

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 81 of 2018

- Smt. Pritha Moitra @ Ghoshal, W/o Deepankar Moitra, aged about 39 years, R/o J-8 Parijaat Colony, Bilaspur, District- Bilaspur, Chhattisgarh.

--- Appellant

Versus

- Deepankar Moitra, S/o Dr. R.K. Moitra, aged about 44 years, R/o Flat No. 820, Block No.A/4, Milan Heights, Near Agrawal Public School, Bichauli Mardana, Indore, District – Indore (M.P.)

--- Respondent

For the Appellant	:-	Mr. Prateek Sharma, Advocate.
For the Respondent	:-	Mr. Rajendra Tripathi, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava J.
02.09.2020

Heard.

2. This appeal is directed against impugned judgment and decree dated 31.01.2018 passed by Additional Principal Judge, Family Court, Bilaspur in Civil Suit No.150-A/2017 by which the learned Family Court has granted decree of divorce in favour of the appellant.

3. This appeal has been filed by the appellant aggrieved in so far as the Court below has not awarded any amount towards permanent alimony.

4. Considering the limited issue involved for adjudication in this appeal where both the parties are aggrieved by judgment

decree of divorce but are contesting only on the issue of permanent alimony, we heard learned counsel for the parties on the said issue and perused the records of the case including the pleadings and evidence both oral and documentary filed by respective parties.

5. Learned counsel for the appellant would argue that while granting decree of divorce in favour of the appellant, though there was enough evidence supported by pleadings on record but no order was passed regarding permanent alimony. He would submit that even in respect of *Streedhan* also, learned Court below while rejecting the claim ignored the admission of respondent/husband in Para 28 and 29 of his evidence that he has admitted that a bed, one Almirah and one microwave oven belong to the wife as her *Streedhaan*. Even that has not been directed to be returned. As far as permanent alimony is concerned, learned counsel for the appellant would argue that the husband in his oral evidence as well as income tax return filed by him in the year 2019-2020 has admitted that he is receiving Rs.11,24,460/- as yearly income. According to husbands' own evidence, his father is pensioner and not dependent on him. The appellant/wife was, though, engaged in legal profession but presently she is not earning anything. Considering that from this income, the husband, wife, one son and old mother of husband are dependent, the appellant is entitled to an appropriate permanent alimony in appropriate amount.

6. On the other hand learned counsel for the respondent/husband would submit that the claim for permanent alimony was not raised by the appellant/wife nor pressed into

service before the Family Court. He would next submits that otherwise also the appellant is a legal professional and she has clearly stated in her pleadings as well as evidence and also admitted that she is working as Government pleader. Having so declared her income and also her capacity to earn, the appellant is not entitled to claim permanent alimony from the respondent/husband. It cannot be said that the wife is not earning anything. It is submitted that the respondent/husband is working in private employment but not in any government employment, the financial status of the appellant and respondent is almost equal and in these circumstances, the wife is not entitled for any amount as permanent alimony.

7. We have heard learned counsel for the parties and perused the material available on record.

8. In the present case, the appellant/wife moved an application for grant of decree of divorce on the ground of desertion and cruelty both. Vide impugned judgment and decree, learned Family Court granted a decree of divorce recording a specific finding that the appellant/wife was subjected to cruelty and thereby entitling her to grant of decree of divorce on the ground of cruelty. In the application filed by the appellant/wife, she has categorically stated that the respondent/husband is earning Rs.80,000/- per month as Regional Account Manager in Dewan Housing and Finance Limited at Mumbai. Though this specific pleading has been denied in the written statement, while appellant/wife in her affidavit under order 18 Rule 4 CPC has stated regarding his husband earning of Rs.80,000/- per month,

not specifically controverted in her cross-examination, the husband in his cross-examination admits that he is earning Rs.88,000/- per month in DHFL Company as Deputy Manager.

9. The husband has also filed his income tax return for the year 2017-2018, 2018-2019 and 2019-2020, alongwith his reply to application for modification filed on 03.03.2020. The last income tax return shows that the husband, after all deductions, is getting Rs.11,24,460/- as annual income. In his affidavit under order 18 Rule 4 CPC, the husband has himself stated that his father is a pensioner and capable of maintaining himself. Thus, on the income of the respondent/husband, he himself, his wife-the appellant, one son and old mother of respondent/husband are dependent. Looking to the age of the respondent/husband that he at present is 46 years of age he is likely to remain in employment for at-least 10 more years to come, and that in future also, as carrier growth, he would be getting higher salary from time to time, we consider it appropriate to award Rs.25,00,000/- as the permanent alimony to the appellant/wife.

10. Though, an argument was raised that the appellant/wife is a legal professional and earning also from the evidence of appellant it is revealed that, though, she states that she worked as government advocate, later on, she has left the work at Indore and came back to Bilaspur. No pleadings, much less any evidence led by the husband that the appellant/wife is continuing in legal profession and if at all working, earning anything substantial.

11. Therefore, considering the totality of the material on record, in our considered opinion, it would be appropriate to award permanent alimony of Rs.25,00,000/- to the wife/appellant.

We consider it appropriate to direct the respondent/husband to pay Rs.1,00,000/- within one month from today, while remaining Rs.4,00,000/- will be paid within six months from today. Thereafter, respondent/husband shall pay Rs.5,00,000/- per year to the appellant/wife for coming four twelve monthly installments, so that within four years the entire balance amount of Rs.20,00,000/- is paid to the appellant/wife.

So far as *Streedhan* is concerned, there is no oral or documentary evidence of purchase with regard to streedhan. The only admission made by respondent/husband is with regard to one bed, one almirah and one microwave as deposed by him in Para 28 and 29 of his cross-examination. Therefore, we also direct the respondent/husband to return one bed, one almirah and one microwave oven as *Streedhan* to the appellant/wife.

12. The appeal is accordingly partly allowed. Let appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge