



C.M.A.No.1938 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	29.07.2024
PRONOUNCED ON	:	22.10.2024

CORAM:

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE P.DHANABAL

C.M.A.No.1938 of 2018
& C.M.P.No.14906 of 2018

Mr.Sijan Antony William

...Appellant

Versus

Mrs.Regina Lavanya

...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 to set aside the Fair and Decretal Order of III Additional Family Court at Chennai passed in Original Petition No.2021/2014 dated 07.10.2017 insofar as the direction awarding Rs.18,00,000/- (Rupees Eighteen Lakhs Only) towards permanent alimony to the respondent herein.

For Appellant : Mrs.D.Geetha

For Respondent : Mrs.Auxila Peter

J U D G M E N T



C.M.A.No.1938 of 2018

(Judgment of the Court was delivered by **J.NISHA BANU, J.)**

WEB COPY

The respondent/wife herein has filed a petition before the Trial Court for grant of divorce and to pay a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) towards permanent alimony. The Trial Court has allowed the petition in part and granted divorce, awarding a sum of Rs.18,00,000/- towards permanent alimony. Aggrieved by the said order, in respect of awarding a sum of Rs.18,00,000/- towards permanent alimony, the present appeal is preferred by the appellant/husband.

2. Before the Trial Court on the side of the appellant/ respondent, the husband himself was examined as R.W.1 and exhibits Ex.R1 to R7 were marked whereas on the side of the respondent/ wife, she was examined as P.W.1 and exhibits Ex.P1 to P21 were marked. The Trial Court, after hearing both sides and perusing the records, granted the decree of divorce and also awarded a sum of Rs.18,00,000/- towards permanent alimony. The aggrieved husband has preferred the present appeal against the awarding of Rs.18,00,000/- as permanent alimony for the respondent/wife.

3. Mrs.D.Geetha, learned counsel for the appellant/husband would



C.M.A.No.1938 of 2018

submit the following:-

WEB COPY

(a) The marriage between the appellant and the respondent was solemnized on 05.12.2012 at Divine Mercy Shrine, Anna Nagar, Chennai, as per Christian Rites and Customs. There is no issue out of the wedlock for the couple. After marriage, the respondent/wife insisted in setting up a separate matrimonial home at Velacherry, Chennai rather living as a joint family alongwith the parents of the appellant. Whenever the appellant's family visited the appellant at Velacherry, the respondent/wife frequently quarrelled with the appellant, thereby causing cruelty.

(b) The appellant/husband is working in a private concern and in order to meet the huge marriage expenses incurred, he borrowed large sums of money from his friends and relatives, to meet such expenses. Besides, the respondent/wife always insisted the appellant to borrow money so that she can spend lavishly and lead a luxurious life. The respondent/ wife was working as Senior copywriter/Co-ordinator at Elsevier Publishing Services and was earning Rs.35,000/- per month.

(c) On 17.07.2013, the respondent/wife locked the house using



C.M.A.No.1938 of 2018

another lock and key and sent out the appellant's parents without informing the appellant, in order to prevent the appellant from entering the house.

Therefore, he lodged a complaint before J.7 Police Station, Velacherry on 28.07.2013 to open the lock of the house. At the time of enquiry, the respondent/wife brought the key to open the house on condition that she would take all her belongings. Acceding to the condition imposed by the respondent/wife, on 30.09.2013, the door was opened and the respondent/wife took away all the jewels from the matrimonial home. In spite of the advice given by the elders and upon counselling rendered, the respondent/wife was not interested to lead matrimonial life with the appellant.

(d) The respondent/wife herself came forward for mutual consent of divorce and sent a legal notice on 01.04.2014. The respondent/wife even forced the appellant to take away his belongings from her and threatened to lodge a complaint if he does not take his belongings from her. Even though the appellant expressed his willingness to live with the respondent/wife, she never came forward to lead a matrimonial life. The Court below, has



C.M.A.No.1938 of 2018

granted the decree of divorce along with a direction to pay permanent alimony of Rs.18,00,000/- to the respondent /wife, which according to the learned counsel for the appellant is arbitrary and perverse. The respondent/wife at the time of leaving the matrimonial house, had taken all her jewels along with 14 sovereigns of gold jewels of the appellant. Therefore, that 14 sovereigns of gold jewels have to be taken into account and the same has to be deducted from the amount awarded by the Court below. Further, at the time of hearing the appeal, this Court directed the appellant/ husband to deposit a sum of Rs.4,00,000/-. Therefore, according to the learned counsel for the appellant/husband, the aforementioned amount of Rs.4,00,000/- along with the jewels taken by the respondent/wife are very much sufficient to satisfy the awarded amount.

(e) Therefore, the learned counsel for the appellant/ husband submitted that the respondent/wife is not entitled to any permanent alimony from the appellant and hence, he prays to set aside the direction of awarding Rs.18,00,000/- (Rupees Eighteen Lakhs Only) towards permanent alimony to the respondent/wife by way of filing the present civil miscellaneous



C.M.A.No.1938 of 2018

appeal.

