

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2016

C O R A M

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.3322 of 2013

Manisha K.Kawad @ Lakshmi ...Appellant/Respondent

Vs

Tarun I.Tater ... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 (Central Act No.66 of 1984) against the findings made against the Appellant and the quantum of alimony made in O.P.No.1182 of 2010 on the file of Judge, Family Court, Chennai, dated 29.07.2013.

For appellant ... Mr.K.P.Gopalakrishnan
For respondent ... Mrs.K.Bhavatharani

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

This appeal has been filed by the appellant/wife against the quantum of alimony made in O.P.No.1182 of 2010, dated 29.07.2013 on the file of the Judge, Family Court, Chennai and sought enhancement of the same.

2. The appellant/wife and the respondent/husband got married on 24.11.2008 and thereafter, during March 2010, the respondent/husband filed O.P.No.1182 of 2010 before the Family Court, Chennai, seeking dissolution of marriage on the ground of cruelty. The wife filed counter and also M.P.No.668 of 2010 seeking remedies under the provisions of Protection of Women against Domestic Violence Act viz., Protection order and also Monetary Relief. The trial court, by order dated 30.09.2011, allowed the said petition and directed the husband to pay Rs.20,000/- per month to the wife and also directed him to return back the Shridhana articles, silver and other belongings of the wife. Subsequently, both sides contested the matter and the trial court, after taking into consideration the evidence,

both oral and documentary let in on both sides, passed an order dated 29.07.2013, ordering dissolution of marriage on the ground of cruelty and the appellant/wife was granted a permanent alimony of Rs.10,00,000/- towards maintenance from the respondent/husband.

3. The allegations and counter allegations raised on both sides have been discussed and findings have been given by the court below in paragraph Nos.24 to 28 as under:-

"24. The respondent after the entire evidence was over preferred to file an I.A.No.1596/13 under Section 25 of the Hindu Marriage Act claiming permanent alimony of Rs.2 crores and para-6 of the application is deserved to be reproduced:

"The respondent now understands and realize that there is no purpose of meaning in fighting the case against such a dubious and characterless person who doesn't have any respect for his wife's emotions and feelings. Therefore, the respondent agreeing for the decree of divorce but on the ground of impotency of the petitioner and his constant behaviour in forcing the respondent to have unnatural sexual relation with him which also amounts to cruelty."

25. The respondent/wife herself realises that it is not possible for her to live with the petitioner. She is agreeing for granting for divorce on the ground of impotency. But she has not filed any counter claim u/s.23(A) of the Hindu Marriage Act. The above averments has been made in the petition filed for permanent alimony. The Relief of divorce cannot be granted by matrimonial court by consent or agreement by the parties except by filing Mutual Petition u/s.13(B) of the Hindu Marriage Act by Mutual consent. Therefore one thing that is obvious in the aforesaid application is, the marriage has broken irretrievably with no possibility of the parties living together again and therefore there is no purpose in compelling both the parties living together and the best course is to dissolve the marriage by passing the decree of divorce on the ground of cruelty so that the parties could live peacefully in the remaining part of their life.

26. Point No.3 Permanent Alimony claimed by the wife in I.A.1596/13.

The petitioner has filed Income Tax return showing his recent income. The income tax return for the year 2010 and 2011 is marked as Ex.P.16

wherein the gross total income was shown as Rs.73,433/- and the I.T>Returns for the year 2011 and 2012 the gross total income of the petitioner was Rs.3,98,702/- and after deduction his total income was Rs.3,38,140/-. The petitioner in his counter in I.A.1596/13 stated that he has been earning only Rs.3,00,090/-. Average per year and he is depending upon his parents for all his expenses and he further stated he willing to pay Rs.1,00,000/- only as permanent alimony to the petitioner. Having regard to the number of days living with the petitioner and acrimonious relationship between the petitioners family and respondent's family and the income of the petitioner as well as the dependency towards his parents. I am of the considered opinion that fixing a sum of Rs.10,00,000/- as permanent alimony in the facts and circumstances of the case.

27. Stability in marital relationship cannot be forced through legal sanctions. It can be ensured through creating an atmosphere of fidelity, confidence and understanding between the spouses. In marital matter, it is the attitude and the mind and the feeling that count and no degree of the court can force a party to live together against their will and pleasure. Taking the holistic view of the incidents of cruelty proved by the petitioner, I am of the considered opinion that the marital bond has been ruptured beyond repair with no chance of reunion. In short the marriage of the parties has become a fiction and by refusing to sever the tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. The marriage is merely a shell out of which the substance has gone.

28. In view of the aforesaid discussions the points raised in the case are answered as follows.

Point No.1. The incidents alleged in the petition are within the purview of cruelty u/s.13 (1) (ia) of the Hindu Marriage Act.

Point No.2. The wife is entitled to divorce on the ground of cruelty in the facts and circumstances of the case.

Point No.3. The petitioner is entitled for permanent alimony of Rs.10,00,000/- (Rupees Ten Lakhs) towards maintenance from the husband.

In the result O.P.1182/2010 is allowed and the marriage solemnized between the petitioner and the

respondent on 24th November 2008 at YMCA, Purasaiwakkam, chennai-600 007 is dissolved by decree of divorce on the ground of cruelty. I.A.1596/13 in O.P.1182/10.

In the result this petition is partly allowed and the respondent is directed to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs) to the petitioner towards permanent maintenance and the said sum is to be paid within two weeks."

4. As against the said order, the appellant/wife is before this court, seeking to enhance the permanent alimony to Rs.2 crores from Rs.10 lakhs.

5. Mr.K.P.Gopalakrishnan, the learned counsel appearing for the appellant/wife contended that the alimony of Rs.10 lakhs fixed by the court below is much below the standard of life of the respondent/husband and the annual gross total income derived by the trial court is not proper.

6. Ms.K.Bhavatharani, learned counsel appearing for the respondent/husband pleaded that the court below after threadbare analysis of the facts and circumstances of the case and taking note of Income Tax Returns filed by the respondent/husband for the years 2010-11 and 2011-12 fixed a sum of Rs.10 lakhs as permanent alimony and, therefore, the learned counsel justified the order of the court below.

7. We have perused the order dated 29.07.2013 passed by the court below and carefully considered the submissions made on both sides.

8. We are of the view that there is no illegality or irregularity or error in the said order granting permanent alimony. However, taking into consideration the plea made by the learned counsel appearing for the appellant/wife for enhancing the permanent alimony and also the submissions raised on the side of the respondent/husband, who is said to be facing financial difficulty and in order to bring a quietus to the issue, we deem it fit to modify the order of the court below as under:-

"The respondent/husband is directed to pay a sum of Rs.15 lakhs (Rupees Fifteen Lakhs) to the appellant/wife towards permanent maintenance as against Rs.10 lakhs as granted by the court below."

9. The learned counsel appearing for the respondent/husband stated that a sum of Rs.10 lakhs as ordered by the court below has already been paid by the respondent/husband to the wife. She further undertakes to pay the enhanced sum of Rs.5 Lakhs within

a period of 12 weeks from the date of receipt of a copy of this order.

10. Accordingly, the counsel for the respondent/husband is permitted to handover the Demand Draft for Rs.5 lakhs [Rupees Five Lakhs only] in favour of wife/appellant viz., Manisha K.Kawad @ Lakshmi, through the counsel appearing for appellant/wife.

11. It is open to the parties to resolve the other matrimonial discord between them in the manner known to law. In the result, this Civil Miscellaneous Appeal is ordered on the above terms. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Principal Judge, Family Court, Chennai.

3 ccs to M/s.K.Bhawatharini, Advocate, sr.11872 & 11165

4 ccs to Mr.K.P.Gopalakrishnan, Advocate, sr.11902 & 11213

C.M.A.No.3322 of 2013

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kra 17.03.2016

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