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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 25.01.2019

+ **MAT.APP.(F.C.) 215/2017**

R R V

..... Appellant

Through: Mr.Roshan Saini and Ms.Kavita Saini,
Advocates

versus

J V

..... Respondent

Through: Mr.Sanjay Sehgal, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Challenge in this appeal is to the order dated 10.11.2017 by which the Family Court while granting a decree of divorce in favour of the appellant-husband has awarded alimony to the respondent-wife at the rate of 33% of the gross salary of the appellant-husband after minimum statutory deductions.

2. The brief facts of the case to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 29.11.1993 at Delhi as per Hindu rites and ceremonies. One daughter was born on 18.04.1995 out of the said wedlock, who is in the care and custody of the respondent-wife. The parties are living separately since 28.02.1996. The petition seeking divorce under Section 13 (1) (ia) of HMA has been filed

by the appellant-husband on 12.04.2002 in the Family Court at Gauhati which was subsequently transferred to the Family Court at Delhi on 21.09.2004.

3. Mr. Roshan Saini, learned counsel for the appellant-husband has restricted his arguments on the aspect of maintenance and submits that once a decree of divorce has been granted by the Family Court on the ground of desertion, the respondent-wife as well as her daughter would not be entitled for any alimony. However, the counsel is unable to support this contention with any law. The counsel further submits that as on date, the daughter is aged more than 22 years and is capable of meeting her own expenses. Thus, the impugned order as far as it relates to the maintenance, the same should be set aside.

4. The present appeal is opposed by Mr. Sanjay Sehgal, learned counsel appearing on behalf of the respondent-wife and submits that the present case is a case of a dead marriage as both the parties are living separately for the last more than 20 years and the learned Family Court after a protracted trial of more than 15 years, at the time of granting divorce rightly awarded 33 % of the gross salary of the appellant-husband after statutory deductions to the respondent-wife and for the welfare of her daughter. The counsel prays that there is no infirmity in the view taken by the learned Family Court by awarding maintenance at the time of passing of a decree.

5. We have heard learned counsel for the parties and considered their rival submissions. We have also perused the impugned order dated 10.11.2017 passed by the Family Court. The relevant para 44 to 47 read as under:

“44. Now before finally putting the curtains down on this case, there remains an issue of grant of permanent alimony to the respondent wife u/s 25 of the Act as also maintenance to their daughter u/s 26 of the Act. At the cost of repetition, the respondent wife had approached the Chief of the Army (HQs) vide application dated 12.12.1997 for grant of maintenance and she received a letter dated 10.08.1999 from the office of GOC ©, Northern Command, C/o 56 APO whereby she was sanctioned maintenance @ 27.5% per month from the pay allowance of the petitioner husband payable w.e.f. 12.12.1997 viz., 22% for the wife and 5.5% for the daughter, which at that time was pegged @ Rs.4,565/- per month. During the course of trial, then Ld. ADJ, Delhi vide order dated 13.09.2006 was pleased to enhance maintenance @ of Rs.8500/- per month w.e.f. 24.03.2005 besides awarding Rs.16,000/- towards cost of litigation to the respondent wife.

45. In the said background, coming to the instant case, though the respondent wife has been held guilty of committing 'cruelty' upon her husband and has also 'deserted' him, she is entitled to grant of permanent alimony. As regards their daughter, she is now over 21 years of age, and pursuing her higher education. It would be expedient to point out that this Court, being a Family Court, has ample powers vide the object and section 10(3) of the Family Courts Act, 1984, to pass appropriate directions for payment of maintenance even to an adult child in these proceedings in terms of Section 20(3) of the Hindu Adoption and Maintenance Act, 1956, to avoid multiplicity of proceedings and provide expeditious relief to the parties. Reliance could be placed on decision in the case of Jayvardhan Chapotkot v. Ajayveer Chapotkat, 2014 SCC On Line Bom 465, wherein maintenance was granted to the male child unable to maintain himself up to the age of 26 years u/s 24 & 26 of the Act. It was observed that "in case where the parents are well educated and economically sound, the children can claim maintenance despite attaining age of majority in order to enable them to pursue higher education". It was observed that the children remain dependent on their parents for education and other purposes even after attaining age of majority. In another case Reta Dutta v Subandan Dutta 2005 (6) SSC 619, maintenance was granted to two adult sons/brothers, to enable them to complete their higher education, in divorce proceedings and

taking a broad view of the matter u/s 24 of the Hindu Marriage Act, 1955. Further in another case titled Jagdish V. Manju Lata, 2002 5 BSC 422, in proceedings under Section 125 Cr.P.C, the daughter even after attaining the age of majority was granted maintenance in the light of the provision u/s 20 (3) of the Hindu Adoption and Maintenance Act to avoid multiplicity of proceedings and the impugned order of the Family Court granting maintenance on combined reading of S.125 Cr.P.C and Section 20(3) of HAM Act was sustained.

