

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA (MAT) No. 91 of 2019

- Ritesh Katakwar, S/o Shayamlal, aged about 35 years, R/o Behind C.J.M. Bunglow, Near Cow Shed, Raigarh, District Raigarh, Chhattisgarh. **---Appellant**

Versus

- Smt. Parmeshwari Katakwar, D/o Lahru Katakwar, aged about 27 years, R/o Barekelkala, Tahsil Hasaud, Police Station Birra, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Respondent

For the Appellant :- Mr. Manoj Pranjpe, Advocate.

For the Respondent/s :- Mr. Yogeshwar Sharma, Advocate.

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

Order on Board by Justice Manindra Mohan Shrivastava J.

10.02.2020

With the consent of the parties matter is heard finally.

2. This appeal is directed against impugned judgment and decree dated 31.10.2019, passed by the Family Court, Janjgir-Champa, in Miscellaneous Civil Suit No.84-A/2017 by which, the learned Family Court while granting decree of divorce has passed an order for payment of Rs.5000 per month to the respondent/wife as well as son.

3. Relying upon the Supreme Court decision in the case of **Jalendra Padhiary Vs. Pragati Chhotray** reported in **(2018) 16 SCC 773**, learned counsel for the appellant would make pointed submission that in the present case, the learned Family Court has exceeded his jurisdiction in directing payment of monthly

maintenance to the wife and her son. He would submit that no enquiry has been made with regard to the income of the husband. He would also submit that the order is more in the nature of maintenance *pendente lite*. He would also submit that in proceedings for dissolution of marriage, even though, the Court has power to pass an order for grant of permanent alimony under Section 25 of the Hindu Marriage Act, the said provision does not cloth the Court with the jurisdiction to direct payment of maintenance to the son.

4. On the other hand, learned counsel for the respondent would submit that the order has been passed by the Court for payment of permanent alimony in the nature of monthly payment to the wife and son taking into consideration that they are unable to maintain themselves and the appellant is under statutory obligation to pay permanent alimony to his wife in view of provision contained in Section 25 of the Hindu Marriage Act.

5. Having heard learned counsel for the parties, we are of the view that the impugned judgment is not sustainable in law to the extent it orders payment of permanent alimony in the form of monthly payment.

6. Firstly, the learned Family Court has clearly exceeded his jurisdiction in directing payment of monthly maintenance to the respondent as well as to her son. In these proceedings learned Court below had no jurisdiction to pass any order for payment of

maintenance to the son. Present is a case arising out of an application for grant of decree of divorce filed by the husband against the wife. There can be no quarrel with the settled legal position that while deciding an application for grant of decree of divorce, the Family Court has the jurisdiction to grant permanent alimony under Section 25 of the Hindu Marriage Act. However, the Family Court is obliged under the law to pass reasoned order after due application of judicial mind to the facts and legal controversy. There is no discussion, appreciation, reasoning and categorical finding on the material issue with regard to financial capacity of the husband to pay the alimony and also the financial earning capacity of the wife. Their Lordships in the Supreme Court, in the case of **Jalendra Padhiary Vs. Pragati Chhotray** (supra) authoritatively pronounced as below:-

“15. 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 opinion, such direction is wholly unsustainable in law.

16. 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 parties to 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 evidence on all the material issues arising in the case.

17. It is really unfortunate that neither the Family Court nor the High Court kept in mind these legal principles and passed cryptic and unreasoned orders. Such orders undoubtedly cause prejudice to the parties and in this case, it caused prejudice to the appellant(husband) because the orders of the High Court and Family Court deprived him to know the reasons for fixing the permanent alimony amount of Rs.15,00,000/- payable to his wife.”

7. Moreover, we find that the order is not really in the nature of permanent alimony. The order is for payment of monthly amount which cannot be termed as permanent alimony. It is more in the nature of an order granting maintenance *pendente lite* under Section 24 which could not continue after passing of the final order in the proceedings under Section 13 of the Hindu Marriage Act.

8. Last but not least, the order even directs payment of monthly maintenance to the son also. In fact, by impugned order appellant has been ordered to Rs.5000 per month not only to the wife but also to the son. Thus in proceedings under Hindu Marriage Act, the learned Family Court has not only directed payment of alimony to the wife but also maintenance to the son.

9. Viewed from angle, impugned judgment and decree to the extent it directs payment of Rs.5000 per month to the wife and son is wholly unsustainable and is therefore, liable to be set aside and accordingly, set aside. The appeal is therefore, partly allowed to that extent.

10. We however, give liberty to the respondent/wife to move appropriate application for grant of permanent alimony under Section 25 of the Hindu Marriage Act. As far as son is concerned, this order leaves him also with the liberty to move appropriate application in appropriate forum for grant of maintenance in his favour. Needless to say, proceedings under Section 25 if instituted, being proceedings under the Hindu Marriage Act, it will be open for respondent/wife to move application under Section 24 also during the pendency of proceedings under Section 25 of the Hindu Marriage Act.

Whatever amount have already been paid to the wife however, shall not be liable for refund in view of the judgment passed by this Court.

11. Appeal is accordingly partly allowed.

Appellate decree be drawn accordingly.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge