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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.10.2020

Judgment Delivered on : 20.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Civil Miscellaneous Appeal No. 2429 of 2018

Suchitra

.. Appellant/Petitioner

Versus

Zubin Shekary

... Respondent/Respondent

Appeal filed under Section 19 of The Family Courts Act against the Order and Decretal Order dated 27.03.2018 passed in Original Petition No. 4224 of 2011 on the file of the VI Additional Principal Judge, Family Court, Chennai.

For Appellant : Mr. Anand Sasidharan

For Respondent : Mr. F. Parreez Ahmed

JUDGMENT

R. SUBBIAH, J

The appellant-wife has come forward with this appeal questioning the legality and/or validity of the order dated 27.03.2018 passed by the VI Additional Principal Family Court, Chennai, in OP No. 4224 of 2011 filed by her.

2. The appellant-wife has filed Original Petition No.4224 of 2011 before the Family Court under Sections 27 (d), 37 and 38 of The Special Marriage Act seeking to (i) dissolve the marriage solemnised between her and the respondent on 04.11.2003 under Marriage No. 483 of 2003 before the Marriage Officer, Mumbai on the ground of cruelty (ii) grant permanent custody of the minor Aryana to her and (iii) to direct the respondent to pay to her a sum of Rs.10 crores as permanent alimony and for costs.

3. It is seen from the records that the appellant and the respondent were employed in KPMG Office in Mumbai. During the course of such employment, they fell in love with each other and



decided to get married. Accordingly, the marriage between them was solemnised on 04.11.2003 under the provisions of the Special Marriage Act, which was registered in the office of the Marriage Officer, Mumbai under M.No. 483 of 2003. After such marriage, a formal ceremony was conducted at Iskon Temple, Mumbai. Thereafter, the appellant and the respondent commenced their matrimonial journey at Bangalore, where they lived happily together for some time. Due to the wedlock between the appellant and the respondent, a female child was born on 06.08.2004 and she is named Aryana.

4. According to the appellant-wife, after the birth of the child, matrimonial differences have cropped up between her and the respondent. The appellant had cited several instances in the Original Petition filed before the Family Court and contended that she was subjected to matrimonial cruelty by the respondent-husband. On 07.11.2011, the appellant left the matrimonial company of the respondent and residing in her parents house along with the minor daughter. Thereafter, she filed the instant Original Petition for dissolution of the marriage solemnised between her and the appellant and for other relief.

5. The respondent filed a detailed counter affidavit in the Original Petition denying each and every one of the allegations made by the appellant in the Original Petition. According to the respondent, it was he, who was subjected to matrimonial cruelty by the appellant.

6. Before the Family Court, the appellant/wife examined herself as PW1 and marked Exs. P1 to P7. The respondent/husband examined himself as RW1 and filed Exs. R1 to R3. It is seen from the records that during the pendency of the matrimonial proceedings, the respondent/husband agreed for grant of a divorce as prayed for by the appellant/wife, which was also recorded by the Family Court in Para No.22 of the order. Notwithstanding the same, the Family Court appreciated the oral and documentary evidence and found that the appellant did not prove the allegations she made in the Original Petition relating to matrimonial cruelty. On the other hand, the Family Court has found that it is the appellant/wife who has not discharged her matrimonial obligations as a dutiful wife. However, by order dated 27.03.2018, the Family Court granted a decree of divorce, since the respondent-husband had agreed for granting divorce, dissolving the marriage solemnised between the appellant and the respondent on 04.11.2003. The Family Court also concluded that since the appellant did not prove the allegations made in the Original Petition relating to cruelty, she is not entitled to grant of permanent alimony. The Family Court also reasoned that it was the appellant/wife who sought for dissolution of the



marriage and therefore, the question of directing the respondent-husband to pay her permanent alimony will not arise. That apart, the appellant/wife is a Post Graduate Degree Holder in M.A. Economics and studied in a foreign country and she has the capability to earn and maintain herself. As regards the plea of the appellant-wife to declare that she is entitled to the custody of the minor female child, the Family Court held that the respondent/husband is equally entitled for visitation rights of the child on Saturday and Sunday and retain custody of the minor child for half of the period during summer vacation declared by the school.

