



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 2426 OF 2019 (FC)

BETWEEN:

SHARATH CARIAPPA K.S,
S/O. K. K. SUBBAIAH,
AGED ABOUT 32 YEARS,
R/AT NO.160, SAI ENCLAVE,
J.P. NAGAR, 7TH PHASE,
BANGALORE-560 076.

AND ALSO WORKING AS
OPERATION MANAGER,
ZEVEN SX SPORTS PVT. LTD.,
NO.1, GROUND FLOOR,
SILVER OAKS APARTMENTS,
KENSINGTON CROSS ROAD,
HALASUR,
BENGALURU - 560 042.

...APPELLANT

(BY SRI. SACHIN B. S., ADVOCATE)

AND:

SMT. SHARIN N.S,
W/O. SHARATH CARIAPPA,
AGED ABOUT 27 YEARS,
R/AT NO.133, A BLOCK,
S.B.M. LAYOUT, BHOGADHI,
MYSORE-570 016.

...RESPONDENT

(BY SRI. G. S. BALAGANGADHAR, ADVOCATE FOR C/R)



THIS MFA IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 17.12.2018 PASSED IN M.C.NO. 716/2016 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, MYSURU, ALLOWING THE PETITION FILED UNDER SECTION 12(1)(a) OF THE HINDU MARRIAGE ACT.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

The Respondent in M.C.No.716/2016 preferred this appeal challenging the judgment and decree dated 17.12.2018 passed by the Principal Family Court, Mysuru (for short 'trial court').

2. It is the contention of respondent that her marriage was solemnized with appellant on 26.05.2016 in accordance with the Hindu customs and rituals. At the time of marriage, as demanded by parents of appellant, her parents have given gold ornaments worth more than Rs.3 lakhs. After marriage, she came to the house of appellant to lead



marital life. Appellant could not cohabit with her. During her stay in her husband's house, he never showed any interest towards cohabitation. In spite of obtaining medical advise, he could not perform marital obligations. She came to know that appellant was impotent and was unable to have cohabitation. Appellant knowing very well that he was impotent, married her and spoiled her life. With these reasons, she prayed to nullify her marriage held with appellant and also prayed for awarding permanent alimony of Rs.50,00,000/-.

3. The appellant – husband denied the allegations made in the petition. He also specifically denied that he was impotent. According to his case, the respondent did not co-operate with him and she refused to cohabit with him. There are no grounds to grant the relief. He also denied that he was liable to pay permanent alimony of Rs.50,00,000/-. And prayed for dismissal of the petition.



4. The trial court recorded the evidence of both the parties. The trial court after hearing both parties and appreciating the evidence on record, by the impugned judgment, allowed the petition and awarded permanent alimony of Rs.25,00,000/-.

5. During the pendency of this appeal, the appellant married one Bhaushi Aiyappa on 11.11.2020 and it was also registered under the Hindu Marriage Act on 28.07.2021. From the said wedlock, he has a son, born on 17.02.2023. Thereafter, the respondent filed a memo dated 13.09.2021 stating as under:

"The appellant is not pressing the prayer in the present appeal for setting aside judgment and decree dated 17.12.2018 in so far as allowing the petition filed by the respondent under Section 12(1)(a) of Hindu Marriage Act and appellant is confining his appeal only in so far as directing the appellant to pay permanent



alimony of Rs.25 lakhs and further creating charge over the properties stated therein.”

In view of the said memo, this appeal challenging the decree granted in favour of the respondent nullifying the marriage with the appellant under Section 12(1)(a) of Hindu Marriage Act is dismissed. Appeal survives only in respect of challenging the impugned judgment in respect of award of permanent alimony of Rs.25,00,000/-.

6. This Court vide order dated 24.03.2021 directed appellant to deposit a sum of Rs.10,00,000/- Accordingly, he deposited the same. On 28.08.2021, this court vide order dated 13.09.2021 permitted respondent to withdraw the said amount. Accordingly, it was released in her favour.

7. The appellant filed an application I.A.No.2/2022 under Section 151 of CPC to direct the respondent to re-deposit the amount of Rs.10,00,000/- before this court, which was



withdrawn by respondent with a contention that respondent got married to one Binish Bidappa on 07.02.2022. In view of the changed circumstances, she has to re-deposit the said amount and she is not entitled for any permanent alimony as awarded by the trial court. The respondent-Wife filed objections to the said application.

8. With consent of both the side, we have taken up the matter for final disposal.

9. We have heard the arguments of learned counsel for both the side.

10. The learned counsel for appellant submits that respondent-Wife filed false petition under Section 12 of the Hindu Marriage Act and submitted false facts before the court and obtained decree including permanent alimony of Rs.25,00,000/-. During the pendency of this appeal, appellant got married with another lady and has got a son through her. It



clearly proves that the allegation made by respondent was false. He further submits that during pendency of this appeal respondent also got married with Binish Bidappa. Therefore, she has no right to claim or receive maintenance.

