

GAHC010122782014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Mat.App./8/2014

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W/O SRI SHIV PUJAN DUSAD, C/O LATE RAMSEVAK DUSAD, OF VILL.
DUDHPATIL, PART-IV, P.O. SILCHAR, DIST. CACHAR, ASSAM.

VERSUS

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S/O LATE DHANIRAM DUSAD, VILL. CHHOTADUDH PATIL GRANT, P.O.
HATICHERRA PART-VII.

– BEFORE –

HON'BLE THE CHIEF JUSTICE

HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

For appellant(s) : Ms. R. Rongmei, Advocate

For respondent(s) : None

Date of hearing : 20.04.2023

Date of judgment : 28.04.2023

JUDGMENT & ORDER

(Mridul Kumar Kalita, J.)

This Matrimonial Appeal has been preferred under Section 19(1) of the Family Court Act, 1984, by Smti Aruti Dusad, challenging the quantum of the Permanent Alimony and future maintenance awarded by the impugned judgment dated 03.03.2011 and decree dated 10.03.2011 passed by the learned Principal Judge, Family Court, Cachar, Silchar in F.C.(Civil) Case No. 152/2006 as well as praying for its enhancement. The present appellant was the respondent in F.C. (Civil) Case No. 152/2006, which was registered on filing of a petition under Sections 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 by her the then husband and the respondent in the present appeal Sri Shiv Pujan Dusad for dissolution of his marriage with the present appellant on the ground of cruelty and desertion. By the impugned judgment and decree, learned Family Court, Cachar has dissolved the marriage between the present appellant and the respondent under Sections 13(1) (i-a) and (i-b) of the Hindu Marriage Act, 1955 and also directed the present respondent to pay an amount of ₹1,50,000/- (Rupees One Lakh Fifty Thousand) under Section 25 of the Hindu Marriage Act, 1955 to the present appellant as Permanent Alimony and future maintenance.

2. In the present appeal, the appellant has not challenged either the decree for divorce or the grounds on which the divorce was granted in F.C. (Civil) Case No. 152/2006. The appellant has only partially challenged the decree with regard to the quantum of permanent alimony granted by learned Family Court, Cachar. The appellant has prayed for enhancement of Permanent Alimony to the tune of ₹13,00,000/- (Rupees Thirteen Lakhs) from ₹1,50,000/- (Rupees One Lakh Fifty Thousand) which was awarded by learned Family Court, Cachar.

3. We have heard learned counsel for the appellant, Ms. R. Rongmai. None appeared for the respondent. Though, by order dated 24.02.2021, an *Amicus Curiae* was also appointed by this Court, however, she failed to appear when the case was called on for hearing. However, considering the facts and circumstances of this case and long pendency of this appeal, we proceed to dispose of this appeal finally after hearing the submission of learned counsel for the appellant and after consideration of available material on record.

4. The factual matrix of this case, in brief, is that the appellant was married to the respondent as per Hindu rituals on 04.04.1985. When the present appellant was carrying four months of pregnancy, she was taken to her father's house by her parents and a male child was born to her, on 31.12.1985, in the house of her parents. Thereafter, for a brief period, the appellant stayed with the respondent in his house. However, on 10.03.1987, the appellant left the matrimonial home with her child without informing the respondent and since then, she never returned back which led to filing of the divorce petition, by the respondent, on 08.12.2003 (*i.e., after about 16 years of the appellant leaving her matrimonial home*), before the Family Court, Cachar, Silchar seeking a decree of divorce on the ground of cruelty and desertion. The present respondent, who was the petitioner before the Family Court, adduced the evidence of 3 (three) witnesses including himself in support of his case, whereas the present appellant, who was the respondent before the Family Court, also adduced evidence of 3 (three) witnesses including herself. Learned Family Court, by judgment and decree passed in said F.C. (Civil) Case No.152/2006 granted the divorce by holding that the present appellant had, without any reasonable cause, deserted the respondent for more than 16 years and also subjected him to mental cruelty by depriving him from fatherly affection towards

his child. This finding of Learned Family Court, Cachar has not been challenged by the appellant.

5. Learned counsel for the appellant has submitted that learned Family Court, while deciding the quantum of Permanent Alimony under Section 25 of the Hindu Marriage Act, 1955 has failed to take into consideration *Annexure-4*, dated 03.06.2010, which is the photo copy of the salary certificate issued by concerned Authority of the Postal Department, where the respondent was employed. Learned counsel for the appellant has also submitted that the appellant was compelled to leave her matrimonial home along with her child as she was subjected to cruelty and torture by the respondent. Learned counsel also submitted that the appellant has lawful right to maintain a standard and dignified life like the life spent by her divorced husband.

6. To see as to what are the relevant factors which should be taken into consideration while deciding an application under section 25 of the Hindu Marriage Act, 1955, let us go through the said provision of law, which is quoted herein below:

" 25 Permanent alimony and maintenance.

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall⁵⁵ [] pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the***

applicant⁵⁶ [, the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock,⁵⁷ [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just]."

Even on cursory perusal of the aforesaid provision, it becomes clear that for deciding an application under Section 25 of the Hindu Marriage Act, 1955 following factors are relevant:-

- (a) Respondent's own income and other property;
- (b) The income and other property of the applicant;
- (c) The conduct of the parties;
- (d) Other circumstances of the case

7. In the instant case, though the salary certificate dated 03/06/2010

(Annexure -4) shows the gross income of the respondent as ₹17,161/-, however, after deduction, the net salary which respondent used to get was ₹ 8289/- only. Moreover, learned counsel for the appellant has fairly submitted that the respondent has already retired from his service.

Another fact which is relevant, in this regard, is that the present appellant had also instituted a maintenance proceeding under Section 125 Cr.P.C. against the respondent before the Court of learned S.D.J.M., Cachar, Silchar and said proceeding was registered as M.R. Case No.200/1990, wherein a maintenance amount of ₹ 700/- per month was granted in favour of the appellant and her son.

The conduct of the parties, is a relevant factor while deciding an application for permanent alimony and maintenance under section 25 of the Hindu Marriage Act, 1955. Though, learned counsel for the appellant has submitted that the appellant was compelled to leave her matrimonial home along with her child as she was subjected to cruelty and torture by the respondent, however, the appellant had failed to adduce sufficient evidence to substantiate this plea and learned Family Court, Cachar had come to a clear finding that the present appellant had failed to prove the allegation of demand of dowry and torture by the respondent on her. On the contrary learned Family Court, Cachar came to the finding that it was the appellant who subjected the respondent to mental cruelty and also deserted him and failed to discharge her matrimonial obligations. This finding of the learned Family Court, Cachar has not been challenged in this appeal, hence the fact that the divorce was granted on the basis of matrimonial faults on the part of the present appellant remains unquestioned, which weighs heavily against the prayer for increasing the

quantum of permanent alimony granted by learned Family Court, Cachar.

8. Even after finding that the present appellant had committed matrimonial fault of subjecting the respondent to mental cruelty as well as of deserting him, learned Family Court, Cachar granted permanent alimony and maintenance amount of ₹1,50,000/- to the present appellant, which under the facts and circumstances of this case, as discussed hereinabove, seems to be just and therefore, does not warrant any interference by this court.

9. The appeal is accordingly dismissed.

10. Send back the record of F.C. (Civil) 152/2006 to the Family Court, Cachar, Silchar along with a copy of this judgment.

JUDGE

CHIEF JUSTICE

Comparing Assistant