7. Even though the appellant/wife has filed this appeal as against the order passed by the Family Court, the learned counsel appearing for the appellant did not raise any plea with respect to the correctness or otherwise of the order passed by the Family Court granting a decree of divorce. The learned counsel for the appellant-wife has only made his submission as against the refusal of the Family Court to grant permanent alimony to the appellant-wife and the grant of visitation rights to the respondent/husband. Therefore, this Court is not traversing into the averments and counter averments made by the appellant and the respondent or the findings rendered thereof by the Family Court with respect to the matrimonial dispute.

8. The learned counsel for the appellant/wife contended that at the time when the Original Petition was filed, the respondent/husband was a Partner in KPMG, Bangalore and was earning about Rs.3 crore per annum. The respondent is also in possession of movable and immovable properties. Currently, the respondent is working at Deloitte Haskins and Sells, a global audit firm and earning Rs.5 Crores per year. When the respondent/husband is earning Rs.5 Crores per annum, the amount of Rs.10 Crores sought for by the appellant/wife towards permanent alimony will be nothing short of a drop in the bucket for the respondent. The Family Court, without taking note of the financial resourcefulness of the respondent, has refused to direct the respondent-husband to pay permanent alimony to the appellant/wife and it calls for interference by this Court.

9. The learned counsel for appellant/wife has strenuously contended that before the Family Court, the respondent/husband refused to disclose his income. Even in the counter statement filed by him, he has not disclosed the income received by him. Therefore, the appellant-wife, before the Family Court, had taken out an application seeking to summon the details of the employment of the respondent/husband, his income records etc. After filing such application, the respondent filed Ex.R1, TDS certificate issued by his employer. Ex.R1 does not disclose the true and exact income of the respondent/husband, yet, even under



Ex.R1, it was indicated that the income of the respondent exceeds Rs.1 Crore per annum. In this context, the learned counsel for the appellant had invited the attention of this Court to the cross-examination of RW1, wherein she has categorically stated that he is not in a position to disclose his income or produce the Income Tax Returns. When the respondent-husband did not produce any document to show his exact salary, the Family Court ought to have taken adverse inference and directed him to pay permanent alimony to the appellant-wife as prayed for by her. However, the Family Court, on an erroneous finding, rejected the claim of the appellant/wife for receipt of permanent alimony in-toto.

10. According to the learned counsel for the appellant/wife, the entitlement of the appellant to get permanent alimony from the respondent/husband has nothing to do with the relief of dissolution of marriage sought by her. The liability of the respondent/husband to pay permanent alimony to the appellant, is independent of the grounds on which the divorce is sought for. When the Family Court granted a decree of divorce, it ought to have directed the respondent to pay permanent alimony to her. The appellant and the respondent lived together as husband and wife for seven years before the Original Petition was filed and as a legally wedded wife, the appellant-wife is entitled for grant of permanent alimony. The amount towards permanent alimony payable by the husband is not an act of charity. On the other hand, the appellant, as a legally wedded wife of the respondent-husband is entitled for permanent alimony to enable her to lead a decent life.

11. To buttress the above submission, the learned counsel for the appellant-wife relied on the decision of the Supreme Court in the case of Satish Sitole Vs. Ganga, reported in 2008 (7) SCC 734, wherein, the Supreme Court granted a decree of divorce by holding that the matrimonial relationship between the spouse had broken irretrievably beyond any scope for re-union. At the same time, while granting such decree, the Supreme Court directed the husband to pay permanent alimony to the wife. Therefore, it is contended by the learned counsel for the appellant-wife that when divorce is granted, it must follow payment of maintenance. As a consequence of grant of divorce, the Court has a duty to consider the income of the other spouse to grant permanent alimony, as has been contemplated under Section 37 of The Special Marriage Act. For receipt of permanent alimony, it is immaterial for the appellant-wife to prove the matrimonial cruelty inflicted on her by the respondent/husband.

