

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2019

CORAM:

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

C.M.A. No. 2801 of 2016

M.Kumar ...Appellant/Respondent

Vs.

T.R.Gnaneshwari ... Respondent

Prayer : Appeal filed under Section 19 of the Family Courts Act, 1984 against the the judgment and decree dated 03.11.2016 made in F.C.H.M.O.P.No.104 of 2016 on the file of the Family Court, Dharmapuri.

For Appellant : Mr.C.Prabakaran

For Respondent : Mr.S.C.Vishwanath

JUDGMENT

(Delivered by M.M.Sundresh,J.)

The scope of the appeal is very limited on the exercise of power under Section 25 of the Hindu Marriage Act, 1955 on the question of granting permanent alimony while granting divorce. Therefore, the issue of divorce is not one for adjudication before us.

2. Learned counsel appearing for the appellant has submitted that, without any basis, the Family Court awarded Rs.10 lakhs to be paid by the appellant. In support of his contention, he has placed reliance upon the judgment of a Division Bench of this Court in R. Sridharan and others v. R. Suganya and others reported in 2018 (6) CTC 130, wherein, it has been held as follows:-

"59. It is evident from the above order passed by the Family Court that the Family Court did not examine, discuss or evaluate the submissions of the appellant/ husband. Merely because the appellant/husband is earning a fatty salary, as

pointed out by the Family Court, it alone cannot be a determining factor for the Family Court to grant permanent alimony to the respondent. The Family Court ought to have taken note of the resourcefulness or wherewithal of the respondent and her entitlement for getting permanent alimony from the appellant. Furthermore, the respondent has not let in evidence with respect to her resourcefulness or financial status warranting the Family Court to pass an order directing the appellant to pay a sum of Rs.40 lakhs. The contention of the counsel for the respondent in this appeal that the respondent need not lead any independent evidence as the petition for permanent alimony shall be automatically decided at the time of disposal of the original petition cannot be countenanced. We have also noted that the respondent also, consciously, has not let in evidence impressing upon the need for payment of maintenance to her or her financial capacity or incapacity to maintain herself. In the absence of such evidence, the Family Court ought not to have awarded a sum of Rs.40 lakhs as maintenance to the respondent. Thus, the Family Court, without any discussion as to the financial capability or status of the respondent, directed the appellant to pay Rs.40 lakhs towards permanent alimony, which is not legally sustainable. The object with which Section 25 of the Family Court Act was enacted is not to elevate the status of the wife or husband as the case may be on par with the other. The grant of permanent alimony depends upon the earning capacity and the financial status of the husband or wife as the case may be to maintain himself or herself. In the present case, admittedly, the respondent is a Cine Star and she had acted in more than 60 films. Above all, even as per the admission of the respondent, she is a Bharatha Natyam dancer and performed various programmes in Television and in private functions as well. In such circumstances, we feel that the respondent cannot be heard to contend that she is not resourceful enough to maintain herself in the absence of permanent alimony from the appellant. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (Jalendra Padhiary vs. Pragati Chhotray) reported in 2018 (6) Scale 7 wherein it has been held as follows:-

'16. 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 view, such direction is wholly unsustainable in law.

17. 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 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 all the material issues arising in the case.'

60. In the present case also, the Family Court, without rendering any finding as to the financial capability or otherwise of the appellant as well as the respondent directed the appellant to pay a sum of Rs.40 lakhs to the respondent. Therefore, in the light of the above decision of the Honourable Supreme Court, we are of the view that the Family Court erred in directing the appellant to pay Rs.40 lakhs to the respondent towards permanent alimony."

3. Learned counsel appearing for the respondent has submitted that inasmuch as power is available under Section 25 of the Act, which is a discretion vested with the Family Court, no interference is required.

4. The Family Court, in our considered view, had taken into consideration the fact that the respondent was a young lady at the relevant point of time and the marriage took place on 04.03.2012. The divorce was granted on the ground of impotency.

Thus, we do not find any reason to interfere with the reasoning adopted by the Family Court in deciding to give permanent alimony. The Family Court also took into consideration the fact that the three sovereign gold ornament and cash of Rs.50,000/- were given in favour of the appellant and held that the it has no power to pass any order in respect of streedhan property. We are of the view that the ratio laid down in the judgment, referred supra, cannot be pressed into service in this case.

5. At this stage, learned counsel appearing for the appellant has submitted that the respondent has since married and as the appellant is not married, the finding of impotency recorded may be removed. That apart, inasmuch as the Family Court has not given any basis for coming to the conclusion of awarding Rs.10 lakhs as permanent alimony, the aforesaid amount may be reduced particularly when the respondent is happily married.

6. Learned counsel appearing for the respondent submitted that considering the facts and circumstances of the case, the findings rendered by the Family Court may be removed. We are of the view that inasmuch as the parties have agreed for divorce, there is no need to reiterate the findings rendered by the Family Court with respect to impotency. Accordingly, the said finding stands eschewed. We also find that the Family Court without any basis granted a sum of Rs.10 lakhs towards permanent alimony, as the respondent is said to have been married happily. In such view of the matter, the amount of Rs.10 lakhs fixed by the Family Court is reduced to Rs. 5 lakhs.

Accordingly, with the above modification, the appeal stands allowed. The finding recorded in the order of the Family Court qua impotency of the appellant is eschewed. The amount of Rs.5 lakhs ordered shall be paid by the appellant within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected CMP No. 20288 of 2016 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssm

To:

The Judge,
Family Court,
Dharmapuri.

Copy to

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

+2cc to M/s.S.C.Vishwanath, Advocate Sr.22670
+1cc to M/s.C.Prabakaran, Advocate Sr.22400

C.M.A. No. 2801 of 2016

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