

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

FAMILY COURT APPEAL No.227 of 2018

JUDGMENT: (Oral)

(Per Suresh Kumar Kait, J)

Vide the present appeal, appellant/husband has challenged order dated 31.03.2018 passed in O.P.No.1660 of 2015 on the file of the Judge, Additional Family Court, Hyderabad, whereby, while granting divorce in the counter-claim filed by the respondent/wife, the trial Court awarded permanent alimony of Rs.15 lakhs to the respondent/wife.

2. Facts of the case are not in dispute. The trial Court, after considering the rival submissions made on behalf of the parties and having considered the oral and documentary evidence on record, recorded a finding that as per Section 25 of the Hindu Marriage Act, 1955 (for short 'the Act') wife can claim permanent alimony. Even according to the appellant, the respondent studied only X class and she has no source of income to maintain herself; whereas, the appellant studied M.B.A. When the respondent has no sufficient income to support herself, appellant is under legal obligation to pay permanent alimony to her under Section 25 of the Act.

3. It is not a case where there is fault on the part of the respondent. Further, the trial Court has given finding on Issue Nos.1 and 2 that respondent is entitled for decree of divorce on the ground of cruelty on the part of the appellant towards her and the appellant failed to establish the grounds of cruelty and desertion. Accordingly, the trial Court held that the appellant is liable to pay permanent alimony of Rs.15 lakhs.

4. While granting permanent alimony, the trial Court has considered the fact that appellant studied M.B.A., and the respondent deposed that appellant is earning Rs.1,00,000/- per month. The trial Court has recorded a finding that though respondent claimed Rs.35 lakhs towards permanent alimony in counter-claim, however, in evidence, she has mentioned Rs.50 lakhs as permanent alimony.

5. The father of the respondent died which is reflected in the evidence of the respondent. Respondent also deposed that two cheques of appellant deposited in bank were returned dishonoured on account of 'stop payment' instructions issued by the appellant.

6. According to the appellant, he was working in Jaypee Brothers Medical Publishers (P) Ltd., and earning Rs.28,000/- per month and he resigned the said job in April, 2017. Ex.A.9 is the experience letter which shows that appellant worked in the said organization from 01.06.2006 to 17.04.2017 as Operations Manager, Ex.A.10 is the payslip of the appellant for the month of March 2017 which shows that he was getting salary of Rs.28,000/- per month, Exs.A.11 and A.12 show that the resignation of appellant was accepted and he was relieved in April, 2017; however, in chief examination affidavit and cross-examination of appellant by respondent on 08.11.2017, appellant has nowhere stated about his resignation from the said company.

7. His entire chief examination affidavit and cross-examination show that appellant was working in the said company as on 08.11.2017, however at a later stage, appellant was recalled on filing petition by him and Exs.A.7 to A.12 were marked.

8. At that stage, he has introduced the version of his job and no official of the company was examined by the appellant. If really appellant resigned the job in April 2017, he could have stated in his cross-examination conducted on 08.11.2017.

9. The Supreme Court in *Shamima Farooqui Vs. Shahid Khan*¹ held that able body of husband can be taken as sufficient means to grant maintenance and though it is a case arising out of Section 125 Cr.P.C., the legal principle can be taken into consideration by court. It was further held that it is the obligation of the husband to maintain his wife; he cannot be permitted to plead that he is unable to maintain his wife due to financial constraints as long as he is capable of earning.

10. As already stated, Section 25 of the Act enables the court to grant permanent alimony in favour of wife. It is not the case of the appellant that he is suffering from any physical disability.

11. In that view of the matter, we find no illegality or perversity in the order of the trial Court granting permanent alimony to the respondent/wife.

12. The appeal is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the appeal, stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

June 20, 2018
MRR

¹ AIR 2015 SC 2025