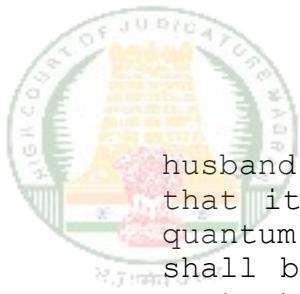
12. Even assuming without admitting that the appellant-wife had treated the respondent-husband cruelly, yet, the appellant is entitled for maintenance. In this context, reliance was made



to the decision of the Supreme Court in the case of Ravi Talreja Vs. Kavita Talreja, reported in 2017 (4) SCC 194, wherein the Supreme Court granted a decree of divorce on finding that the wife, by her conduct of filing false complaints, has caused mental cruelty to the husband. At the same time, the Supreme Court directed the husband to pay the wife a sum of Rs.50 lakhs as one time permanent alimony. Reliance was also placed on a decision of the Supreme Court in the case of U.Sree Vs. U.Srinivas, reported in 2013 (2) SCC 114, wherein it was held that the husband has successfully proved that the wife had subjected him to mental cruelty. Notwithstanding the same, the husband was directed to pay permanent alimony taking note of the status of the parties, their financial and social needs, financial capability etc. It was also held that the amount of maintenance fixed for the wife should be such that she can live in reasonable comfort considering her status and the mode of life she used to, when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party. By pointing out the above decision, the learned counsel for the appellant-wife contended that whenever divorce was granted, the wife will be entitled to permanent alimony to enable her to live with reasonable comfort. Therefore, it is contended that even if it is proved that the wife committed cruelty, still, she is entitled for maintenance.

13. The learned counsel for the appellant-wife has also contended that the appellant did not seek for pendente lite maintenance during the pendency of Original Petition. However, when she sought for permanent alimony, the Family Court went on to hold that appellant-wife did not seek for pendente lite maintenance and therefore, it can be presumed that she is financially comfortable without any alimony by the respondent-husband. Such a conclusion arrived at by the Family Court is strange. Merely because the appellant-wife did not seek for pendente lite maintenance, it cannot be assumed that she is financially convenient to lead a life or it will not disentitle her to get permanent alimony from the respondent-husband. The fact remains that the appellant is under the care and custody of her parents along with the minor female child.

14. It is further contended by the learned counsel for the appellant that the Family Court refused to direct the respondent-husband to pay permanent alimony on finding that the appellant-wife is a holder of M.A. Economics Degree and has the potential to earn sufficiently. Such a finding is legally not sustainable and it is liable to be set aside. According to the learned counsel for the appellant, after dissolution of the marriage, it has to be ensured that the wife leads a comfortable life with the status and mode of life she used to, when she lived with her husband. Further, the amount payable by the



husband towards permanent alimony to the wife should be such that it befits the status of the parties. For determining the quantum of permanent alimony, 25% of the earnings of the husband shall be a just and proper compensation to be awarded. In this context, reliance was made to the decision of the Supreme Court in the case of Kalyan Day Chowdhary Vs. Rita Dey Chowdhary, reported in 2017 (14) SCC 200 and hence, it was contended that the appellant/wife is entitled for 25% of the income of the respondent/husband towards permanent alimony.

15. As regards visitation rights of the minor female child granted to the respondent, it is contended that I.A. No. 582 of 2018 was filed by the respondent-husband only when the Original Petition was posted for arguments. Even in the said application, the respondent only seek for visitation right to satisfy the wishes of his mother and he has no real interest to meet his daughter. In any event, the interest of the father or the grandmother is immaterial and the interest of the minor female child, who is now 16 years old, has to be ascertained. The Family Court failed to take note of the fact that, even during the pendency of the Original Petition, the respondent/husband was permitted to visit the daughter every month at the Court creche, but the respondent-husband, who was pre-occupied with his employment, did not avail those opportunities. This would only indicate that the respondent has no interest to meet the minor daughter. In such circumstances, the Family Court ought not to have granted visitation rights to the respondent.

16. Countering the submissions of the learned counsel for the appellant/wife, the learned counsel for the respondent/husband contended that the appellant did not prove the averments she made in the Original Petition for grant of divorce. The Original Petition was contested by the respondent and who disproved the various allegations made in the Original Petition. The Family Court, on appreciation of the oral and documentary evidence has held that the Original Petition is only liable to be dismissed for want of proof of the averments of the plea of matrimonial cruelty. However, the respondent-husband wanted a legal separation, inasmuch as the parties are unhappy with the subsistence of matrimonial relationship. Therefore, the Family Court granted a decree of divorce, even though the appellant-wife did not prove the averments she had made in the Original Petition and declined to grant maintenance on the reasoning that the Original Petition was initiated by the wife, without considering the future of the child. Such a conclusion arrived at by the Family Court is in accordance with the guidelines issued by the Supreme Court in the case of V.Bhagat Vs. D.Bhagat, reported in 1994 (1) SCC 337, wherein it was held that since the petitioner is a working lady with sufficient



salary, the Court declined to grant any maintenance in her favour.

17. According to the learned counsel for the respondent-husband, the grant of permanent alimony is contemplated under Section 37 of The Special Marriage Act. Section 37 of the said Act provides a discretion to the Family Court to grant permanent alimony at such sum depending upon the facts and circumstances of the case. At the same time, the Family Court is not bound to grant permanent alimony if it is found that the other spouse has the wherewithal and is resourceful enough to maintain himself or herself. In other words, it is not axiomatic that the Family Court must issue a direction to the husband to pay permanent alimony soon after granting a decree of divorce dissolving the marriage.

18. In this case, the Family Court noticed that the Original Petition for divorce was filed by the appellant herself alleging several acts of cruelty perpetrated against her by the respondent-husband. However, the appellant-wife could not prove those allegations against her. On the other hand, the respondent has brought-forth the events that had taken place during the matrimonial relationship between the parties and satisfied that it was the appellant who had exhibited a blame-worthy conduct and is responsible for the matrimonial rift. Therefore, taking note of the conduct of the appellant, her educational qualification, the potentiality to earn and the fact that she did not seek for pendente-lite maintenance all along, the Family Court has come to a correct conclusion that the appellant-wife is not entitled for permanent alimony.

19. Above all, the learned counsel for the respondent-husband has brought to the notice of this Court that, notwithstanding the filing of the Original Petition seeking dissolution of marriage as also permanent alimony, the appellant-wife has also filed Maintenance Case No.140 of 2006 before the Family Court, Chennai under Section 125 of the Code of Criminal Procedure, claiming a sum of Rs.1,00,000/- per month as monthly maintenance. After contest, the Maintenance Case was allowed on 27.03.2018 directing the respondent-husband to pay a sum of Rs.50,000/- per month to the minor female child. Even in the order dated 27.03.2018, the Family Court has concluded that, from the year 2007, the respondent was paying a sum of Rs.35,000/- per month as monthly maintenance to the minor female daughter and such amount is being remitted to the Bank Account of the appellant-wife. The appellant also admitted having received the maintenance amount of Rs.35,000/- per month from the respondent. According to the learned counsel for the respondent, since the respondent-husband voluntarily paid a sum of Rs.35,000/- from the year 2007 without any order of the



Court, the appellant-wife did not seek for pendente lite maintenance and it was taken note of by the Family Court while declining to direct the respondent-husband to pay permanent alimony to the respondent. In effect, it is the submission of the learned counsel for the respondent that, even without the order of the Court, from the date when the appellant-wife deserted his matrimonial company in the year 2007, he has been remitting a sum of Rs.35,000/- per month towards maintenance of the minor female child. Subsequently, in the Maintenance case filed by the appellant, the Family Court directed the respondent to pay a sum of Rs.50,000/- per month. Accordingly, from 27.03.2018, as ordered by the Family Court, the respondent is paying Rs.50,000/- per month. Thus, the respondent had totally paid a sum of Rs.29 lakhs at the rate of Rs.35,000/- per month from the year 2007 and Rs.14 lakhs from 27.03.2018, totalling a sum of Rs.43 lakhs. It is also contended that this amount remitted by the respondent-husband, month after month, had been by and large utilised by none other than the appellant-wife, though the respondent-husband paid it for the welfare of the minor female child. Having regard to the aforesaid voluntary payment made by the respondent, the Family Court has declined to direct the respondent-husband to pay permanent alimony to the appellant-wife.

20. The learned counsel for the respondent-husband further contended that the present appeal proceeding is being converted by the appellant-wife into recovery proceedings, as if the appellant-wife is entitled to recover a fixed sum from the respondent towards permanent alimony. The amount is payable by the respondent only if it is established that the appellant has no independent source of income to lead a decent life. In the present case, the appellant is residing along with her parents in Chennai in the house owned by the parents of the appellant. The appellant hails from an affluent and influential family. The appellant is financially independent, stable and living in extremely good comforts. Above all, the appellant-wife is presently employed in a firm for a salary of more than Rs.50,000/- per month. However, this was not disclosed by the appellant-wife either in the grounds of appeal or during the course of arguments. Such a conduct on the part of the appellant is required to be taken note of by this Court, while considering the present appeal filed by the appellant-wife. On the other hand, the respondent-husband's mother has been diagnosed with cancer and he had spent huge amount for the treatment of the mother. In spite of the same, in order to fulfil his obligation as a dutiful father, he is continuously paying the maintenance amount to the minor female child. In this context, the learned counsel for the respondent-husband placed reliance on a decision of the Supreme Court in the case of *Kusum Bhatia Vs. Sagar Sethi*, reported in CDJ 2019 SC 1582, in which the Supreme Court,



finding that the wife is working gainfully, refused to award any maintenance to her.

21. It is the submission of the learned counsel for the respondent-husband that the appellant left the matrimonial company of the respondent during the year 2011 and also refused to permit him to have a glimpse of his own child. The respondent was therefore constrained to file a Petition seeking visitation rights. Even during the pendency of the matrimonial proceedings, the respondent was subjected to acute mental cruelty and he could not concentrate on his duties. The Family Court taking note of the right of the respondent, as a father, to meet the minor child, granted him visitation rights. The respondent-husband is having abundant love and affection towards his minor daughter and that is the reason why, he remitted a sum of Rs.35,000/- for her welfare and well being. The minor child is now 16 years old and the appellant-wife will continue to extend financial support to the minor child. Having regard to the above, the learned counsel for the respondent-husband prayed for dismissal of the appeal.

22. We have heard the counsel for both sides and perused the records produced. This is an appeal by the wife assailing the order passed by the Family Court, insofar as it relates to the refusal to direct the respondent to pay permanent alimony to her and the permission granted to the respondent/ husband to have visitation right of the minor female child.

23. The parties to this appeal are governed by the provisions of The Special Marriage Act, 1954. Section 37 of The Special Marriage Act deals with grant of permanent alimony and maintenance. Useful reference can be made to Section 37 which reads as follows:-

"37.(1) Any Court exercising jurisdiction under Chapter V or Chapter VI, may, at the time of passing any decree at any time subsequent to the decree, or application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property, such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability, the conduct of the parties and other circumstance of the case it may seem to the Court to be just

(2) If the district court is satisfied that there is a change in the circumstance of either party at any time after it has made an order under sub-section (1), it may, at the instance of either



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party, vary, modify or rescind any such order in such manner as it may seem to the Court to be just

(3) If the district court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.

24. It is evident from Section 37 of The Special Marriage Act that grant or refusal to grant permanent alimony, is a discretion vested with the Court. It depends on several factors as to the employability of either of the spouse or potentiality to get employed, their social and financial status, economical needs to lead a life with reasonable comfort, mode of life which they are used to, the commitment and other obligations of the respective spouse towards their family, etc. Thus, there cannot be any straight-jacket formula in the matter of grant of permanent alimony. The amount of permanent alimony has to be fixed in such a manner that the living condition of the other party will not, in any manner, gets affected. The quantum of permanent alimony has to be fixed to ensure that adequate financial support is provided for the husband or wife, when there is no independent income to maintain himself or herself as the case may be during the pendency of matrimonial proceedings. At the same time, it cannot be used as a tool by one of the spouse to elevate the status or standard on par with each other. The financial status of the husband or wife can be taken note of by the Court only for fixation of quantum of maintenance and it is not a criteria for matching the financial status of one of the spouse with the other.

25. The learned counsel for the appellant-wife relied on a decision of the Supreme Court in the case of U.Sree Vs. U.Srinivas, mentioned above, to contend that whenever a decree of dissolution of marriage is granted, it must follow payment of permanent alimony automatically. Useful reference can be made to the aforesaid Judgment wherein it has been held as follows:-

"33.Be it stated, while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. In Vinny Parmvir Parmar vs. Parmvir Parmar (2011) 13 SCC 112 while dealing with the concept of permanent alimony, the court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable



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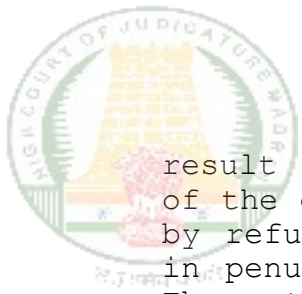
comfort considering her status and the mode of life she used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party.

34. Keeping in mind the aforesaid broad principles, we may proceed to address the issue.

35. The respondent himself has asserted that he has earned name and fame in the world of music and has been performing concerts in various parts of India and abroad. He had agreed to buy a flat in Hyderabad though it did not materialise because of the demand of the wife to have a flat in different locality where the price of the flat is extremely high. Be that as it may, it is the duty of the Court to see that the wife lives with dignity and comfort and not in penury. The living need not be luxurious but simultaneously she should not be left in discomfort. The Court has to act with pragmatic sensibility to such an issue so that the wife does not meet any kind of man made fortune. Regard be had to the status of the husband, the social strata to which the parties belong and further taking note of the orders of this Court on occasions. We think it appropriate to fix the permanent alimony at Rs.50 lakhs, which shall be deposited before the learned Family Judge within a period of four months out of which Rs.20 lakhs shall be kept in a fixed deposit in the name of the son in a nationalised bank which would be utilised for his benefit. The deposit shall be made in such a manner so that the respondent wife would be in a position to draw maximum quarterly interest. We may want to clarify that any amount deposited earlier shall stand excluded."

26. In the above decision (Sree case) of the Supreme Court relied on by the learned counsel for the appellant-wife, the Supreme Court directed the husband to pay permanent alimony to the wife. While granting such permanent alimony, it was clearly mentioned that any amount already deposited earlier shall stand excluded, meaning thereby, during the pendency of the matrimonial proceedings, if any amount was paid, it shall be adjusted towards the amount directed to be paid as permanent alimony.

27. The ratio laid down by the Supreme Court in the above case (Sree case) has to be applied in the light of the facts and circumstance of this case. We are not oblivious of the fact that the permanent alimony to be fixed is such that it will not



result in the other spouse to lead a luxurious life at the cost of the other spouse. At the same time, it must be ensured that, by refusal of permanent alimony, the other spouse will be left in penury without any financial resource to lead a basic life. Thus, the entitlement of the wife to get permanent alimony is not axiomatic following a decree of divorce. The entitlement of a spouse for receipt or payment of permanent alimony depends upon various factors. The grant of permanent alimony should be need-based and not the capability of the other spouse to pay. It is needless to mention that for any of the spouse to earn income through employment, one has to put in hard labour throughout the month, fulfil the tasks assigned to him by the employer, remain in attendance for any of the assignments at all times, keep himself abreast with the nuances of the work etc., to survive in his employment. While so, when permanent alimony is fixed, regard must be had to the hard labour put in by one spouse to earn income, out of which, the amount is directed to be paid to the other spouse. In other words, the amount of permanent alimony directed to be paid cannot be a windfall or bounty by one spouse at the cost of the other. There must be some yardstick to be adopted in such cases before directing a spouse to pay permanent alimony to the other.

28. In the present case, the counsel for the appellant-wife contended that atleast 25% of the income of the other spouse has to be directed to be paid as permanent alimony. Such a plea cannot be countenanced. Before grant of permanent alimony, the need of a spouse for receipt of such amount alone cannot be the criteria, equally, the commitment of the other spouse, his potential to pay, the pecuniary disadvantage that may be caused to the other spouse after payment of the amount towards permanent alimony have also to be examined. It is an admitted fact that from the year 2007, the respondent-husband started paying voluntarily a sum of Rs.35,000/- towards maintenance of the minor female child. Such amount has been deposited into the Bank Account of the appellant-wife month after month. Subsequently, the amount of Rs.35,000/- paid was enhanced and from the year 2018, the respondent is paying a sum of Rs.50,000/- per month. It is also contended by the learned counsel for the respondent-husband, that, so far, a sum of Rs.43 lakhs has been paid. The learned counsel for the respondent-husband also submitted that the respondent is very much affectionate towards the minor female daughter and he is also ready to spend amount that may be reasonably required for the daughter for the purpose of her education and marriage. It is also stated that when the respondent had fulfilled his obligations to financially support the minor female daughter, he cannot be overburdened to pay amount towards permanent alimony to the appellant-wife, when she herself has the wherewithal through the employment and is resourceful enough to maintain



herself.

29. Unfortunately, nowhere in the grounds of appeal or in the course of arguments, the learned counsel for the appellant-wife has stated about the amount paid by the respondent from 2007. Even in the written submissions filed by the appellant, nowhere it was stated that the respondent-husband had paid a sum of Rs.35,000/- per month from the year 2007 and presently he is paying Rs.50,000/- per month. The written submission as well as the grounds of appeal are silent in this aspect. In any event, the amount already paid by the respondent deserves to be taken note of by this Court while considering the plea of the appellant for payment of permanent alimony.

30. The appellant-wife repeatedly harps upon by asserting that the respondent is earning a sum of Rs.5 Crores per annum and therefore, 25% thereof must be directed to be paid to her towards permanent alimony. To substantiate that the respondent is in receipt of Rs.5 Crores per annum, there is no proof. The fact remains that the appellant had taken an application to summon the documents relating to the income of the respondent-husband, pursuant to which the respondent-husband filed Ex.R1, TDS Certificate. It is an admitted fact that the respondent is in receipt of a sum of Rs.1 Crore and above as income per annum as per Ex.R1. At the same time, regard must be had to the payments made by the respondent-husband from 2007 and as on date, a total sum of Rs.43 lakhs has been paid to the account of the appellant-wife and it was also not disputed. Above all, it is seen that the Family Court had rendered a specific finding that the appellant-wife is a Post Graduate in M.A. Economics, which she obtained from a foreign country. Before the marriage, the appellant-wife was also employed along with the respondent-husband in the same company. The appellant is residing in the house of her parents from 2011 along with the minor female children in a posh locality in Chennai. When a specific question was posed to the counsel for the appellant as to whether the appellant is presently employed anywhere, it was admitted by the learned counsel for the appellant-wife that the appellant is presently working and earning an amount over and above Rs.50,000/- per month.

31. In the light of the above, we are of the firm opinion that the appellant is resourceful enough and has the wherewithal to maintain herself through her employment. The appellant-wife is having the potentiality to earn befitting her educational qualification. If permanent alimony is refused, the appellant will not starve or will be left in penury. This is more so that the respondent-husband is continuously paying Rs.35,000/- from the year 2007 and enhanced it to Rs.50,000/- per month from 2018 towards the maintenance of the minor female child. Having regard



to all the above facts, we are of the considered opinion that the Family Court is wholly justified in refusing to direct the respondent-husband to pay permanent alimony to the appellant-wife and we find no reason to interfere with such a conclusion arrived at by the Family Court.

32. At the same time, we direct the respondent herein (husband) to deposit a lumpsum amount of Rs.50 lakhs, apart from the above sum of Rs.50,000/- he is paying to the appellant-wife, for the welfare of the minor female child. This amount of Rs.50 lakhs is directed to be deposited by the respondent in the name of the minor child in any interest bearing account within a period of eight weeks, so that the amount can be utilised for the education or marriage expenses of the minor child in future.

33. As regards the plea of visitation rights, we find that the Family Court, in order to strike a balance and having regard to the plea of the respondent-husband to permit him to have visitation right of the minor female child, aged 16 years, had granted the same. The minor female child is in the custody of the appellant from 2011 and the respondent is only seeking for a visitation right. We see no reason to refuse such a relief sought for by the respondent-husband. The Family Court, on proper appreciation of the facts involved in this case, has rightly granted visitation right to the respondent-husband to see the minor female child at frequent intervals, over which, we refused to interfere.

34. In the result, we decline to interfere with the Order dated 27.03.2018 passed in Original Petition No. 4224 of 2011 on the file of the VI Additional Principal Judge, Family Court, Chennai. The Civil Miscellaneous Appeal fails and it is dismissed with the directions as stated in paragraph 32 above. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

rsh/cs
To
1.The VI Additional Principal Judge
Family Court, Chennai

Copy to:
The Section Officer
V.R. Section
High Court, Madras



+1cc to Mr.Anand Sashidaran, Advocate, S.R.No.37412

CMA No. 2429 of 2018

SSI (CO)
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