WEB COPY

4. Per contra, Mrs.Auxila Peter, learned counsel for the respondent/wife would submit the following:-

(a) From the day of inception of marriage, the appellant and his parents have been criticising the respondent and they often used to pass rude comments about the respondent's saree, jewels and household articles provided by her parents. The appellant never respected the respondent and her family members. The grievance of the respondent/wife is that the appellant/husband always borrowed large debts from banks and spent it lavishly and he did not have the thought to save money for the family.

(b) Moreover, according to the learned counsel for the respondent/wife, the appellant had close contact with a married woman by name Bini Pereira living in Mumbai, who was ex-fiancée of the appellant and the appellant/husband has been frequently sending messages to her. The appellant/husband humiliated the respondent even to the extent of posting screen-shots, wordings about personal relationship and status in public social



C.M.A.No.1938 of 2018

media like Face book..etc. It is further submitted that the respondent/wife got pregnant and also suffered a miscarriage.

(c) According to the learned counsel, the appellant and his parents verbally abused the respondent and her family members and made false allegations. The appellant/husband demanded dowry from the respondent but the same was not accepted by the parents of the respondent, which was the ultimate reason for the appellant to cause cruelty to the respondent. Therefore, the respondent/wife filed a petition for grant of divorce and to pay permanent alimony of Rs.50,00,000/-. The Court below, after considering the submissions made by both sides, has awarded the decree of divorce and granted permanent alimony of Rs.18,00,000/- to the respondent wife, which is a well reasoned order and the same does not warrant the interference of this Court.

(d) The contention raised by the appellant/husband that the respondent/wife has taken 14 sovereigns of jewels is denied by the respondent. The Trial Court has only fixed a meagre amount and directed to pay a sum of Rs.18,00,000/- (Rupees Eighteen lakhs only) and considering the cost of living of the respondent, the said amount awarded by the Trial



C.M.A.No.1938 of 2018

Court is just and reasonable one and therefore, the present appeal is liable to be dismissed. Accordingly, the learned counsel prayed for dismissing the appeal.

5. Heard the learned counsel for the appellant as well as the learned counsel for the respondent and perused the materials placed before this Court and upon such perusal, the point for determination in this appeal is whether the quantum of the amount awarded by the Trial Court is justifiable or not?

6. In this case, there is no dispute as to the relationship stated between the parties and also to the fact that there is no child born out due to the wedlock. The respondent/wife has filed a petition for divorce before the Trial Court on the ground of cruelty and also sought for permanent alimony of Rs.50,00,000/-. The Trial Court has granted divorce and awarded a sum of Rs.18,00,000/- towards permanent alimony. The present appeal is filed only challenging the quantum of the amount awarded by the Trial Court by the appellant/husband. It is to be taken into consideration that the appellant



C.M.A.No.1938 of 2018

has not challenged the order passed by the Trial Court by granting divorce.

Now the only point is with respect to the quantum of the amount awarded by the trial Court.

7. In order to prove the financial capacity, no evidence was adduced by either of the parties. It is an admitted fact that the respondent/ wife was employed in a private company and she was earning a sum of Rs.35,000/- per month. There is no proof to show regarding the financial source of the appellant. Even as per the averments of the appellant, the appellant is having an habit of incurring expenses towards his luxurious life and he has not taken any steps to save the money.

8. This Court perused the evidence of both sides and on perusal, it would reveal that there is no acceptable evidence to show that the respondent/wife had taken 14 sovereigns of jewels of the appellant. But during the deposition of PW1, the respondent/wife(PW1) herself has stated that she had taken the jewels along with the jewels of the appellant. Even in the document Ex.P.7, there is a recital that the respondent/wife had taken her



C.M.A.No.1938 of 2018

jewels along with the jewels of the appellant. However, there is no mention about the quantity of the jewels. The Trial Court has awarded a sum of Rs.18,00,000/- towards permanent alimony without any evidence to prove the financial capacity of the appellant. Further, the Trial Court failed to consider the employment of the respondent/wife. While that being the fact, the quantum of the amount awarded by the Trial Court is too high and considering that the respondent/wife is also working and earning a sum of Rs.35,000/- per month and considering the financial position of both the parties, this Court is inclined to modify the awarded sum of permanent alimony from Rs.18,00,000/- to Rs.10,00,000/- payable to the respondent/wife by the appellant/ husband.

11. In the result, this civil miscellaneous appeal stands partly Allowed and the decree and the judgment passed by the Trial Court with regard to the quantum of permanent alimony fixed by the Trial Court is modified and reduced from Rs.18,00,000/- to Rs.10,00,000/-. The amount of Rs.4,00,000/- already deposited by the appellant/husband before this Court has to be withdrawn by the respondent/wife on filing appropriate application. The



C.M.A.No.1938 of 2018

remaining amount of Rs.6,00,000/- has to be paid within a period of two (2)

months from the date of receipt of copy of this judgment. No costs.

Connected, miscellaneous petition stands closed.

(J.N.B.J) (P.D.B.J)
22.10.2024

Index : Yes/no
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
sts

To:
The III Additional Family Court,
Chennai.

J.NISHA BANU, J.
and
P.DHANAPAL, J.



WEB COPY



C.M.A.No.1938 of 2018

sts

Judgment made in
C.M.A.No.1938 of 2010

Dated:
22.10.2024