

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD) No. 3556 of 2018
and
CMP Nos.19951 of 2018 & 10754 of 2021

Kanniappan

....

Petitioner

Vs

Saroja

....

Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.06.2018 made in I.A.No.707 of 2018 in O.P.No.1046 of 2001 on the file of the Principal Judge, Family Court, Chennai.

For Petitioner : Mr. J.Saravana Vel

For Respondent : Dr.G.Krishnamurthy

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 12.06.2018 made in I.A.No.707 of 2018 in O.P.No.1046 of 2001 on the file of the Principal Family Court, Chennai, thereby ordering permanent alimony.

2. The petitioner is the husband and the respondent is the

wife. The petitioner filed a petition for divorce and the respondent filed a petition for restitution of conjugal rights. While pending both the petitions, the respondent/wife filed a petition for permanent alimony in I.A.No.707 of 2018 and the same was allowed on 12.06.2018. Aggrieved by the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner would submit that originally in the year 2001 the petitioner filed a petition for divorce, on the ground of cruelty. Pending divorce petition, the respondent filed a petition for restitution of conjugal rights. The Court below allowed the petition for restitution of conjugal rights and dismissed the petition for divorce. Aggrieved by the same, the petitioner preferred an appeal before this Court in CMA Nos.3366 and 3367 of 2009. This Court by a Judgment dated 16.11.2016 set aside the orders passed in FCOP No.1046 of 2001 filed by the petitioner/husband for divorce and FCOP No.1099 of 2004 filed by the respondent/wife for restitution of conjugal rights and remanded back the matter to the Trial Court for fresh consideration of the evidence already let in by the parties and also any fresh evidence to be let in by the parties and to pass order afresh on merits and in accordance with law. After remitted back to the Trial Court, the respondent filed an

Interlocutory Application claiming permanent alimony of Rs.1,00,00,000/- payable by the petitioner/husband. The Court below allowed the divorce petition filed by the petitioner and dismissed the petition seeking restitution of conjugal right filed by the respondent.

4. However, the Court below allowed the petition seeking permanent alimony and directed the petitioner to pay a sum of Rs.25,00,000/- towards permanent alimony for the respondent's life time. From the year 2001, when the petition for divorce as well as restitution of conjugal rights were pending, the respondent did not choose to file any petition seeking permanent alimony.

5. Admittedly, in the year 2001, the respondent/wife left the matrimonial home leaving behind two sons born to them. From the childhood, the petitioner had been taking care of them and providing food, shelter and everything. Now, they got married and residing in the same portion of the house owned by the petitioner herein. The Court below unfortunately decided the issue as claim petition filed under the Motor Vehicles Act, calculating the age of the respondent and awarded huge sum of Rs.25,00,000/- as permanent alimony. The petitioner has

no income at all, now he is aged about 64 years and he is taken care of by his two sons. At the time of their marriage, he was working as Peon in a private concern and he was drawing very meagre salary. His father was allotted with a residential house by the Slum Clearance Board, in which, the petitioner put up first floor construction by availing loan. The petitioner, though filed divorce petition before the Trial Court unfortunately the documents which were cited by the petitioner were not marked. Those documents are lease agreements dated 25.10.1986, 15.12.2000 and 16.11.2001 and the bank pass book of the petitioner. Therefore, the petitioner also filed a petition to receive and mark additional documentary evidence on the side of the petitioner before this Court in CMP No.10754 of 2021.

6. He further submitted that the Court below, while awarding permanent alimony, failed to follow the procedure as contemplated under the provision and also contrary to the Judgment of the Hon'ble Supreme Court of India. In support of his contention, before the Court below, he examined P.Ws.3 and 4 who are none other than his own sons. They categorically deposed that from their childhood the petitioner only had taken care of them including dressing, bathing and cooking etc.,

everything. Their mother never taken care of them at any point of time. From 2001 onwards, she left them and living with her sister. As per the evidence of the petitioner, he had no permanent income at all. After resigning his job in the private concern, he started selling business of spares of chapels and shoes, in which, he got meagre income to maintain his two sons.

7. Insofar, the respondent is concerned, she is well settled with her sister and her sister is a political person and she doesn't need any monitory help from the petitioner. All along she failed to claim any interim maintenance and all of sudden after a period of 18 years she filed a petition for permanent alimony. However, the Court below ordered very huge sum of Rs.25,00,000/- towards permanent alimony and it is very higher than to his income. In support of his contention, he relied upon the Judgment reported in **2021 (2) SCC 324** and **2017 (14) SCC 200**.

8. Per contra, the learned counsel for the respondent would submit that the respondent got married with the petitioner on 24.08.1986. Due to their wedlock they gave birth to two male children who are none

other than P.Ws.3 and 4. Admittedly, the petitioner was working as coolie in a private concern with a salary of Rs.300/- During her marriage the respondent was presented with gold ornaments. The said gold ornaments were given to the petitioner to start business. Thereafter, he developed their business, in which the respondent only had taken care of the entire business. Due to her hard work, the business was flourished and earned huge money. However, the respondent was driven out from the matrimonial home by the petitioner and he was not paying any single penny from the date of her driven out from the matrimonial home. Though the respondent did not claim any maintenance during the pendency of the divorce petition as well as the conjugal rights petition, she is entitled to get permanent alimony when their marriage was dissolved by the Court of Law.

9. In fact, the respondent filed a petition for restitution of conjugal rights and as such, she was in fond hope that she will be taken back by the petitioner. Now the petitioner leased out the first floor and also earning huge money from his business apart from her sons' income. The petitioner being the husband, duty bound to maintain the wife. He also relied upon the judgment reported in **1970 (3) SCC 129**, in which, the

Hon'ble Supreme Court of India held that 25% of the husband's net salary would be just and proper should be awarded as maintenance to the wife.

10. He further relied upon the judgment reported in **2017 1 MWN (Civil) 150** held that the wife is entitled to huge maintenance. Therefore, the Court below rightly ordered for a sum of Rs.25,00,000/- as permanent alimony and the respondent is aged about 54 years. Therefore, the Court below rightly ordered permanent alimony and prayed for dismissal of this Civil Revision Petition.

11. Heard, Mr. J.Saravana Vel, learned counsel appearing for the petitioner and Dr.G.Krishnamurthy, learned counsel appearing for the respondent.

12. The petitioner and the respondent have got married on 24.08.1986. Due to their wedlock they gave birth to two male children who have examined as P.Ws.3 and 4. Due to misunderstanding between them, the respondent left the matrimonial home and stayed with her sister. Thereafter, the respondent lodged so many complaints on various

occasions against the petitioner herein. Therefore, the petitioner was constrained to file a petition for divorce on the ground of cruelty in the year 2001. Pending divorce petition, the respondent filed a petition for restitution of conjugal rights. The Trial Court ordered restitution of conjugal rights in favour of the respondent and dismissed the petition for divorce. Aggrieved by the same, the petitioner herein filed an appeal before this Court and the Hon'ble Division Bench of this Court, set aside both the orders passed in the divorce petition as well as the restitution of conjugal rights and remitted the matter back to the Trial Court for fresh consideration by a Judgment dated 16.11.2016.

13. When the petitions remitted back to the Trial Court, the petitioner examined P.Ws. 1 to 4 and the respondent examined R.Ws.1 to 2. Thereafter, the respondent filed a petition seeking permanent alimony on 25.01.2018. The respondent alleged that the petitioner is earning Rs.1,00,000/- as rental income and also from his business. In support of the said contention, the respondent failed to prove the same by any evidence. In fact, the petitioner availed loan in the year 2000 by receipt of advance for the portion which was rented out to the third parties. Except her oral claim that she had helped the petitioner in

business, she has not produced any evidence to substantiate her claim. That apart, the respondent also failed to produce any evidence to show that the petitioner is receiving rent to the tune of Rs.1,00,000/-. However, the respondent prayed in the said petition for a sum of Rs.2,500/- per month may be awarded towards permanent alimony. From the date of separation of both the petitioner and the respondent, admittedly, the children are in the custody of the petitioner. He provided all facilities to his children such as, education, food, shelter and everything including cooking and the respondent never come forward to take care of their children.

14. On perusal of the deposition of P.Ws.3 and 4 revealed that they have been taken care of by their father and due to the conduct of their mother they could not pursue their studies further. They also categorically deposed that the respondent was doing leather business ; saree business and money lending business. The Court below ordered Rs.25,00,000/- as permanent alimony payable by the petitioner for the reason that the petitioner has admitted that he is ready to pay a sum of Rs.2,500/- per month to the respondent even in the year 2001 itself.

Though no proof of rental income and other income by the petitioner

filed by the respondent, the Court below notionally decided the income of the petitioner at Rs.25,000/- per month and also calculated the age of the respondent herein and awarded permanent alimony by calculating 20 years, used as multiplier of Rs.10,000/- per month was ordered and total sum of Rs.25,00,000/- towards permanent alimony.

15. In this regard, the learned counsel for the petitioner relied upon the judgment reported in **2021 (2) SCC 324** in the case of **Rajesh Vs. Neha and another**, the Hon'ble Supreme Court of India held that the parties may lead oral and documentary evidence with respect to their income and expenditure and standard of living etc., for fixing the permanent alimony. The duration of marriage would be a relevant factor to be taken into consideration for determining the permanent alimony. The income of the petitioner and reasonable needs of wife and dependent children have to be seen while fixing quantum of permanent alimony. Simultaneously, the financial capacity of the husband, his actual income, reasonable expenses and dependant family member liabilities, if any, would be required to be taken into consideration to arrive at the appropriate quantum of permanent alimony. These are all the factors to determine the quantum of alimony payable to the wife.

