appeals.

3. The requisite petition in O.P.No.2399 of 2018 are stated in brief:

Marriage between the petitioner and the respondent was solemnized on 28.12.2015 at CSI Trans Church at Kuttralam, Tirunelveli as per the Christian rites and customs in the presence of relatives, elder members of both side families and friends. It is an arranged marriage.

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On the same date, reception was held at bridegroom's residence at

Dhonavur. Both lived in rental house at Tirunelveli. The matrimonial life was peaceful initially. The petitioner was doing business of love birds breeding and selling. When he returns to home at night, the respondent would look at the petitioner suspiciously and would start to pick-up quarrel with him. Respondent used filthy language every day which affected the petitioner's mind. For the respondent/wife to study M.A., Degree Course, they lived at Tirunelveli temporarily from January 2016 to March 2017. After completion of M.A., Degree Course, both returned to Chennai and set up a separate house at Selaiyur in April, 2017. Her educational expenses were borne out by the petitioner and his father. The respondent/wife never cared about the petitioner/husband and his health condition. She would often pick-up quarrel and would curse the petitioner to die. Whenever the petitioner's parents visited the petitioner at Tirunelveli, the respondent used to shout at him unnecessarily in front of them. She shouted in unparliamentary language in anger and bet him mercilessly. She never prepared food for him. The respondent pick up quarrel not only with the petitioner and also with his parents and his sister and due to which he lost his peace of mind. She would not get up early in the morning and prepare food for them. Only the petitioner used to get up in early hours and prepare tea and food for her. When she was

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advised in this regard, she used to pick up quarrel with the petitioner.

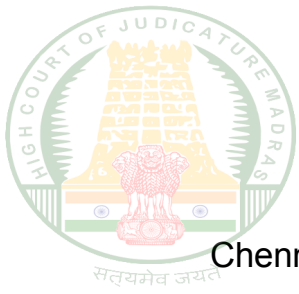
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She was instigated and supported by her parents. His father used to help him financially, but, she disrespected the parents in-law and harassed them. The respondent did not accede to the request of the petitioner for leading peaceful married life. The respondent and her family always blackmailed the petitioner that they would lodge a dowry complaint and harass him. Upon the complaint of the respondent's father alleging that the petitioner demanded dowry, a constable visited his house and conducted an enquiry on 01.09.2017 at 9 a.m. During the enquiry, the respondent told the police that she did not want to live with the petitioner. All the attempts to reconcile for reunion has miserably failed and as he was left with no other option, he filed the petition for divorce. On 20.07.2017, when the petitioner approached his wife for cohabitation, she assaulted him at his private part and for which he underwent medical treatment.

4. The details of counter in O.P.No.2399 of 2018 are stated in brief:

The respondent's parents spent for her marriage and gave 75 sovereigns of gold jewels and Rs.2,00,000/- cash for the petitioner. They stayed initially at Tirunelveli for her education purpose and shifted to

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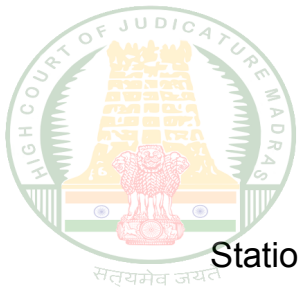
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Chennai are admitted facts. The entire allegations are in entirety false.

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The petitioner used to drop the respondent at college by car. He took a rental house at Palayamkottai to save time in order to continue her studies. She completed her M.A., Course in English Literature. Thereafter, both came to Chennai on 10.05.2017 and lived along with the parents-in-laws. Actually, the respondent was cordial with the parents of the petitioner and she gave utmost respect towards his parents. They lived in the ground floor of the petitioner's own house and later upon the advise of petitioner's parents, they shifted to opposite house which also belongs to the petitioner. She had been duty full wife and prepared and served food to the petitioner and his parents. It was the petitioner's mother who teased the respondent to the effect that she brought lesser jewels and dowry. The petitioner's mother demanded 500 sovereigns of gold. She told this details to the petitioner's uncle one Charles, in-turn spoke to their in-laws, but no effect. Meanwhile, on 19.09.2017, petitioner and his parents bet the respondent and she was driven out of the matrimonial home. On 20.09.2017, when the respondent went with her father came to her matrimonial home, she was not permitted to enter into the matrimonial home. The respondent and her father stayed in the relatives house during the night and on the next day morning, respondent lodged a complaint before Selaiyur Police

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Station against the petitioner and his parents. After enquiry, respondent and her father opened the house and stayed there.

