

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH
and
THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1040 of 2017

Gokila @ S.Valliammal ...Appellant/Petitioner

..vs..

A.Rajagopal ...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act 1984, against the order and final order dated 17.05.2016 passed by the learned Principal Family Judge, Coimbatore in H.M.O.P.No.493 of 2012.

For Appellant : Mr.V.Nicholas

For Respondent : Mr.S.Kaithamalai Kumaran

JUDGMENT

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

This appeal has been preferred by the appellant - wife against the order and final order dated 17.05.2016 passed by the learned Principal Family Judge, Coimbatore ('the Family Court' for brevity), whereby, the Family Court allowed the petition in H.M.O.P.No.109 of 2016 filed by the respondent-husband granting a decree of divorce and dismissed the petition in H.M.O.P.No.493 of 2012 filed by the appellant - wife claiming permanent alimony from the respondent - husband. However, in this appeal, the appellant - wife has questioned only the dismissal of her petition seeking permanent alimony of Rs.15,00,000/-.

2.The necessary facts for deciding this appeal, are as under:

2.1 The marriage between the parties was solemnized on 04.07.1990 at Maruthamalai Arulmighu Subramaniaswamy Temple, Coimbatore and the same was followed by reception at Gandhipuram

Sreenivasapuram Municipality Thirumanamandapam at Coimbatore on the same day. Thereafter, they were living at a separate house, situated opposite to Edapadi Union Office, for some time. They have no issues.

2.2 According to the appellant - wife, the respondent -husband was always teasing her without any cause of reason and insisting her to get money from her family and that he was having illegal intimacy with his own third brother's wife; besides her mother-in-law was also treating the appellant -wife very badly; and ultimately, the respondent -husband had driven the appellant - wife from the matrimonial home on 10.11.2004.

2.3 Without taking any efforts to call back the appellant -wife to the matrimonial home, the respondent - husband filed HMOP.No.109 of 2016 under section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 (for short 'the Act') for grant a decree of divorce, dissolving the marriage between the parties.

2.4 Pending the same, the appellant - wife has filed HMOP.No.493 of 2012 under Section 25(1) of the Act, seeking a direction to the respondent - husband to pay permanent alimony of Rs.15,00,000/-. It is averred in the said petition that due to her miserable life, she suffered from physical and mental agony. She being unemployed, is solely depending on her brother for maintaining herself, paying rent to her residence, medical treatment, etc. whereas, the respondent - husband was working as Deputy Block Development Officer at Konganapuram and was drawing a sum of Rs.40,000/- per month as salary.

2.5 Denying the averments made in the said petition, the respondent- husband filed a counter statement, stating that the appellant - wife has left the matrimonial home on her own accord and has settled depending on her brother from 2004 without any reason; subsequently, she lodged a complaint against the respondent - husband before the All Women Police Station, Thudiyalur, Kovai with false allegations; and she never treated him as husband at any point of time.

2.6 By a common order dated 17.05.2016, the Family Court has allowed HMOP.No.109 of 2016 granting a decree of divorce to the respondent - husband and dismissed HMOP.No.493 of 2012 filed by the appellant - wife claiming permanent alimony.

2.7 Hence, the appellant - wife is before this Court, only questioning the dismissal of her petition seeking permanent alimony.

3.The learned counsel for the appellant - wife submitted that the appellant - wife, being unemployed, has no source of income and she does not own or possess any movable or immovable

property and is depending on her brother for her livelihood, whereas, the respondent - husband was working as Deputy Block Development Officer and was earning a sum of Rs.40,000/- per month. However, the Family Court, without considering the financial difficulties of the appellant - wife, has rejected her petition claiming permanent alimony on the ground that she is living with her parents on her own accord. According to the learned counsel, the ground on which the decree of divorce was granted, is immaterial. As a decree of divorce was passed, the appellant - wife is entitled to permanent alimony. Therefore, he sought to quash the order impugned herein and allow this appeal by awarding a reasonable sum towards permanent alimony.

4. On the contrary, learned counsel for the respondent - husband submitted that the Family Court, taking note of the facts of the case and evaluating the evidence adduced by the parties, has rightly rejected the petition claiming permanent alimony, which does not call for any interference by this Court.

5. Heard the learned counsel for the parties and perused the materials.

6. With reference to the relief of permanent alimony, it is settled law that Section 25 of the Hindu Marriage Act, 1955 confers power upon the Court to grant permanent alimony to either spouse, who claims the same by making an application. Sub-section (1) of Section 25 requires that an application must be made by the wife or the husband, who is party to the main proceeding, if she or he wants the incidental relief of permanent alimony and such an application may be made in the main proceedings either before or at the time of passing the decree granting substantive relief of divorce or at any time subsequent to the passing of such decree. It has also been laid down in the said section that the Court may consider the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, while granting permanent alimony.

7. In the case at hand, as earlier noticed, the parties were married in the year 1990. They lived together for some time. They did not have any child from the marriage and now, they have been living separately. It is undisputed from the record that the respondent- husband is a retired Government employee and is now, drawing pension.

8. The appellant - wife pleaded in her petition that due to ill-treatment meted out at the hands of the respondent - husband, she left the matrimonial home; and the respondent - husband has not taken any steps to call back her, but he filed

HMOP.No.109/2016 seeking a decree of divorce on the ground of cruelty. The further plea of the appellant - wife is that she has no source of income and is solely depending on her brother for all the expenses, including house rent, medical expenses, etc., whereas, the respondent - husband at the time of marriage, was working as Deputy Block Development Officer and was drawing a salary of Rs.40,000/- per month. Since the parties have no issues, the respondent - husband has no responsibility, except maintaining the appellant - wife. Opposing the relief sought for herein, the respondent - husband stated that as it is held by the Family Court that the appellant - wife had refused to return the matrimonial home from the year 2004; she deserted him without any reason; and she agreed for divorce, hence, she is not entitled to permanent alimony.

9.It is to be noted that the Family Court, while granting the decree of divorce on the ground of cruelty, has rejected the petition filed by the appellant -wife claiming permanent alimony on the ground that she is living with her parents on her own accord and is living separately from the respondent - husband without any sufficient reason.

10.We are of the opinion that the relief of permanent alimony is a relief incidental to the granting of the substantive relief. Once a decree of divorce is granted, the wife is entitled to permanent alimony for her sustenance. Simply because the wife had deserted her husband without any lawful excuse ultimately resulting in a decree of divorce against her, she could not be deprived of her right to claim permanent maintenance on that account after the said decree. Thus, we have no hesitation to hold that the appellant - wife is entitled to permanent alimony from the respondent - husband.

11.As regards the quantum of permanent alimony, the Hon'ble Supreme Court in the decision reported in (2013) 2 SCC 114 (U.Sree v. U.Srinivas), observed that "while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations." It is further observed therein that "it is the duty of the Court to see that the wife lives with dignity and comfort and not in penury. The living need not be luxurious, but simultaneously, she should not be left to live in discomfort." In the light of the same, we are of the view that having regard to the facts of the case and taking note of the plight of the appellant - wife and the financial status of the respondent - husband, it would be just and reasonable to award a sum of Rs.3,00,000/- towards permanent alimony to the appellant - wife.

12.In the result, the Civil Miscellaneous Appeal is allowed and the order dated 17.05.2016 passed by the Family Court is set aside, as far as HMOP.No.493 of 2012 alone is concerned. Consequently, the respondent - husband is directed to pay a sum of Rs.3,00,000/- to the appellant - wife within a period of six weeks from the date of receipt of a copy of this Judgment. No costs.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

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To

1.The Principal Family Court,
Coimbatore.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.A.k.Kumarasamy, Advocate SR.No.66529
+1cc to Mr.V.Nicholas, Advocate SR.No.66916

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GN(08/01/2018)

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