16. In the case on hand, as stated supra, the respondent left the

matrimonial home in the year 2001 and she is living with her sister. Though the divorce petition was filed in the year 2001, the respondent filed a petition for permanent alimony only in the year 2018. Admittedly, the respondent failed to prove the income of the petitioner by way of any material evidence. However, the petitioner admitted the fact that he was willing to pay a sum of Rs.2,500/- per month as maintenance to the respondent in the year 2001 itself. Further the petitioner is also aged person and his sons are residing along with the petitioner and they are taking care of the petitioner. The petitioner being the husband, he is duty bound to maintain his wife also. Since, the divorce was granted on the ground of cruelty and the respondent asked for permanent alimony, the Trial Court has rightly ordered permanent alimony payable by the petitioner to the respondent herein. However, the quantum of the permanent alimony is very high and this Court feels that it is liable to be reduced.

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17. Considering the age of the petitioner and income of the petitioner, the permanent alimony is fixed at Rs.10,00,000/- payable by the petitioner to the respondent as one time permanent alimony. The petitioner is directed to pay permanent alimony of Rs.10,00,000/- within

a period of three months from the date of receipt of a copy of this order.

18. Accordingly, the order dated 12.06.2018 made in I.A.No.707 of 2018 in O.P.No.1046 of 2001 on the file of the Principal Judge, Family Court, Chennai is hereby modified, insofar as the quantum of permanent alimony is alone and the Civil Revision Petition is partly allowed.

19. In view of the above order passed in CRP.No.3556 of 2018, the CMP.No.10754 of 2021 is dismissed. Consequently, connected Miscellaneous Petition is closed. No cost.

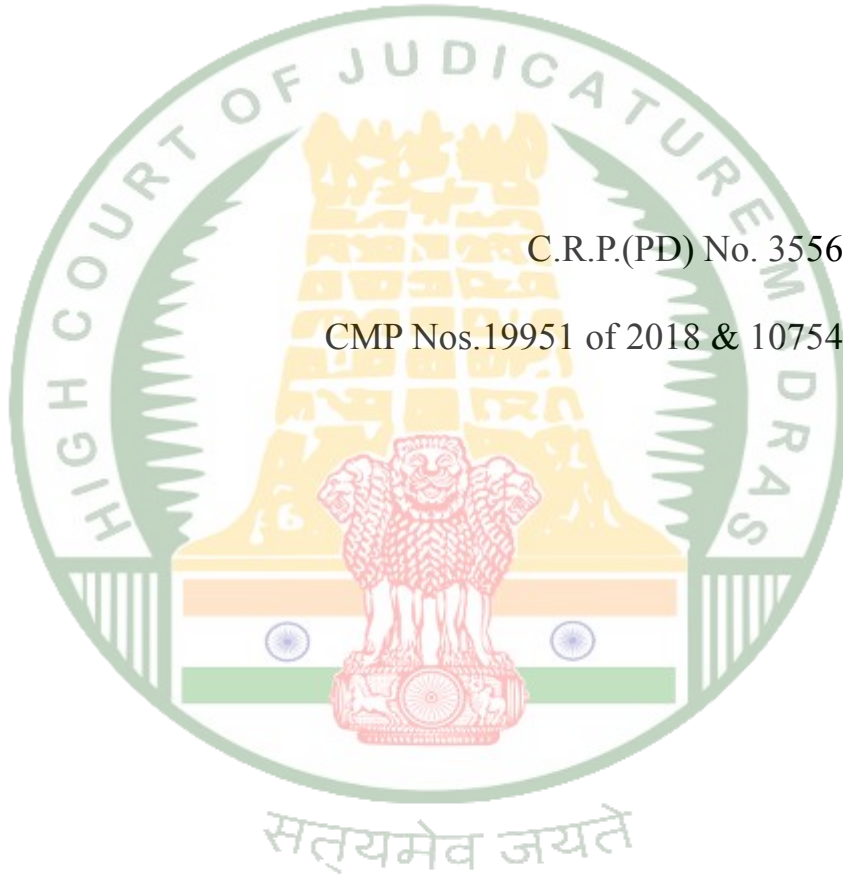
27.07.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
To

1. The Principal Judge,
Family Court, Chennai.
2. The Section Officer,
V.R.Section, High Court, Erode.

G.K.ILANTHIRAIYAN.J,

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