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5. Facts narrated in the petition in O.P.No.3845 of 2017 (filed by the respondent/wife for restitution of conjugal rights) is set out hereunder :

The petitioner is the legally wedded wife of the respondent. Their marriage was solemnized on 28.12.2015 as per Christian rites and customs. At the time of marriage, petitioner was doing first year M.A., Course in a private College at Palayamkottai. After marriage, she came to the house of her husband at Palayamkottai and completed the course. Thereafter, both the petitioner and the respondent came to Chennai on 10.05.2017. In Chennai, the petitioner and the respondent occupied the ground floor of the respondent/husband's house. Upon the advise of the parents of the respondent/husband, they moved to the opposite house which also belongs to the respondent/husband. On 19.09.2017, the respondent and his parents bet the petitioner/wife and drove her out of the matrimonial home. On 20.09.2017, the petitioner/wife and her father came to the matrimonial home, she was not permitted to enter into the house. They stayed at their relatives house during the night and on the next day she lodged a complaint

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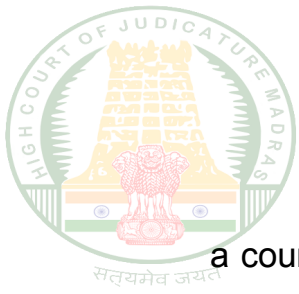
before the Selaiyur Police Station against the respondent and their parents and the CSR number was assigned (CSR.No.1437/2017).

Thereafter the petitioner and her father opened the house with keys and stayed there. The respondent cut the EB and disconnected the water connection. Because of the parents of the respondent, he (husband) behaves in such a way. The petitioner is eager to join with the respondent/husband to lead a happy married life. Hence, the petitioner/wife filed this petition to reunite with the respondent/husband.

6. The details of counter in O.P.No.3845 of 2017 is given in brief:

After receipt of a summons from the learned District Judge, Chengalpattu, the petitioner/wife along with her parents and rowdy elements broke open the respondent's father's house situated at No.6, Muthamil Street Extension, Selaiyur, Chennai and trespassed into the same and damaged the entire cages of the birds. The petitioner who is a trespasser of a house, has set up a residence for her which is opposite the respondent's father's house and hence, she is entitled for any relief. He lodged a complaint before the Selaiyur Police Station and no case was registered. He filed a CrI.M.P.No.6645 of 2018 before the learned Judicial Magistrate, Tambaram under Section 153, 156 of Cr.P.C. The O.P., filed by the wife for restitution of conjugal rights is only

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a counter blast for the divorce petition filed by the respondent/husband.

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The petitioner/wife always would quarrel with the respondent and wanted to live separately. On 20.07.2017, while the respondent/husband attempted to cohabit with the petitioner/wife she forcibly hit at the private part of the respondent/husband. He suffered severe pain and it persisted for few months. The petitioner/wife was not interested in living with the respondent/husband and in sexual life. He was forced to take treatment with Dr.Parimala and she gave certificate to that effect. It is the duty of the petitioner to take care of her sister-in-law who came from Dubai along with her husband and children. The petitioner/wife treated his sister and family members when they had come down from Dubai affectionately and now blaming that she was treated as a servant maid. The fact that the petitioner was beaten up by the respondent and she was driven out from the matrimonial home on 01.09.2017 was denied and the fact that she was not permitted to enter into the matrimonial home is also not admitted.

7. The learned counsel for the appellant / husband would strenuously contend that the order of the trial Court was based on surmises. It is the wife who committed criminal trespass with the help of her parents, advocates and her brother. It is the wife who has filed her

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case by stating the incorrect facts. The trial Court has failed to observe that the marriage has irrevocably broken down.

