



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH 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. 1663 OF 2020 (IDA)

BETWEEN:

MR. VINCENT LUKE D'SOUZA,
S/O. LATE. THOMAS D'SOUZA,
AGED ABOUT 52 YEARS
R/AT. GREEN MEADOWS,
KALPANE, KULASHEKAR POST,
KULASHEKAR,
MANGALURU – 575 005(DK)

...APPELLANT

(BY SRI. M. SUDHAKAR PAI, ADVOCATE)

AND:

MRS. SUNITHA ELVIRA D'SOUZA,
D/O. EDWARD. J. ALBUQUERQUE,
AGED ABOUT 47 YEARS,
R/AT. 1-9-569/1, OASIS KOTEKANI ROAD,
KANDETTU, ASHOKNAGAR POST,
MANGALURU – 575 006(DK)

...RESPONDENT

(RESPONDENT-SERVED, UNREPRESENTED)

THIS MFA IS FILED UNDER SECTION 55 (1) INDIAN DIVORCE ACT, READ WITH SECTION 19(1) OF THE FAMILY COURT ACT, AGAINST THE JUDGEMENT AND DECREE DATED 25.06.2019 PASSED IN M.C.NO. 230/2015 ON THE FILE OF THE I ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, D.K., MANGALURU, ALLOWING THE PETITION FILED UNDER SECTION 10(ix)(x) OF THE INDIAN DIVORCE ACT.

THIS APPEAL, COMING ON FOR ADMISSION, 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 SREENIVAS HARISH KUMAR)

Heard Sri. M. Sudhakar Pai, learned counsel for the appellant. Respondent is served with notice but she has not entered appearance either personally or through advocate.

2. This appeal is preferred against the judgment dated 25.06.2019, passed in M.C.No.230/2015, on the file of I Additional Principal Judge, Family Court, D.K, Mangaluru (for short 'trial Court'). M.C.No.230/2015 was a petition for divorce filed under Section 10 (ix) (x) of the Indian Divorce Act, seeking dissolution of marriage solemnized between the parties on 30.12.1995 at Immaculate Conception Church, Urwa, Mangaluru. The family court by the impugned judgment dissolved the marriage and directed the appellant/husband to pay



monthly maintenance of Rs.10,000/- to the respondent-wife.

3. It is the submission of Sri. M. Sudhakar Pai, learned counsel for the appellant that prior to institution of divorce petition, the husband had instituted petition for restitution of conjugal rights in M.C.No.66/2014 and in the said proceedings, the parties arrived at a compromise and pursuant to the same, they filed a compromise petition under Order XXIII Rule 3 of CPC. In the compromise, the wife agreed to receive maintenance of Rs.4,000/- per month. There was also a settlement between them that their son Elvin Shawn D'souza should be paid a sum of Rs.4,000/- per month till he would secure a job and with a further condition that the son should meet the father periodically and update about his studies and other extra curricular activities and also his needs. There was also another mutual agreement between the parties that they should apply for divorce by mutual consent. This



compromise was accepted and decree was drawn accordingly.

4. It appears that the wife, instead of co-operating with the husband in filing of divorce petition by mutual consent, initiated independent proceeding for divorce by filing M.C.No.230/2015, in which maintenance amount of Rs.10,000/- was granted. The only grievance of the appellant is that, when the wife agreed for maintenance of Rs.4,000/- in the compromise petition filed in M.C.No.66/2014, the family court should not have ordered for maintenance of Rs.10,000/-, which the husband finds it difficult to pay to her in view of his meager income.

5. We have perused the records.

6. We find that the compromise petition was filed on 18.12.2014 and the impugned judgment was passed on 25.06.2019. In paragraph No.16 of the impugned judgment, the trial court has given reasons for fixing the maintenance amount of Rs.10,000/-. It indicates



application of mind by the family court in fixing the amount. It is submitted by appellant's counsel that the appellant has been regular in paying the maintenance amount and the amount has been credited to the bank account of the wife.

7. Sri. M. Sudhakar Pai, learned counsel for appellant further submits that appellant is a small agriculturist and really finds it difficult to make payment of Rs.10,000/- per month. The respondent has not contested this appeal inspite of service of notice on her. If really amount of Rs.10,000/- was not sufficient for her, she would have appeared and sought for enhancement of maintenance by filing cross-appeal. In a situation like this, to strike balance between the parties, we are of the opinion that even though the maintenance amount cannot be reduced to Rs.4,000/- as prayed for by the appellant, the maintenance amount granted by the family court can be reduced to Rs.8,000/-, this will meet the ends of justice. Therefore, the following:



ORDER

- i. The appeal is partly allowed.
- ii. The maintenance amount is reduced to Rs.8,000/- from Rs.10,000/- as ordered by the family court. Therefore, appellant is hereby directed to deposit the entire amount of maintenance from the date of acceptance of the compromise in M.C.No.66/2014 till date.

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

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