

HIGH COURT FOR THE STATE OF TELANGANA
THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

F.C.A.Nos.181 and 87 of 2018

Date: 28.02.2019

F.C.A.No.181 of 2018

Between:

Smt. Shikha Shrivastava

...Appellant

and

Sri Divya Prakash

...Respondent

Counsel for the appellant : Ms. Ch. Sujatha

Counsel for the respondent: Mr. T.S. Praveen Kumar

F.C.A.No.87 of 2018

Between:

Sri Divya Prakash

...Appellant

And

Smt. Shikha Shrivastava

...Respondent

Counsel for the appellant : Mr. T.S. Praveen Kumar

Counsel for the respondent: Ms. Ch. Sujatha

The Court made the following:

COMMON JUDGMENT: (Per the Hon'ble Sri Justice Raghvendra Singh Chauhan)

Both these appeals, namely F.C.A.No.181 of 2018 and F.C.A.No.87 of 2018, arise out of the same impugned judgment dated 05.01.2018, passed by the Family Court, Ranga Reddy District, whereby the learned Family Court has granted a decree of divorce in favour of the wife, Ms. Shikha Shrivastava, and has directed the husband, Mr. Divya Prakash, to pay a permanent alimony of Rs.30,00,000/- to the wife.

Briefly stated, the facts of the case are that on 17.01.2011 the appellant and the respondent were married in accordance with the Hindu rites and customs. However, according to the wife, during the wedlock, she was subjected to mental and physical cruelties at the hands of the husband. Moreover, due to the cruelties inflicted upon her, on 15.04.2011, she had no other option but to leave the matrimonial home. Therefore, the parties parted their ways. Subsequently, she filed a divorce petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 ("the Act", for short).

In order to support her case, the wife examined herself as a witness, and submitted eleven documents. On the other hand, the husband also examined himself as a witness, and submitted a single document. After going through the oral and documentary evidence, by the impugned order dated 05.01.2018, the learned Family Court granted the decree of divorce in favour of the wife and granted a permanent alimony as aforementioned. Hence, both the parties (the wife and the husband respectively) have filed these two different appeals before this Court.

While the wife, in her appeal, claims that she is aggrieved by the amount of permanent alimony being granted to her, namely

Rs.30,00,000/-, the husband, in his appeal, claims that he is aggrieved both by the grant of divorce, and by the amount of permanent alimony being granted to the wife.

F.C.A.No.181 of 2018:

Ms. Ch. Sujatha, the learned counsel for the appellant-wife, pleads that a bare perusal of the testimony of the appellant-wife would clearly establish that she had been subjected to physical abuse and cruelty, even prior to her entering into the marriage. Even during her marriage, she was subjected to unbearable cruelties by the respondent-husband. Therefore, she had asked the Family Court to grant a permanent alimony of Rs.3.00 crores. Yet, the Family Court has granted a measly amount of Rs.30,00,000/-. Hence, the permanent alimony deserves to be enhanced by this Court.

On the other hand, Mr. T.S. Praveen Kumar, the learned counsel for the respondent-husband, submits that the learned Family Court has relied upon the documents submitted by the appellant-wife herself. She had submitted the Income Tax Returns for the years 2015-16 and 2016-17 (Ex.P.10 and Ex.P.11 respectively). The assessment of the economic status of the respondent-husband was made on the basis of these two documents. Therefore, the learned Family Court was justified in concluding that the respondent-husband was earning about Rs.1,00,000/- per month. Hence, the grant of permanent alimony of Rs.30,00,000/- is not too little for the comfort of the appellant-wife. In fact, according to the learned counsel for the respondent-husband, considering the fact that the respondent-husband was earning merely Rs.1,00,000/- per month, the permanent alimony of Rs.30,00,000/- is too high an amount.

Heard the learned counsel for the parties and perused the impugned judgment.

It is, indeed, trite to state that the factors which need to be considered, while deciding the issue of permanent alimony, are: firstly, the paying capacity or the economic status of the husband; secondly, the lifestyle that the wife was used to during her married life; thirdly, the age and the economic status of the wife, i.e the remaining years that the wife is required to live without economic and financial support of the husband.

A bare perusal of the impugned judgment clearly reveals that the appellant-wife had submitted the Income Tax Returns of the respondent-husband for the years mentioned hereinabove. On the basis of the said evidence, the learned Family Court had rightly concluded that the income of the respondent-husband is about Rs.1,00,000/- per month. Considering the fact that the appellant-wife was a young lady of 31 years old, considering the fact that she would have many decades to live, the learned Family Court was justified in granting the permanent alimony of Rs.30,00,000/-. Therefore, this Court does not find that the grant of Rs.30,00,000/- towards permanent alimony is too little an amount to be paid to the appellant-wife.

Although, the learned counsel for the appellant-wife has stressed on the point of cruelty, which was meted upon the appellant-wife by the respondent-husband, but the incident of cruelty cannot be the foundation for the grant of permanent alimony. Therefore, even if the appellant-wife had sought permanent alimony of Rs.3.00 crores, the same could not have been granted by the learned Family Court, considering the financial status of the respondent-husband.

For the reasons stated above, this Court does not find any illegality in the impugned judgment. Therefore, this appeal is hereby dismissed.

F.C.A.No.87 of 2018:

Mr. T.S. Praveen Kumar, the learned counsel for the appellant-husband, has pleaded that although the respondent-wife had made certain allegations with regard to the alleged cruelties committed by the husband against her, the same were proved by the wife. Therefore, the appellant-husband has challenged the legality of the grant of divorce in favour of the wife. He has further pleaded that considering the fact that the appellant-husband is earning merely Rs.1,00,000/-, a permanent alimony of Rs.30,00,000/-, that too, for a wife, who had stayed with him for not more than four months, is too high a permanent alimony to be granted to the respondent-wife.

On the other hand, Ms. Ch. Sujatha, the learned counsel for the respondent-wife, has pleaded that the respondent-wife had succeeded in establishing all her allegations against the appellant-husband. Therefore, the grant of divorce in favour of the respondent-wife is legally sustainable. However, as far as the grant of permanent alimony is concerned, the learned counsel pleads that, in fact, it is too little an amount and, as pleaded by her in F.C.A.No.181 of 2018, the said amount needs to be enhanced by this Court.

Heard the learned counsel for the parties and perused the impugned judgment.

A bare perusal of the impugned judgment clearly reveals that the respondent-wife had made certain grave allegations with regard to the conduct of the appellant-husband even prior to the marriage. She has further given details of the acts of cruelties committed not only by the appellant-husband, but even by his step-mother.

Considering the physical and mental cruelty meted upon her, obviously it is too difficult for a wife to live under such harsh conditions. Therefore, the learned Family Court was justified in granting divorce on the ground of cruelty. Hence, this Court does not find any illegality or perversity in the grant of decree of divorce in favour of the respondent-wife.

As far as the grant of permanent alimony is concerned, this Court has already expressed its opinion, hereinabove, that the grant of permanent alimony of Rs.30,00,000/-, in the facts and circumstances of the case, is a reasonable amount. Therefore, the contention raised by the learned counsel for the appellant-husband that the amount is too high is clearly unacceptable. Hence, the appeal filed by the appellant-husband is devoid of any merit; it is hereby dismissed.

Since the appeal filed by the appellant-husband has been dismissed, he is directed to deposit the remaining amount of Rs.20,00,000/- in favour of the respondent-wife along with an interest at the rate of 9% per annum from the date of filing of the divorce petition before the learned Family Court till the date of realisation within a period of three months from today.

The miscellaneous petitions pending, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, J)

(T. AMARNATH GOUD, J)

28th February, 2019
JSU

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD



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