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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2019

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.No.2893 of 2013
and
M.P.No.1 of 2013

M.Venkataprasad .. Appellant/Petitioner

vs.

G.Kumudham .. Respondent/Respondent

Appeal filed under Section 19 of the Family Courts Act, 1984 against the fair and decretal order dated 19.11.2011 in H.M.O.P.No.292 of 2011 on the file of the Family Court, Coimbatore.

For Appellant : Mr.J.Saravana Veles

For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal has been preferred by the appellant, who is the petitioner before the Family Court, Coimbatore in H.M.O.P.No.292 of 2011 filed for divorce by invoking Section 13 (1)(i)(a) of the Hindu Marriage Act.

2.The Family Court while granting divorce on the ground of cruelty as sought for, nonetheless directed the appellant to pay a sum of Rs.6 lakhs towards alimony for lifetime, though not asked for.

3.Heard the learned counsel appearing for the appellant. As there was no representation for the respondent on the last occasion we posted the matter today. Even today, there is no representation on behalf of the respondent. Learned counsel appearing for the appellant has submitted that he contacted the



counsel for the respondent, who has stated that he has got no instructions from the respondent. Be that as it may, we are proceeding with the matter on merit, particularly when the matter is pending for more than four years and the order was passed way back in the year 2011.

4. Learned counsel appearing for the appellant would submit that this is a case where no request has been made by the respondent for permanent alimony. Secondly, the Family Court has passed the order without any basis and discussion. The capability of the appellant to pay the amount vis-a-vis any further payment from the point of the view of the respondent has not been considered. To buttress his submission, he has made reliance on the judgment of the Apex Court in *Jalendra Padhiary Vs. Pragati Chhotray* (2018 SCC OnLine SC 391), wherein it has been held as follows:

15. In our view, mere perusal of the order of the Family Court and the High Court quoted supra, would go to show that both the Courts failed to apply their judicial mind to the factual and legal controversy insofar as award of permanent alimony to the respondent(wife) is concerned. Both the Courts did not even mention the factual narration of the case set up by the parties on the question of award of permanent alimony and without there being any discussion, appreciation, reasoning and categorical findings on the material issues such as, financial earning capacity of husband to pay the alimony and also the financial earning capacity of wife, a direction to pay Rs.15,00,000/- by way of permanent alimony to the wife was given. In our opinion, such direction is wholly unsustainable in law.

16. Time and again, this Court has emphasized on the Courts the need to pass reasoned order in every case, which must contain the narration of the bare facts of the case of the parties to the lis, the issues arising in the case, the submissions urged by the parties, the legal principles applicable to the issues involved and the reasons in support of the findings recorded based on appreciation of evidence on all the material issues arising in the case.

17. It is really unfortunate that neither the Family Court nor the High Court kept in mind these legal principles and passed cryptic and unreasoned orders. Such orders undoubtedly cause prejudice to the



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parties and in this case, it caused prejudice to the appellant(husband) because the orders of the High Court and Family Court deprived him to know the reasons for fixing the permanent alimony amount of Rs.15,00,000/- payable to his wife.

18. We cannot countenance the manner in which both the Courts passed the order which has compelled us to remand the matter to the Family Court for deciding the issue afresh on merits.

19. In the light of the foregoing discussion, we allow the appeal, set aside the impugned order of the High Court and the order of the Family Court insofar as it relates to fixing of Rs.15,00,000/- towards payment of permanent alimony to the respondent(wife) by the appellant(husband) and remand the case to the Family Court to decide the quantum of payment of permanent alimony afresh in accordance with law keeping in view our observations made supra.

5. We find considerable force in the submissions made by the learned counsel appearing for the appellant. A perusal of the order passed by the Family Court would show that without asking for permanent alimony, a sum of Rs.6 lakhs was directed to be paid by the appellant after holding that he made out a case for divorce on the ground of cruelty. No reasons have been assigned by the Family Court for grant of permanent alimony. The divorce has been granted on merit which order has become final inter se parties. We also find that the decision referred supra would be applicable to the case on hand.

6. In such view of the matter, we are inclined to interfere with the order of the Family Court insofar as granting Rs.6 lakhs towards permanent alimony payable by the appellant in favour of the respondent is concerned and thus the same is set aside. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

The Family Court, Coimbatore.

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KJ (CO)
GMV (16/10/2019)