



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF AUGUST, 2024

PRESENT

**THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
AND**

THE HON'BLE MR JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 8000 OF 2016 (FC)

BETWEEN:

SMT. SHEETHAL S
W/O ASHOK KUMAR
AGED ABOUT 30 YEARS,
R/AT D.NO.137,
LOKANAYAKA NAGAR,
METAGALLI,
MYSORE-570 016

...APPELLANT

(BY SMT. SONA VAKKUND., ADVOCATE)

AND:

SRI. ASHOK KUMAR
S/O THIMMAPPA SHETTY,
AGED ABOUT 38 YEARS,
R/AT ANUGRAHA,
PADUTHOTA, PADU,
PANAMBUR VILLAGE,
HALEYANGADI
MANGALORE - 574 146.

...RESPONDENT

(BY SRI. SUYOG HERELE E., ADVOCATE)

THIS MFA IS FILED U/S 19(1) OF THE FAMILY COURTS
ACT, AGAINST THE JUDGMENT AND DECREE
DATED:25.08.2016 PASSED IN M.C.NO.109/2015 ON THE FILE
OF THE PRINCIPAL JUDGE, FAMILY COURT, D.K., MANGALURU,



ALLOWING THE PETITION FILED U/S 13(i)(ia) OF HINDU MARRIAGE ACT.

THIS APPEAL, HAVING BEEN RESERVED FOR JUDGEMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, **UMESH M. ADIGA, J.**, PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

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

Respondent in M.C.No.109/2015 has challenged the impugned order dated 25.08.2016, passed by the Family Judge, Dakshina Kannada, Mangaluru, (hereinafter for brevity referred to as `Family Court'), in the present appeal.

2. We refer the parties as per their rank before the Family Court.

3. The brief facts of both the parties before the Family Court are that :

The petitioner and respondent are husband and wife. Their marriage was performed on 01.11.2009 at Jnana Mandira, Bappanadu Shri Durga Parameshwari Temple, Mulki, in accordance with the customs and rites prevailing in



the family of the parties. It is the further case of the petitioner-husband that a few days after the marriage, respondent-wife started treating him and his family members cruelty. She was insulting them and threatening the petitioner that she would give divorce if he did not follow her directions and there were frequent quarrels between them.

4. It is the further case of the petitioner that respondent became pregnant and required rituals were performed in his house. She delivered a baby on 14.08.2010. The petitioner and his family members had participated in the cradle ceremony. During January 2011, after delivery, the respondent came to the house of the petitioner. Again she started quarrelling with the petitioner and his family members. Even she made an attempt to commit suicide by jumping herself into a well. She gave all sorts of torture to the petitioner and members of his family. However, the petitioner as well his family members were taking care of her and the child.

5. It is the further case of the petitioner that to settle the disputes between the petitioner and the respondent,



panchayath was also held, but, the respondent and members of her family did not participate in the panchayath. She left the company of the petitioner and started residing in her parents house at Mysuru. In spite of repeated requests, she did not turn up and reside with the petitioner to lead a marital life. The petitioner tried his level best to settle the dispute, but, he was unsuccessful. With these averments, he prayed for decree of divorce on the ground of cruelty, as well as, desertion as provided under Section 13(1)(i-a) and Section 13 (1)(i-b) of Hindu Marriage Act, 1955.

6. The respondent has denied the allegations made against her and members of her family. According to her contention, petitioner as well as his family members harassed and ill-treated her and did not provide required treatment when she was not well. Due to their harassment, she suffered depression and mental agony; even she had to take treatment for the same. She tried her level best to co-operate and reside with the petitioner and members of his family. When it became intolerable, she left the house of the petitioner and started residing in her parents house. She



further contended that petitioner did not even look after her properly and when she was residing in her parents' house, even he did not take care of her by paying maintenance to her and to her son. Therefore, she prayed for dismissal of the petition.

7. The petitioner, to prove his case, examined PWs.1 to 3 and got marked the documents at Exs.P-1 and P-2. The respondent got herself examined as RW-1 and got marked the documents at Exs.R-1 and R-2.

8. The Family Court after hearing both the parties and appreciating the evidence available on record, held that the ground for divorce under Section 13(1)(i-a) of Hindu Marriage Act is proved and another ground under which the petition was filed i.e., under Section 13(1)(i-b) of Hindu Marriage Act, as not proved and it has granted decree of divorce, dissolving the marriage between the petitioner and respondent and directed the petitioner to pay a sum of Rs.6 lakhs as permanent alimony and also to pay monthly maintenance of Rs.5,000/- to the minor child, from the date of order till minor child attains the age of majority. The



same is challenged in the present appeal under various grounds mentioned in the appeal memo.

9. We have heard the arguments on both side and perused the materials on record.

10. Learned counsel for the appellant-wife would submit that the appellant will not insist on setting aside the decree of divorce, however, she is aggrieved by the amount of permanent alimony awarded by the Family Court. The Family Court without considering the income of the respondent-husband, awarded a meager sum of amount as permanent alimony to the appellant. The appellant is not doing any work at present and she has no earning. She has been residing with her parents along with her son. She is aged about 35 years and depending upon her parents. Therefore, learned advocate for the appellant has prayed for enhancement of permanent alimony.

11. Learned counsel for the appellant further submitted that the she has also prayed that her son is aged about 14 years and studying in high school, therefore, the amount



of Rs.5,000/- awarded to him is not sufficient to meet out the educational expenses and hence, prayed for enhancement of both the amounts.

12. Learned counsel for the respondent-husband would submit that the Family Court has appreciated the facts properly and rightly passed the decree of divorce. The Family Court considering the income of the respondent-husband, his expenditure towards maintenance of his parents and himself, has awarded proper amount towards permanent alimony. The respondent was earlier working in L & T Company and earning a sum of Rs.21,000/- per month prior to his marriage and he learnt that, at present, the petitioner has been serving in a company and earning the salary. He tried to get the information, since it is a private company, he could not lay his hands to get the records and hence, prayed for dismissing the appeal.

13. Learned counsel for the respondent-husband would further submit that now he has been transferred to Mysuru and his mother alone is residing in Mangaluru in the house purchased by him. Therefore, his personal expenses are



more. Since his father has died, his mother is getting meager amount of pension of his father, as such, he is maintaining her and spending for her medical treatment etc., The respondent has submitted his assets and liabilities statement and he is ready to bear the educational expenses of his son and he will also continue to pay Rs.5,000/- per month as maintenance to his son as ordered by the Family Court. With these reasons, he prayed to dismiss the appeal.

14. The appellant/wife is not interested in marital relationship with the petitioner-husband as submitted by the learned counsel for the appellant. Hence, no need to reconsider the grant of decree for divorce. The Family Court appreciating the materials available on record and looking to the contentions of both the parties, has granted the relief of divorce and it does not call for any interference.

15. As per the materials placed on record, the petitioner is serving in Airports Authority of India. His basic pay as per pay slip of December 2023 is Rs.60,560/- and his gross emolument is Rs.1,20,162/- and after deductions, his net salary is Rs.52,043/-. Except the deductions towards



professional tax, as well as, income-tax, the other deductions are towards savings, as well as, repayment of the loan obtained for construction of the house.

16. As per the income-tax returns produced along with assets and liabilities statement, the net total income for the Assessment Year 2022-23 was Rs.12,55,561/- less income-tax of Rs.80,756/- + professional tax of Rs.2,400/- comes to Rs.11,72,405/-. Considering his personal expenses, as well as, maintenance of his mother and his undertaking to meet out the educational and medical expenses of his son, 50% of the same is to be deducted, which comes to Rs.5,86,202/-.

17. The petitioner has completed 45 years of age. His remaining period of service is around 15 years. If we consider the multiplier as per his age, it would be `13' and his total income per annum would be around Rs.76,20,626/-. If 25% of the same is calculated, then it comes to around Rs.19,05,156/-.

18. The appellant is now aged about 38 years and the respondent is aged about 44 to 45 years. Both have not



crossed the marriageable age and remarriage prospect is available. This fact should also to be kept in mind while awarding the permanent alimony. If the petitioner gets married, then, he has to meet out the family expenses and if the respondent gets married, then, the husband will take care of her even if she does not go for work. Keeping in mind all these facts, we deem it appropriate to award the permanent alimony as Rs.25 lakhs as against Rs.6 lakhs awarded by the Family Court.

19. There is no dispute for payment of Rs.5,000/- as monthly maintenance to the son born to the petitioner and respondent. The petitioner has also undertaken that he is ready to bear all the expenditure of his son, such as, medical as well as educational expenses. It appears that, at present, the said child is studying in High school. The petitioner and the respondent shall take collective decision in the matter of future education of the child as per the wish and interest of the child and the petitioner shall meet all future expenses of the child without any grievance.



20. In view of the aforesaid discussion, we pass the following order :

ORDER

[i] The Appeal is ***allowed in-part.***

[ii] The judgment and decree passed by the Family Court, Dakshina Kannada, Mangaluru, in M.C.No.109/2015, dated 25.08.2016, is partly modified. The decree of divorce is confirmed. The amount of permanent alimony payable to the respondent-wife is enhanced from Rs.6 lakhs to Rs.25 lakhs.

[iii] The petitioner shall continue to pay monthly maintenance of Rs.5,000/- to the minor son till he attains the age of majority and petitioner shall bear all his educational expenses, as well as, major medical expenses as observed in the above paragraphs.

[iv] The petitioner shall deposit the said amount of permanent alimony within a period of six weeks from the date of release of this order,



before the concerned Family Court, after deducting the amount already paid towards permanent alimony.

[v] The custody of the minor son till he attains the age of majority shall be with the respondent-wife and the petitioner has visiting rights of the said child. Since at present, both petitioner and respondent are residing at Mysuru, on every week-end, especially on Sunday, the respondent-wife shall hand over the custody of the minor child to the petitioner from morning 9.00 a.m., till 8.00 p.m. and during summer vacation of the said minor child, the petitioner is entitled for custody of the child for 15 days. He is permitted to take the said minor child to his native place and he shall take care of the said minor child properly and hand over the custody to the respondent-wife immediately after completion of 15 days. This arrangement shall continue till said boy attains the age of majority.



[vi] The petitioner shall pay Rs.25,000/- to
the respondent towards litigation expenses.

Draw modified award accordingly.

Registry to transmit the records along with copy of this
judgment to the concerned Court without delay.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(UMESH M ADIGA)
JUDGE**

BK
List No.: 1 Sl No.: 1