8. Per contra, the learned counsel for the respondent/wife would vehemently contend that the wife was living in the matrimonial home as a duty-full wife and the commissions complained of are incorrect. Because of the petitioner and in-laws, she lodged a complaint and in a right perspective, the trial Court has rejected the contention of the petitioner and accepting the contention of the wife, granted for restitution of conjugal rights.

9. At trial, on the side of the petitioner/husband, he has examined himself as PW1 and 9 documents were marked through him. On the respondent side, respondent/wife has examined herself as RW1 and through her 8 documents were marked.

10. In the matrimonial cases, burden of proof lies on the petitioner. As regards the degree of probability, it is not beyond reasonable doubt, but, based on preponderance of probabilities.

11. As regards the word 'Cruelty', the Court has got a wider

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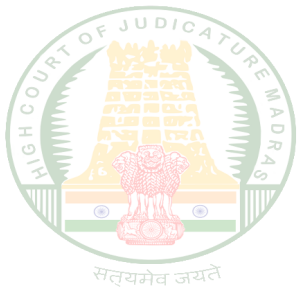
spectrum for consideration so as to apply it contextually. It depends upon the educational, social and financial background of spouse, culture, conduct of husband and wife, physical and mental weakness of the spouse, etc. The reasons are enumerative and exhaustive. It differs in each house and each person. Even deliberate and willful intention may not matter at times.

12. With the passage of time, due to the impact, especially electronic media, the concept of cruelty is bound to change from time to time. There cannot be any fixed parameters for determining the issue of cruelty in matrimonial matters. Therefore, it is prudent to adjudicate on a case to case basis, by evaluating in a given situation. Acts of cruelty would differ from person to person and man to a woman and a broad approach is the need of the hour in matrimonial matters. In the modern era, issues have to be dealt with some latitudinarianism.

13. Useful reference may be made to the observations of the Apex Court in the matters of granting of divorce on the ground of cruelty in *Dr.N.G.Dastane Vs. Mrs.S.Dastane* reported in 1975 (2) SCC 326, the Hon'ble Supreme court has held that:

“27. The misconception regarding the standard of

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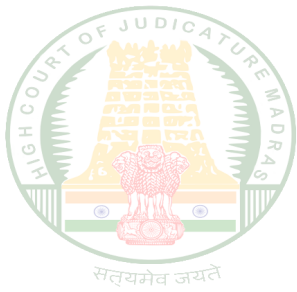


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proof in matrimonial cases arises perhaps from a loose description of the respondent's conduct in such cases as constituting a "matrimonial offence". Acts of a spouse which are calculated to impair the integrity of a marital union have a social significance. To marry or not to marry and if so whom, may well be a private affair but the freedom to break a matrimonial tie is not. The society has a stake in the institution of marriage and therefore the erring spouse is treated not as a mere defaulter but as an offender. But this social philosophy, though it may have a bearing on the need to have the clearest proof of an allegation before it is accepted as a ground for the dissolution of a marriage, has no bearing on the standard of proof in matrimonial cases."

14. It is relevant to refer to the observations made by the Hon'ble Supreme Court in *V.Bhagat Vs. D. Bhagat* reported in (1994) 1 SCC 337:

"16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to



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prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

15. In *Samar Ghosh vs Jaya Ghosh* reported in (2007) 4 SCC 511, the Hon'ble Supreme Court has held that:

“101. (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.”

16. In the case of *Roopa Soni Vs. Kamalnarayan Soni* reported in 2023 SCC Online SC 1127 has observed that “...the court as the
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interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — libre recherché scientifique i.e. “free scientific research”...”.

17. In short, the case of the petitioner/husband is that the respondent/wife used to pick up quarrel with him and she would use filthy language to him. She never cared for her husband and would curse the petitioner to die. The respondent/wife bet the petitioner/husband by using unparliamentary language. She never prepared food for the petitioner and the respondent/wife failed to respect the petitioner and his family members. She blackmailed the petitioner that she would give false dowry complaint against him and his parents, the petitioner sought for divorce on the ground of cruelty.

18. On a careful perusal of the evidence of PW1 and RW1, it appears that both have filed their proof affidavit in line with their pleadings. During the cross examination, both of them have invariably denied the details putforth to them.

19. It is pellucid that both lived together peacefully from January 2016 to May 2017 at Tirunelveli and thereafter for four months lived

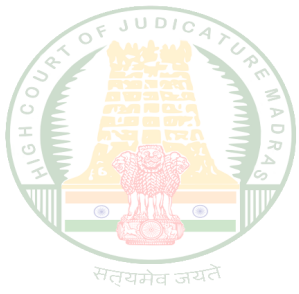
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peacefully in Chennai. For the injuries alleged to have been caused by his wife no acceptable evidence is produced by the petitioner/husband.

20. With regard to the assault alleged to have been committed by the respondent, Ex.P8 medical certificate is filed. The said Certificate reads that on 20.07.2017, the respondent/wife caused injury over his private part and he was advised to take rest for a period of 30 days which was seriously opposed by the respondent/wife. The author of the Medical Certificate / Ex.P8 was not examined. Had it been true in what manner she assaulted him as alleged by the petitioner would have been mentioned in Ex.P8. Therefore, we are of the considered view that Ex.P8 will not strengthen the case of the petitioner/husband. It is relevant to note that the petitioner/husband has conceded that on 20.09.2017, his wife along with her parents had come to his residence. For about 3 hours, door was not opened. When he was posed a question that for about 3 hours, the door was not opened, the petitioner has answered that nobody was inside their house and went to the hospital as his sister's children suffered dengue fever.



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21. It appears that at the instance of the respondent/wife, a complaint was lodged against the petitioner and her parents-in-law (C.S.R.No.1437 of 2017 of Selaiyur Police Station).

22. It has been stated that from 31.08.2017 onwards, both husband and wife are living in separation. Though the petitioner has stated that despite steps taken by him to reconcile the difference between them no witness was examined to substantiate the same. On the other hand, the respondent/wife would state that due to matrimonial discord, she met the maternal uncle of the petitioner one Charles which has been accepted by the petitioner during his cross-examination. Though complaint was lodged by the respondent/wife, except assigning CSR Number, it was kept as such and not proceeded further. It seems that the petitioner was willing to re-unite with the respondent during counselling session. On the contrary when he was cross-examined, he would state that he is not interested to live with her and hence-forth he filed the petition for divorce.

23. For passing of decree of divorce, requisite matrimonial offence has to be established in order to conclude that the cruelty has resulted into a situation where the spouses were no longer lived together.

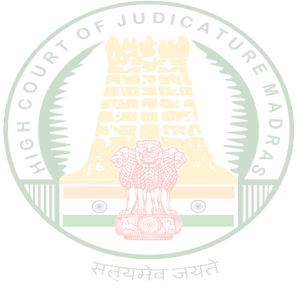
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Therefore, the behaviour of desertion by way of cruelty should be on the part of the respondent. As mentioned supra, many acts of physical and mental cruelty though have been alleged, not even one instance is specifically given, explaining the acts of cruelty committed in detail. Taking into consideration of the entire facts and circumstances of the matrimonial relations of the parties and the atmosphere disclosed in the testimony of the parties, we are not able to infer anything from the alleged acts of cruelties against the respondent/wife. At times, some persons language would be with rudeness or acts of ill-treatment *per se* would not constitute legal cruelty. We do not find any deliberate refusal to cooperate or a calculated harassment or any ill-treatment of a grave and serious character on the part of the respondent/wife.

24. According to the petitioner/wife, she was sent out of the matrimonial home and when she came along with her father, thereafter, she was not permitted to enter into the matrimonial home. She was beaten up and sent out of the matrimonial home. Whereas, the respondent/husband denies the entire allegations made by the petitioner/wife.



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25. Whereas, the cross-examination of RW1/wife explicates that

the respondent/wife in fact rang up to the police station and requested to rescue her. The relevant portion of the evidence of RW1 is extracted hereunder:

"என் வீட்டிற்கு எதிரே ஒரு காலி இடத்தில் வீடு இருந்ததா என்றால் அங்கு தான் என் மனைவியையும், என்னையும் தனிக்குடித்தனம் வைப்பதற்கான ஏற்பாடு நடந்தது என்றால் ஆமாம். 01.09.2017 ல் தனிக்குடித்தனம் வைப்பதற்காக என் அக்கா முயற்சி செய்தார் என்றாலும் என் அம்மா அன்று காலை என் மனைவியிடம் பிள்ளை பெற்றுக்கொள்ள முடியாத உனக்கு எதற்கு வீடு என்றும், நீ உன் அம்மா வீட்டிற்கு செல் என்று மிகவும் தரக்குறைவாக பேசினார் என்றால் இல்லை. என் அம்மா என் மனைவி படித்ததால் அவர் இவ்வளவு திரீராக இருக்கிறார், அவருடைய சான்றிதழ்களை கொடுத்து என்று சொன்னார் என்றாலும், ஆதனால் என் மனைவி அறை கதவை பூட்டிக்கொண்டார் என்றாலும் நான் வெளியே தாழ்பாள் போட்டு பூட்டினேன் என்றாலும் இல்லை. என் மனைவி காவல் நிலையத்திற்கு போன் செய்து தன்னை மீட்குமாறு கூறினார் என்றால் சரிதான். ஆனால் என்னுடைய ஸ்டேட்மெண்டில் காவலர் வந்து மனைவியை மீட்டார் என்றாலும், அவருடைய பெற்றோருக்கு தகவல் சொல்லி காவலர்கள் அழைத்து சென்றார்கள் என்றாலும் எனக்கு தெரியாது, காவலர்கள் என்னை கூப்பிட்டு விசாரித்தார்கள்."

26. The petitioner/husband has stated during his cross-examination that on 20.09.2017, his wife had came to his residence

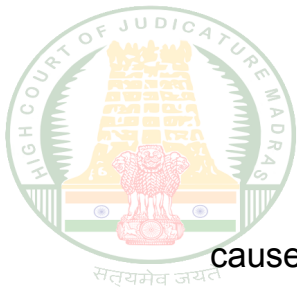


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along with her parents. More so, she rang up to the police and she was rescued. When she was posed a question that for about 3 hours, when they were knocking the door, they did not open the door, for which she has answered that nobody was inside the house. Therefore, plea of the respondent/wife that she was driven out of the matrimonial home stands proved.

27. It is the fundamental rule of matrimonial law that one spouse is entitled to the society and comfort of the other spouse. Whether either spouse has abandoned or withdrawn from the society of the other without reasonable excuse or just cause then it is a ground for granting a decree for restitution.

28. As regards burden of proof, initially onus of proving that the respondent has without 'just cause' withdrawn from the society of the petitioner, must obviously rest on the petitioner. 'Just cause' must be grave and weighty. Therefore, we are of the considered view that the petitioner/wife has shown a good cause for leaving the matrimonial home. Taking into account of the over all attendant facts and circumstances, the petitioner/wife has succeeded in showing sufficient



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cause for leaving matrimonial home. Therefore, respondent herein [wife]

is entitled for the relief of restitution of conjugal rights.

29. Based on the aforesaid observations and discussions, C.M.A.No.962 of 2024 and C.M.A.No.1002 of 2024 stand dismissed. In the result :

(i) O.P.No.2399 of 2018 filed by the husband for divorce on the ground of cruelty stands dismissed.

(ii) O.P.No.3845 of 2017 filed by the wife for the restitution of conjugal rights stands allowed. There is no order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

(J.N.B. J.,) (R.K.M.J.,)
15.10.2024

Index: Yes/No
Speaking Order/Non Speaking order
Neutral Citation Case :Yes / No
ssn

J.NISHA BANU, J.,
and
R.KALAIMATHI, J.,

To

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C.M.A.Nos.962 and 1002 of 2024

The III Additional Principal Judge,
Family Court,
Chennai.

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Pre-delivery Judgment in

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