

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 202 of 2019

Smt. Subhadra Kunwar W/o. Goverdhan Kunwar, aged about 25 years, R/o. Village Khakhritoli, House of Ugrasen Tapkara, Tahsil Farshabahr, Police Station Tapkara, District Jashpur (CG)

---- Appellant

Versus

Goverdhan Kunwar S/o. Jitan Ram, aged about 31 years, R/o. Village Kachhuwakani, Police Chowki Dokda, Police Station and Tahsil Kansabel, District Jashpur (CG) at present R/o. Khajanchitoli, behind Jail, Jashpur Nagar, District Jashpur (CG)

---- Respondent

For the Appellant :- Mr. D. Kushwaha, Advocate
For the respondent :- Mr. Rohitashva Singh, Advocate

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

Order on Board By Manindra Mohan Shrivastava, J.

18.08.2021

1. This appeal is directed against the judgment and decree dated 13.02.2019 passed by the Family Court, Jashpur District Jashpur to the extent of award of permanent alimony of Rs. 4,00,000/- under Section 25 of the Hindu Marriage Act.
2. Shorn of unnecessary details, the husband/respondent filed an application for grant of decree of divorce under Section 13(1-B) of the Hindu Marriage Act, on the pleading that the wife/appellant left the matrimonial house stating that she is not inclined to reside with the parents of the respondent, she used to quarrel and left the

matrimonial house. Even though, the husband made repeated efforts neither the wife returned to matrimonial house nor she allowed the son to reside with the husband/respondent. As the parties have not been in cohabitation since 2016, there is no possibility of revival of the relationship and therefore, marriage be dissolved by decree of divorce.

3. Learned Family Court after allowing the other party to file written statement and collecting evidence led by both the parties, came to the conclusion that the husband is entitled to decree of divorce. While granting decree of divorce the learned family Court also passed an order of permanent alimony under Section 25 of the Hindu Marriage Act, awarding Rs. 4,00,000/- to be paid to the wife. While passing that order, the Family Court clearly recorded that while assessing the amount of permanent alimony, the Family Court has kept in view that the wife is already getting Rs. 5000/- per month as maintenance under order passed under Section 125 CrPC.
4. The limited challenge to the judgment and decree at the instance of the appellant is confined only to the aspect of permanent alimony. Learned counsel for the appellant would argue that the family court has not made any inquiry nor collected any evidence. He would submit that according to the appellant, she is entitled at least Rs. 12,00,000/- as lump sum amount towards permanent alimony.
5. On the other hand, learned counsel for the respondent would submit that the family Court has awarded Rs. 4,00,000/- as lump sum amount keeping in view the income of the party, present situation and that wife is already getting Rs. 5000/- per month as maintenance under the order passed under Section 125 CrPC.

6. We find that learned Family Court while deciding the issue of cruelty and while passing final decree has also passed the order with regard to award of permanent alimony of Rs. 4,00,000/- to the wife. The order in the judgment and decree shows that while passing this order, the family Court has kept in view that the wife is already getting some amount towards maintenance under an order passed in 125 CrPC proceedings. However, except that no other consideration has made in the mind of the court below nor any inquiry has been made. The order for award of permanent alimony has been passed more as an order of consequential or incidental nature rather than an order, after consideration of any material on record. The other situation is that the wife has already received Rs. 400,000/- under the impugned judgment and decree. Had it not been so, this Court would have remanded the matter for collecting evidence with regard to the financial capacity of the parties and also other relevant consideration in the matter of determination of permanent alimony under Section 25 Hindu Marriage Act. In the circumstances, though we are not inclined to interfere with the impugned order particularly, for the reason that the wife has already received entire amount of Rs. 4,00,000/- and that the decree clearly states that the amount is being awarded keeping in view the maintenance amount which the wife is receiving under the order passed in 125 CrPC proceedings, we are inclined to observe that if the wife seeks enhancement of the amount of maintenance on any count whatsoever, it will be open for her to file application under Section 25 (2) of the Hindu Marriage Act seeking enhancement of the amount of alimony. Subject to the

aforesaid liberty, we are not inclined to interfere with the impugned judgment and decree and appeal is therefore, dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge