

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CMA.No.1167/2017

R.N.Senthilkumar ... Appellant/Respondent

-vs-

Subashini ... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act read with Order 43 Rule 1(D) of C.P.C. against the fair and decreetal order passed in O.P.No.2608/2009 by the learned II Additional Judge, II Additional Family Court, Chennai, dated 07.10.2016.

For Appellant : Mr.A.R.Nixon

For Respondent : Mr.S.Karunakaran

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

The Civil Miscellaneous Appeal has been directed against the fair and decreetal order dated 07.10.2016 passed in O.P.No.2608/2009 by the learned II Additional Judge, II Additional Family Court, Chennai.

2. The brief facts of the case is that the marriage between the appellant-husband and the respondent-wife was solemnized on 06.07.2003 at Sangeetha Kalyana Mandapam, Porur, Chennai, as per the Hindu Rites and Customs. The respondent-wife is an Engineering Graduate. At the time of marriage, during 2003 to November, 2004, the appellant husband was at Pittsburg, USA and he is Software Engineer by qualification and employed at CDI Corporation, USA as Java Developer and getting a monthly salary of 72000 USD p.a. After marriage, on 19.07.2003 both the parties left U.S.A. At U.S.A., it is stated that the respondent-wife suffered extraordinary violence and humiliation at the hands of the appellant-husband and unable to bear with the same, the respondent-wife returned to India with the help of

her parents on 10.5.2004. After returning to India, the respondent wife was given medical treatment in Chennai and though she has no inclination to join her husband, at his assurance that no untoward incident will be happened hereafter, the respondent wife went back to USA on 05.07.2004. Between September, 2004 till October, 2004, the respondent once again suffered severe harassment at the hands of the appellant-husband both sexually and physically. It is further stated that on 29.11.2004, the appellant has voluntarily taken ticket for sending the respondent wife to India. But with the help of her friend Vivek, the respondent wife obtained a job as a Baby Sitter in USA and after finishing a Computer Course at USA, she got a job in Wipro Technologies in 2005 and thereafter, she returned to India on 08.08.2008 since the appellant has called off the spouse visa. In the meantime, the appellant husband has not taken any steps to take his wife back to the matrimonial home. Since the respondent wife was forcefully eliminated from the matrimonial home on 29.11.2004, she filed F.C.O.P.No.2608/2009 before the learned II Additional Principal Judge, II Additional Family Court, Chennai, seeking dissolution of the marriage that took place between the parties on 06.07.2003.

3. A Counter Affidavit has been filed by the appellant herein/respondent therein before the trial court denying all the allegations levelled against him.

4. After full fledged trial, the learned trial Court allowed the Original Petition thereby dissolving the marriage held between both the parties on the ground of cruelty and also directing the appellant husband to pay a sum of Rs.50,00,000/- as permanent alimony to the respondent wife by a fair and decreetal order dated 07.10.2016. Aggrieved over Clause 2 of the decree dated 7.10.2016 directing the appellant herein to pay a sum of Rs.50,00,000/- as permanent alimony to the respondent wife, the present Civil Miscellaneous Appeal has been filed.

5. Learned Counsel for the appellant-husband would submit that the marriage between the appellant-husband and the respondent-wife was solemnized on 06.07.2003 as per the Hindu Rites and Customs and in the presence of friends and relatives of both the families. It was an arranged marriage. At the time of marriage, the appellant husband was at Pittsburg, USA and he is a Software Engineer by qualification and employed at CDI Corporation, USA as Java Developer and getting a monthly salary of 72000 USD p.a. Thereafter, On 19.07.2003 both the parties left U.S.A. However, due to the difference of opinion that arose between the parties, the respondent wife left the matrimonial home on 29.11.2004. Thereafter, she filed F.C.O.P.No.2608/2009 seeking dissolution of the marriage that took place between both the parties on 06.07.2003 before the

learned II Additional Judge, II Additional Family Court, Chennai. After filing the counter affidavit, accepting the prayer for divorce, the marriage was dissolved by the trial court by order and decree dated 07.10.2016 and also ordered to pay a sum of Rs.50,00,000/- to the respondent wife as permanent alimony. Learned Counsel would further submit that as the appellant having accepted the decree for divorce has come forward before this Court only challenging the grant of permanent alimony of Rs.50,00,000/- to the respondent wife.

6. Learned Counsel for the appellant husband after filing of the appeal challenging the correctness of the order of the trial court directing the appellant husband to pay a sum of Rs.50,00,000/- on the ground that the respondent wife was unemployed and she was not earning money to eke out her livelihood, has filed CMP.No.5610/2021 seeking to receive six number of photographs filed showing that the respondent-wife got remarried after the dissolution of the marriage on 07.10.2016 under Order 41 Rule 27(1)(b) and 2 of CPC. submitted that now due to the subsequent event that was taken place on 10.04.2019 on which date the respondent wife got remarried with one Ramachandran Srinivasan and out of the said wedlock, they were also blessed with a female child, namely, Aditi, the respondent wife is not entitled to get the entire permanent alimony as ordered by the trial court by virtue of Section 25(2) of the Hindu Marriage Act, 1955 which clearly says that if there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), the Court may, at the instance of either party, vary, modify or rescind any such order.

7. Arguing further, learned Counsel for the appellant husband requested us to go through the photographs of the respondent contracting 2nd marriage with one Ramachandran Srinivasan and the further photographs showing the respondent standing and sitting with her second husband and newly born female child Aditi.

8. A perusal of the photographs filed along with the profile of the respondent's second husband as additional typed set dated 23.02.2021 would clearly go to show that the respondent-wife, namely, Subhashini has contracted second marriage with one Ramachandran Srinivasan on 10.04.2019 and out of the said wedlock, a child was also born to them and they have been living happily in U.S.A. Therefore, these photographs and other connected documents made available after the impugned judgment and decree of the trial court is taken on record by invoking Order 41 Rule 27 (1)(b) and 2 of the C.P.C. by order dated 18.03.2021.

9. It is, at this stage, learned Counsel for the respondent wife fairly stated that his client respondent herein

was granted permanent alimony on the ground that at that time, she was unemployed and she was not able to eke out her livelihood. But during the pendency of this appeal, she got engaged with one Ramachandran Srinivasan and remarried him on 10.04.2019 and also settled down at USA. However, learned Counsel for the respondent requested us to consider granting some reasonable amount at the rate of Rs.30,000/- p.m. for the interregnum period between the order and decree of the trial court granting dissolution of the marriage between the parties dated 07.10.2016 and the date of remarriage of the respondent wife on 10.04.2019 i.e. for 30 months towards permanent alimony.

10. Agreeing to the fair submission made by the learned Counsel for the respondent-wife since the respondent wife got remarried on 10.04.2019 and settled down at USA and also having a female child, in view of the subsequent development took place during the pendency of the appeal, this Court thought it fit to invoke Section 25(2) of the Hindu Marriage Act, 1955, by which this Court can modify the permanent alimony ordered by the trial court. In this regard, it is relevant to extract Section 25 (2) of the Hindu Marriage Act, 1955 here under:

25. Permanent alimony and maintenance:

(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 the either party, vary, modify or rescind any such order in such manner as the Court may deem just.'

11. Under such circumstances, considering the fact that after the dissolution of the marriage between the parties on 07.10.2016, the respondent wife got remarried with one Ramachandran Srinivasan on 10.04.2019, and they were also blessed with a female child, namely, Aditi, and the same was also proved by producing the relevant photographs which were received by this Court as additional documents, we are of the view that directing the appellant-husband to pay Rs.25,000/- for 30 months would meet the ends of justice. Accordingly, the appellant-husband is directed to pay a sum of Rs.7,50,000/- towards permanent alimony to the respondent wife instead of Rs.50,00,000/- as ordered by the lower court, within a period of two weeks from the date of receipt of a copy of this Order.

12. With the above modification, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

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To

The II Additional Judge,
II Additional Family Court,
Chennai.

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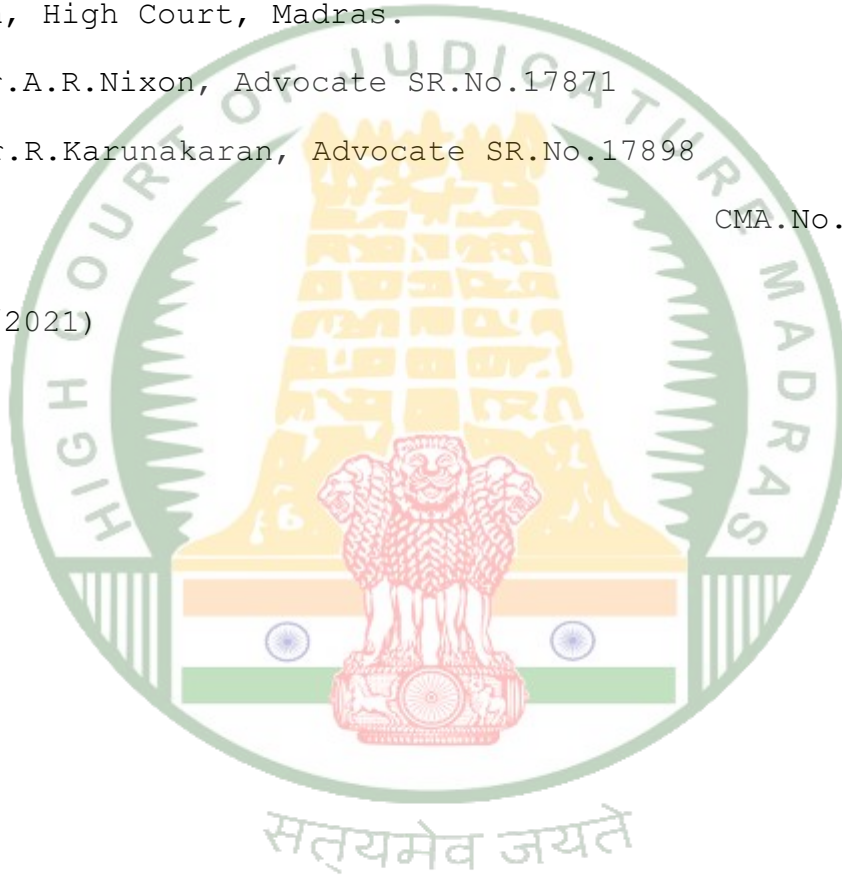
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.A.R.Nixon, Advocate SR.No.17871

+2cc to Mr.R.Karunakaran, Advocate SR.No.17898

CMA.No.1167/2017

SSD(CO)
GMY(08/07/2021)



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