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C.M.A.No.1500 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2022

PRONOUNCED ON : 31.10.2022

CORAM :
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
AND
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.1500 of 2018
and
C.M.P.No.11926 of 2018 and 15924 of 2019

Karthik Nagaraj

... Appellant

Vs.

Rasika Balachandar

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, praying to set aside the fair and decreetal order dated 10.10.2017 passed in I.A.No.2648 of 2016 in O.P.No.84 of 2015, on the file of the learned III Additional Principal Judge at Chennai.

For Appellant : Ms.P.Srividhya

For Respondent : Mr.R.Thiagarajan

JUDGMENT



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(Judgement of the Court was made by S.SOUNTHAR.J.,)

This Civil Miscellaneous Appeal is filed by the appellant/husband,

challenging the order dated 10.10.2017 in I.A.No.2648 of 2016 in O.P.No.84 of 2015 passed by the III Additional Principal Judge, Family Court, Chennai, directing him to pay a permanent alimony and compensation of Rs.2,75,00,000/- to the respondent/wife at the time of granting decree for divorce on the ground of cruelty in a petition filed by the respondent/wife.

2. The respondent/wife filed a petition for divorce on the ground of cruelty in O.P.No.84 of 2015 against the appellant. The said OP was allowed by granting decree for divorce and no appeal had been preferred by appellant/husband, challenging the decree of divorce. When OP was pending, the respondent/wife filed I.A.No.2648 of 2016 seeking permanent alimony of Rs.3,50,00,000/- and the said application was considered by the Family Court simultaneously and the same was allowed by directing the appellant/husband to pay a sum of Rs.2,75,00,000/- and aggrieved by the quantum of permanent alimony fixed by the III Additional Principal Judge, Family Court, the appellant/husband has come up with this appeal.



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3. The only controversy involved in this appeal is with regard to the quantum of permanent alimony fixed by the Family Court. The respondent/wife in her affidavit filed in support of the petition seeking permanent alimony submitted that her marriage with the appellant had taken place on 27.01.2003. After marriage, both of them lived at London, U.K as husband and wife, subsequently in Dubai. Later, they shifted to London but due to the cruelty inflicted by appellant, she was constrained to file a petition for divorce.

4. The respondent/wife averred that during her stay at matrimonial home, she was made to spend all the day-to-day expenses. She also claimed that the property in the name of both the parties situated at Bangalore, was purchased out of major contribution made by her. The respondent/wife claimed that the appellant/husband was employed in an internationally recognized Audit Firm called 'Deloitte'. She claimed that his approximate last known income was Rs.55,00,000/- per annum. She also claimed that the appellant had no concern for her and he had not contributed anything for her comforts and livelihood. On these pleadings, she sought for permanent



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alimony of Rs.3,50,00,000/-.

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5. The appellant/husband filed a counter and resisted the claim for permanent alimony. He claimed that he was leading a middle class living in UK. He also submitted that even as per respondent's statement she was employed in a multinational company called as Fidelity Consultants earning over a lakh of rupees per month. He also averred that the respondent was getting Rs.50,000/- per month as rental income from the property at Bangalore. Therefore, according to the appellant/husband, the respondent/wife is capable of maintaining herself and she is not entitled to any permanent alimony.

6. The appellant filed C.M.P.No.15924 of 2019 to raise additional evidence in this appeal. He wanted to produce certified copy of the complaint given by respondent's father to Inspector of Police, Valasarawakkam Police Station, Chennai, dated 10.05.2018 and the certified copy of the First Information Report in Crime No.169 of 2018 registered by Inspector of Police, based on the said complaint as additional evidence. The additional



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evidence was sought to be raised by the appellant to prove that the respondent/wife had lost her chastity and hence, under Section 25(3) of the Hindu Marriage Act, 1955, the order for payment of permanent alimony requires re-consideration.

7. The learned counsel appearing for the appellant submitted that the amount of Rs.2,75,00,000/- awarded by the Family Court is wholly unjustified and not supported by any evidence available on record. The learned counsel submitted that while fixing the permanent alimony, the Family Court failed to take into consideration that the respondent/wife is capable of maintaining herself as she has been receiving a decent income. The learned counsel further submitted that the respondent/wife had resigned her job just two weeks prior to filing of the petition for permanent alimony and hence, she is not entitled to any permanent alimony, as she is capable of earning a decent income for maintaining herself. The learned counsel further submitted that the amount of Rs.1,15,00,000/- awarded by the Family Court towards compensation to the respondent/wife has no basis and hence, the same is liable to be set aside. The learned counsel appearing for the appellant



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also submitted that as per the additional evidence produced before this Court in C.M.P.No.15924 of 2019, the father of the respondent himself admitted that she had illicit affair with a person by name Giresh Nair and hence, she incurred disqualification under Section 25 (3) of the Hindu Marriage Act, 1955.

8. Per contra, the learned counsel appearing for the respondent submitted that the appellant herein filed this appeal only questioning the permanent alimony granted to the respondent, but not compensation awarded to her for her contribution during her stay at matrimonial home. Therefore, it was the contention of the learned counsel that a sum of Rs.1,15,00,000/- fixed by the Family Court towards compensation to the respondent/wife has become final and the same cannot be assailed by the appellant. The learned counsel further submitted that the respondent is residing in a rental premises and paying a rent of Rs.18,000/- per month. The learned counsel vehemently contended that even as per the evidence of appellant/husband, the respondent during her stay in matrimonial home contributed considerably for the day-to-day expenses and also for purchase of property and the appellant/husband is



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liable to compensate her insofar as the contribution made by her. The learned counsel further submitted that the respondent is not having any income of her own and she has been getting a meagre rental income of Rs.35,000/- per month from Bangalore property and in order to get along with her life in Chennai with all comforts which she would have been enjoying but for the breakage of marriage, she may have to incur an expenditure of Rs.75,000/- per month. The learned counsel for the respondent also submitted that the respondent may be allowed to retain the Bangalore flat jointly purchased in the name of the petitioner and the respondent apart from granting a decent amount by way of permanent alimony.

9. On the basis of the pleadings of the parties, evidence available on record and also contentions of the learned counsel, the following points are arising for consideration:-

- (i) Whether the respondent/wife is entitled to permanent alimony?
- (ii) If so, what is the quantum of permanent alimony payable to the respondent/wife?



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Point Nos: (i) and (ii)

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10. The learned counsel for the appellant by drawing the attention of this Court to the additional evidence produced by the appellant in C.M.P.No.15924 of 2019, submitted that in view of the clear admission made by the respondent's father in his complaint to Police that she had an affair with Giresh Nair, the respondent/wife is not entitled to any permanent alimony. The documents now sought to be produced by way of additional evidence were dated 10.05.2018 and 17.05.2018. In the said documents, the father of the respondent namely Balachandar had preferred a complaint to Police wherein he mentioned that one Giresh Nair brain washed his daughter namely respondent and developed illegal relationship. Based on the said documents, the learned counsel for the appellant submitted that the respondent lost her right to claim permanent alimony in view of Section 25(3) of Hindu Marriage Act, 1955. The documents now sought to be produced by the appellant are only the complaint preferred by the respondent's father to Police and First Information Report registered by the Police based on the complaint. Nothing is available on record to show whether the FIR resulted in



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culmination of filing of final report. Those documents contains serious allegations regarding the chastity of the respondent and hence, those documents cannot be taken into consideration without affording an opportunity to the respondent/wife to lead rebuttal evidence. If the allegations mentioned in those documents are found to be proved, then it will have a serious impact on the entitlement of the respondent to claim permanent alimony.

11. Therefore, we feel it would not be appropriate to permit the appellant to lead additional evidence without affording an opportunity to the respondent to lead rebuttal evidence in this regard. However, we make it clear that it is always open to the appellant to file appropriate application before the Family Court under Section 25(3) of the Hindu Marriage Act, 1955 to vary, modify or rescind, the order for payment of permanent alimony on the grounds mentioned therein, if so advised. If any such application is filed by the appellant, the same shall be considered by the Family Court in accordance with law without being influenced by any of the findings rendered in this appeal with regard to the quantum of permanent alimony.



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12. As far as the quantum arrived at by the Family Court is concerned, it has got two parts, based on the income of the respondent, Family Court fixed the permanent alimony payable to the respondent at Rs.1,60,00,000/-. Apart from that the Family Court also said that the appellant is liable to pay a sum of Rs.1,15,00,000/- to the respondent by way of compensation to reimburse day-to-day expenses met by the respondent during her stay in matrimonial home. Permanent alimony is the one which is the amount awarded to wife or husband either at the time of passing of any decree under the Hindu Marriage Act, 1955 or at any time subsequent thereto to support their life. Any voluntary contribution made by a spouse during his or her stay in matrimonial home, when they were together, cannot be reimbursed in the guise of awarding permanent alimony. The Family Court observed that the respondent/wife contributed for leading a luxuries day-to-day life when both of them lived together at Dubai and London.

13. First of all, there is no evidence available on record to quantify the said compensation at Rs.1,15,00,000/-. When a suggestion was put to husband when he was in witness box, he denied the suggestion in toto.



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Secondly, even assuming there is some evidence to support alleged contribution by the wife, she is not entitled to get it reimbursed on getting decree for divorce. Therefore, we set aside the finding of the Family Court that the appellant is liable to pay a sum of Rs.1,15,00,000/- to the respondent/wife under the head permanent alimony for the purpose of reimbursing contribution made by wife during her stay at matrimonial home.

14. Certainly, such reimbursement will not come under the head 'permanent alimony'. The Family Court directed that a sum of Rs.1,15,00,000/- has to be paid by appellant to the respondent/wife by way of compensation apart from alimony. Such compensation by way of reimbursement to the expenses incurred by one of the spouse is not contemplated under Section 25 of the Hindu Marriage Act, 1955 and hence, the direction of the Family Court to pay a sum of Rs.1,15,00,000/- towards reimbursement of expenses by way of compensation is unsustainable.

15. As far as permanent alimony of Rs.1,60,00,000/- fixed by the Family Court is concerned, as per the Ex.R18/Salary Certificate of the appellant, he was getting a salary of 4525 pounds on the date of issuance of



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certificate viz., 24.03.2017. The rupees equivalent of the sum is Rs.3,98,200/-

(4525 pounds x 88 rupees = Rs.3,98,200).

16. The Family Court as per the decision of the Supreme Court reported in **2017 (3) CTC 209** in the case of ***Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy***, held that 25% of the husband's net salary should be taken as just and proper maintenance to wife. The said conclusion of the Court below i.e., 25% of the husband's net salary should be taken as the basis for fixation of quantum of maintenance is just and proper and in accordance with the law laid down by the Supreme Court in the aforesaid decision.

17. Accordingly, the 25% of the appellant's net salary would be Rs.99,550/- and the same was rounded to Rs.1,00,000/- per month. The Family Court thus fixed the annual income at Rs.12,00,000/- per year and apply the multiplier of 20, it observed that the permanent alimony to be awarded shall be calculated for a term not exceeding the life of the applicant and fixed life expectancy of the respondent/wife at 20 years. The Family



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Court by taking into consideration the rental income received by the respondent/wife deducted Rs.4,00,000/- from Rs.12,00,000/- and fixed the amount payable per year at Rs.8,00,000/- and adopted multiplier of 20. In this regard, we disagree with the findings of the Family Court. Even in the multiplier method followed in Motor Vehicles Accident cases, the maximum multiplier shall not exceed 18. In ***Sarla Verma and others Vs. Delhi Transport Corporation and another in (Civil Appeal No.3483 of 2008)***, the Hon'ble Apex Court held that in all cases irrespective of the young age of the victim the maximum multiplier should be only 18. In the present case, at the time of filing the application in O.P.No.84 of 2015, the age of the respondent/wife was 34 years. If we apply the guidelines issued in ***Sarla Verma*** case, the multiplier relevant to the age of the respondent/wife would be 16. Therefore, we think it would be appropriate to adopt the multiplier of 16. In such a case, the respondent/wife is entitled to a permanent alimony of Rs.1,28,00,000/- (Rs.8,00,000 x 16). We would like to clarify that the multiplier method adopted in Motor Vehicle cases cannot be applied as straight jacket formula while calculating permanent alimony under Section 25 of the Hindu Marriage Act, 1955. In view of the evidence available on record



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with regard to style of life which the respondent/wife accustomed to in matrimonial home and having regard to her income and that of appellant, only for fixing outer limit for multiplier, we refer to **Sarla Verma** case.

18. Therefore, we reduce the quantum of permanent alimony awarded by the Family Court to Rs.1,28,00,000/-. As far as the direction given by the Family Court that the appellant should execute a release deed in favour of the respondent releasing his half share in the house property at Bangalore is concerned, it was purchased in the name of both appellant and respondent. The appellant claims that the said property was purchased out of contribution made by him. According to the appellant, the entire sale consideration was paid by appellant's cheque, but since the respondent was in India, she handed over the cheques to the promoter and he issued the receipt in the name of wife.

19. Considering the financial status of the parties and also the fact that the respondent/wife must have a roof above her head, we feel it would not be appropriate to interfere with the said direction issued by the Family Court and



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therefore, the same is confirmed.

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In nutshell:

- (i) The Civil Miscellaneous Appeal is partly allowed. The permanent alimony fixed by the Family Court is reduced to Rs.1,28,00,000/- from Rs.2,75,00,000/-.
- (ii) The appellant is given liberty to move the appropriate application under Section 25(3) of the Hindu Marriage Act, 1955 based on the subsequent events if any, so advised.
- (iii) In other respects, the order passed by the Family Court is confirmed.
- (iv) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

(V.M.V.J) (S.S.J)
31.10.2022

Index : Yes / No
Speaking Order : Yes / No
dm



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V.M.VELUMANI, J.
and
S.SOUNTHAR, J.

dm

To

The III Additional Principal Judge,
Chennai.

Pre-delivery order made in
C.M.A.No.1500 of 2018

31.10.2022