46. Therefore, in the totality of the facts and circumstances, it is provided as under:-

(i). The respondent wife shall be entitled to 33% of the gross salary of the petitioner-husband after minimum statutory deduction as maintenance to herself including their daughter, which shall be computed by the Chief of Army Staff/ GOCC/DDO of the concerned Unit, which shall be reflected by his employer every month in the salary slips of the employee under the head "Debit for the purposes of monthly maintenance to the wife" giving the break up of minimum statutory deductions under different sub-heads like GPF, GP, Insurance etc. from his gross salary;

(ii). The Chief of Army Staff/ GOC-C/DDO shall make direct remittance in the bank account of the respondent-wife and the concerned Commandant/DDO shall ensure that she is delivered a quarterly statement of account for every financial year detailing the salary component and deduction as aforesaid;

(iii) It is further directed that the arrears of maintenance shall be reckoned and payable w.e.f. from the date of application for enhancement of maintenance dated 19.07.2011 moved by the respondent-wife, and the arrears shall be assessed subject to adjustment towards maintenance already paid or disbursed;

(iv). It is directed that the arrears of maintenance be calculated w.e.f. 19.07.2011, and shall be paid by the employer of the respondent-husband in a likewise manner and the same shall be cleared in 18 equal monthly installments within the next year and a half from the date of this order, if any, along with the current maintenance charges by the 10th of each succeeding month in the

bank account of the respondent-wife, and in case of default or delay, the petitioner husband shall be liable to pay penal interest @ 18% per annum till realization of arrears of maintenance;

(v). It is further provided that this direction for payment of 33% out of the gross salary of the petitioner husband, after permissible statutory deduction, shall remain in force till such time their daughter, namely Yavanika is financially independent or gets married, whichever is earlier;

(vi). It is further directed that in the event the liability to pay maintenance to the daughter ceases, the respondent wife shall be entitled to maintenance @ 22% of the gross salary of the respondent minus permissible statutory deduction till such time she is self reliant or remarries or her life, or disentitles to relief on any legal ground whatsoever.

47. In view of the said discussion, the present petition filed by the petitioner-husband is allowed and a decree for dissolution of marriage is passed in favour of the petitioner husband and against the respondent-wife on the ground of 13 (1) (ia) & (ib) of the Act. The petitioner-husband shall remain bound to pay maintenance to the respondent-wife and their daughter as provided hereinabove. The decree sheet be prepared accordingly.”

(Emphasis Supplied)

6. At the outset, it would be necessary to extract Section 25 of HMA which reads as under:

“25. Permanent alimony and maintenance:

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to 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, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”

7. The Supreme Court of India in the case of **Rameshchandra Rampratapji Daga v. Rameshwari Rameshchandra Daga** reported at (2005) 2 SCC 33 held that Section 25 of HMA enables the Court to award maintenance at the time of passing any type of decree and the purpose of it not to render a financially dependent spouse destitute. The relevant para 16 and 18 read as under:

“16. The decisions of this Court and High Courts which have been relied, in our opinion, are distinguishable and are not directly on the point of law before us. We find that taking into consideration the divergent views of various High Courts, this Court in the case of Chand Dhawan v. Jawaharlal Dhawan (1993) 3 SCC 406 has dealt with the point on the interpretation of Section 25 read with Sections 9 to 13 read with Section 5 of the Act. The decision in Chand Dhawan (1993) 3 SCC 406 squarely covers the point against the husband. It is true that Chand Dhawan case (1993) 3 SCC 406 arose from different facts but the statement of law on the interpretation placed on Section 25 answers the question raised by the husband against him on the competence of the court to grant maintenance under Section 25. In the case of Chand Dhawan

(1993) 3 SCC 406 a joint petition filed by the spouses for grant of a decree of divorce by mutual consent failed as they withdrew their consent during the statutory waiting period. Thereafter the wife moved a petition for grant of maintenance under Section 25 of the Act. This Court held that Section 25 can be invoked by either of the spouses where a decree of any kind governed by Sections 9 to 13 has been passed and the marriage tie is broken, disrupted or adversely affected by such a decree of the court.....

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18.....We have critically examined the provisions of Section 25 in the light of conflicting decisions of the High Court cited before us. In our considered opinion, as has been held by this Court in Chand Dhawan case (1993) 3 SCC 406, the expression used in the opening part of Section 25 enabling the “court exercising jurisdiction under the Act” “at the time of passing any decree or at any time subsequent thereto” to grant alimony or maintenance cannot be restricted only to, as contended, decree of judicial separation under Section 10 or divorce under Section 13. When the legislature has used such wide expression as “at the time of passing of any decree”, it encompasses within the expression all kinds of decrees such as restitution of conjugal rights under Section 9, judicial separation under Section 10, declaring marriage as null and void under Section 11, annulment of marriage as voidable under Section 12 and divorce under Section 13.

(Emphasis Supplied)

8. The facts of the present case fully justify grant of maintenance both to the respondent-wife and her daughter. The Court cannot lose track of the fact that the respondent-wife is single handedly bringing up her child and thus the alimony fixed, in our view, is reasonable. Having examined the order of the Family Court, we find no infirmity in the same. The appeal is devoid of any merit.

9. Resultantly, the appeal is dismissed with regard to the question of alimony alone.

G.S.SISTANI, J.

JYOTI SINGH, J.

JANUARY 25, 2019

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