HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

IA No. 01/2017 in
APCIV 29/2014

Reserved on 22.07.2020
Pronounced on 27 .07.2020

Ashwani Kumar ……Applicant(s)

Through :- Mr. Ashwani Thakur, Advocate

v/s

Vijay Kumari and others

……non-applicant

Through :- None

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

APCIV 29/2014

1 This is an application by one Vijay Kumari for enhancement of permanent alimony from Rs.1000/- per month granted by this Court vide its judgment dated 13.10.2000 passed in CIMA No.165/1996 to Rs.10,000/- per month in view of the changed circumstances since the passing of the said judgment. The applicant Vijay Kumari has invoked the power of superintendence vested in this Court by Section 104 of the Constitution of Jammu and Kashmir which was then in force. It is contended that, owing to a matrimonial dispute between the applicant Vijay Kumari and her husband Ashwani Kumar, a divorce petition under Section 13 of Hindu Marriage Act ('the Act' for short) was filed by Ashwani Kumar before the Additional District Judge (Matrimonial cases) Jammu. The petition was dismissed by the trial Court vide its judgment and decree dated 31st July 1996. The

Judgment and decree was appealed by the husband Ashwani Kumar in CIMA No. 165/1996.

2 This Court, on the agreement of the parties, dissolved the marriage between the parties. On account of permanent alimony, the applicant-wife was held entitled to Rs.1000/- per month till life or remarriage. She was also held entitled to be paid a sum of Rs.15000/- as lump sum in lieu of past maintenance. The applicant Vijay Kumari has not challenged the aforesaid judgment and decree, but seeks enhancement of amount of permanent alimony fixed by this Court on the ground of changed circumstances and the rising price index.

3 Having heard learned counsel for the applicant and perused the record, I am of the view that the order passed by this Court is a consent order. The parties before this Court had agreed to dissolve the marriage subject to payment of Rs.1000/- per month as permanent alimony to the wife till her remarriage or life. The parties also agreed that Ashwani Kumar, husband would pay a sum of Rs.15000/- as lump sum amount in lieu of past maintenance. It is not the case of the applicant that the aforesaid order was without consent or that her consent was obtained by fraud, misrepresentation or undue influence. Rather, she affirms the consent, but submits that in view of the changed circumstances, the permanent alimony of Rs.1000 per month which was perhaps adequate in the year 2000 cannot be held to be so adequate in the year 2014.

4 Mr. Ashwani Thakur, learned counsel for the applicant, relying upon Section 31 of the Act urges that the Court, if satisfied that there is a change in the circumstances, may vary, modify or rescind any order in such manner as the Court may deem just.

5 Before the argument of learned counsel is appreciated, it would be necessary to set out the provisions of Section 31 of Hindu Marriage Act which reads thus:

> "**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, while the applicant remains unmarried, 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 and the conduct of the parties, 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 favor 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 shall rescind the order"

6 From perusal of Section 31 of the Act, it clearly transpires that once the permanent alimony is fixed by the Court having regard to the income of the respondent and other property as also the income and other property of the applicant claiming permanent alimony, it can be varied, modified or rescinded, if the Court is satisfied that the party, in whose favour the order

has been made, has remarried or that there is a change in the circumstances of either party at any time after it has made the order of grant of maintenance.

7 In the instant case, as is apparent from bare reading of the impugned order, the permanent alimony was fixed by this Court, not by taking into consideration the parties' income and other properties, but, on the basis of agreement of the parties. The impugned order is, thus, a consent order and, therefore, is not liable to be varied, modified or rescinded by having recourse to Section 31(2) of the Act. Sub- section 2 of Section 31 of the Act would come in operation only where the permanent alimony in a case has been fixed on merits and not where the permanent alimony is fixed with the consent and agreement of the concerned parties.

8 In view of the aforesaid, I find no justification to invoke Article 227 of the Constitution of India to recall or modify the order passed by this Court. The judgment and decree impugned has, thus, become final and is binding on the parties and being a consent decree, is not open to challenge otherwise than on the ground of fraud, misrepresentation or undue influence. No such case has been set up by the appellant.

9 Accordingly, the application is dismissed.

(Sanjeev Kumar)
Judge

JAMMU.
27 .07.2020
Sanjeev.

Whether the order is speaking : Yes
Whether the order is reportable: Yes/No

SANJEEV KUMAR UPPAL
2020.07.29 12:54
I attest to the accuracy and
integrity of this document