11. The learned counsel for the appellant further submits that as directed by this court, appellant deposited Rs.10,00,000/- as a part of permanent alimony and that was withdrawn by the respondent-Wife. Since she re-married she has no right to retain the said amount. Therefore, prayed to allow the appeal setting aside the permanent alimony awarded by the trial court in the impugned judgment in favour of respondent and also direct her to re-deposit Rs.10,00,000/-, which was withdrawn by her as stated above.

12. The learned counsel for the respondent contends that respondent had got married with



appellant when she was aged about 22-23 years. Looking to the status of appellant, she had colorful dreams before her marriage but in view of the impotency of appellant, her life became nightmare. She suffered a lot during the said marital life. Her parents had spent huge amount to perform her marriage. She was not employed and had no independent source of income. After she left the house of appellant, she had been residing in her parents house. She carried the stigma of divorcee. With great difficulty, she could re-marry after obtaining nullification of marriage with appellant. Immediately, after the decree, the appellant - husband got married and thereafter about 1 ½ years later, the respondent got married in the year 2022.

13. The further arguments of the learned counsel for appellant that appellant-husband had not paid any maintenance to the respondent or the litigation expenses. Therefore, he cannot disown his



liability to pay permanent alimony to the respondent on the ground that she re-married after getting decree of nullifying the marriage. However, in view of the changed circumstances, looking to the standard of living of appellant-husband and financial needs of the wife after her marriage with appellant till she got re-married, the part of permanent alimony paid to the respondent shall be ordered to be set-off. Accordingly, impugned decree be modified in respect of permanent alimony.

14. At present, this appeal is restricted only in respect of permanent alimony. The fact that both appellant and respondent have re-married on the dates stated by the parties is not in dispute. Looking to the facts and circumstances, financial and social status of appellant and stay of respondent with appellant from the date of her marriage till she left his company and thereafter till she re-married on 07.02.2022, she was entitled for maintenance.



15. The respondent repeatedly contended that appellant was incapable of having cohabitation with her when she lived with him. They could not cohabit or marriage was not consummated is not in dispute. Respondent contends that appellant did not co-operate with her for cohabitation. However she suffered till she got re-married. The submission of learned counsel for respondent is acceptable. She had spent towards litigation expenses before the trial court as well as this court. Hence, she is entitled for the litigation expenses.

16. The appellant has not filed separate assets and liabilities statement but along with an application, filed documents such as Bank statements, salary slip and RTC and other documents. The appellant relies on the judgment of Hon'ble Apex court in the case of ***Rajnish Vs. Neha and another*** reported in Criminal Appeal No.730 of 2020. Further, he filed objections to the application filed by the respondent for



withdrawal of the amount, wherein he discloses that he was earning salary of Rs.71,000/- per month. He has not disclosed income from the agricultural source. He has not disputed that, he is having right, title and interest in respect of 9 acres of agricultural land. The amount of permanent alimony has to be re-assessed in view of changed circumstances i.e. remarriage of petitioner on 07.02.2022.

17. The amount of permanent alimony has to be determined on the basis of financial status of appellant and amount necessary to maintain the same standard of living by the wife to lead respectful life. The learned trial Judge considering the income of the appellant, his personal expenses, etc., and also requirement of the respondent to lead a normal life as per the standard of appellant-husband, assessed permanent alimony of Rs.25,00,000/-. In the grounds of appeal, the appellant has not disclosed as to where the trial court has erred in awarding the said



amount of permanent alimony. The only ground of the appellant is that after remarriage of the respondent she is not entitled for any permanent alimony. The said submission is not legally tenable. Matrimonial relationship of both the parties were continued from the date of their marriage till she obtained decree of nullifying the marriage and her right to maintenance continued till she re-married in the year 2022. Considering the facts stated above, we find it just and necessary to modify the amount of permanent alimony awarded by the trial court by the impugned judgment. Accordingly, we pass the following:

ORDER

The appeal is ***allowed in part.***

The impugned judgment and decree dated 17.12.2018 passed by the Judge, Principal Family court at Mysuru in M.C.No.716/2016



pertaining to awarding of the permanent alimony is modified.

The respondent is entitled for permanent alimony of Rs.10,00,000/- lakhs. Appellant has already paid the said amount during the pendency of this appeal.

The charge created by the order of the trial court on property referred in the judgment stands vacated.

In view of the disposal of the appeal, all the pending I.A.s stands disposed off.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE