

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2022

PRONOUNCED ON : 18.10.2022

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

C.M.A.No.1278 of 2022  
and  
C.M.P.No.9272 of 2022

A.Karthik Kumar

... Appellant

Vs.

J.Krithiga (Kriuthika)

... Respondent

**Prayer:** Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, praying to set aside the Judgment and Decree dated 29.03.2022 in respect of granting Permanent alimony to the respondent in O.P.No.3594 of 2019 on the file of the VII Additional Family Court, Chennai by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.K.Sudhakar

For Respondent : Ms.S.B.Priyadarshini  
for Mr.K.Chandru

**JUDGMENT**

(Judgement of the Court was made by S.SOUNTHAR.J.,)  
Aggrieved by the quantum of permanent alimony/compensation fixed by the Family Court, while granting decree of divorce on the ground of cruelty, the appellant/husband has come up with this appeal.

2. The respondent/wife filed a petition for divorce on the ground of cruelty. According to her, the marriage between the appellant and the respondent was solemnized on 29.05.2017 and after marriage, both of them lived together in appellant's house at Old washermenpet, Chennai. It was her case that she stayed in matrimonial home only one month and there was no consummation of marriage. In her petition, the respondent/wife alleged that the continuous neglect and avoidance by the appellant/husband caused mental agony to her and sought for divorce on the ground of cruelty. She also alleged that she entered into a matrimonial life with appellant with a great hope and she was cheated by the appellant and his family members and hence, they were liable to pay compensation by way of permanent alimony. Along with her prayer for divorce on the ground of cruelty, she also sought for direction to appellant to pay permanent alimony of Rs.10,00,000/-.

3. The appellant/husband filed a counter denying various allegations made by the respondent/wife. The appellant/husband claimed that it was the respondent who avoided the co-habitation with the appellant without any *bona fide* reason. The appellant also alleged that the respondent who had gone to her parental home in the Tamil month of Aadi, refused to come back to the matrimonial home. It was also alleged that the respondent refused to do any domestic work and tortured the appellant's mother.

4. Before the Family Court, the respondent was examined as P.W.1 and on her side Ex.P1 to Ex.P6 were marked and on behalf of the appellant, RW.1 and RW.2 were examined and Ex.R1 and R2 were marked.

5. The Family Court gave a factual finding that the respondent proved her allegations of cruelty against the appellant and granted the decree of divorce. The Family Court also passed a decree directing the appellant to pay a sum of Rs.10,00,000/- towards compensation to the respondent and aggrieved by the same, the appellant has come up with this appeal insofar as, the portion of decree which directs him to pay a sum of Rs.10,00,000/- towards permanent

alimony/compensation, therefore, the decree for divorce granted by the Family Court had attained finality and the dispute in this appeal is only with regard to the quantum of permanent alimony fixed by the Family Court.

6. The learned counsel for the appellant assailed the order of the Family Court mainly on the ground that the Family Court after having held that the respondent/wife is equally educated and earning much more than the appellant and she was not entitled to any permanent alimony, ought not to have directed the appellant to pay compensation.

7. The learned counsel submitted that the reasoning given by the Family Court for granting compensation to the respondent is untenable in law. Further, it was submitted that a quantum arrived at by the Family Court is without any valid reason.

8. The learned counsel for the respondent submitted that both the parties lived together only for a short period of one month and due to cruelty meted out by the appellant by denying normal co-habitation they were compelled to

separate. The appellant is guilty of matrimonial wrong. When the respondent/wife suffered at the hands of the appellant and her matrimonial life got spoiled by the act of the appellant, he is liable to pay compensation as directed by the Family Court.

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

- (i) Whether the Family Court is justified in awarding a sum of Rs.10,00,000/- to respondent by way of permanent alimony and compensation.

10. It is settled law that the Court while quantifying the permanent alimony at the time of granting divorce, may take into consideration, the income of both the parties, their life style, conduct of the parties and other circumstances of the case. It would be appropriate to extract observations of the Apex Court in ***Rajnesh vs. Neha*** reported in ***(2021) 2 SCC 324 = CDJ 2020 SC 809*** which reads as follows:-

*“Permanent alimony*

*(i) Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the concerned Court, for fixing the permanent alimony payable to the spouse.*

*(ii) In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.*

*(iii) Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family.*

*(iv) If there are any trust funds / investments created by any spouse / grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.”*

11. In the case on hand, the respondent/wife is working at Infosys as found in Ex.R2/Salary Certificate issued by the said company.

12. The perusal of Ex.R2/Salary Certificates make it clear that her salary during the month of January, 2018 was Rs.31,273/- and the same was increased to Rs.66,116/- during the month of July, 2021. As far as the salary of the appellant/husband is concerned, he claimed that his salary was only Rs.30,000/- in the memorandum of grounds, but however, he had not produced his salary certificate before the Court below. As per the dictum laid down in ***Rajnish vs. Neha*** cited supra, parties to the matrimonial proceedings especially the proceedings for interim maintenance/permanent alimony are expected to file their affidavits of assets and liabilities.

13. In the case on hand, both the parties failed to file their affidavits of assets and liabilities. But however, the respondent/wife had chosen to file her salary slip for the month of January, 2017, which was marked as Ex.P3. The appellant/husband had chosen to mark salary slip of wife as Ex.R2. But however, he failed to produce his own salary slip. In the typed-set of papers filed in this appeal, the appellant produced his salary slip for the month of May-2022 (subsequent date of judgment). However, he had not filed any

petition for reception of the said documents as an additional evidence. Therefore, this Court cannot place any reliance on the said documents filed by the husband in the typed-set of papers. But the evidence available on record establish that the respondent/wife is well qualified and having decent salary income. She lived in matrimonial home only for a month, it cannot be treated that she is a person unable to maintain herself. The Court below after observing that she is not entitled to any permanent alimony, directed the appellant to pay a sum of Rs.10,00,000/- towards compensation for the loss suffered by her. We are unable to accept the said conclusion of the Court below.

14. Even as per the averments found in the petition filed by the respondent/wife, the marriage had not been consummated, however, she lived in the matrimonial home for a short period of one month. The respondent succeeded in establishing act of cruelty, which has not been successfully assailed before us.

15. The perusal of evidence of PW.1 and RW.2 would suggest, the respondent who visited her parental home, was not taken back to matrimonial home by appellant. The copy of Ex.P5-letter written by respondent would

suggest her intention to joint appellant but perusal of Ex.P6 memo filed by appellant reflects his intention to deny matrimonial relationship. Hence, the Court below rightly came to the conclusion that the respondent/wife suffered mental cruelty at the hands of appellant.

16. Taking into consideration the fact that the decree for divorce has been granted by the Family Court on the ground of cruelty, which has not been successfully challenged by the appellant herein, and other facts and circumstances of the case, this Court feels that it would be appropriate to direct the appellant to pay a sum of Rs.5,00,000/- towards permanent alimony/compensation to the respondent/wife. The decree under challenge is modified to that extent and the appeal is partly allowed.

17. Accordingly, the Civil Miscellaneous Appeal is partly allowed by directing the appellant to pay a sum of Rs.5,00,000/- toward permanent alimony/compensation to the respondent instead of Rs.10,00,000/- as directed by the Court below.

18. In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

(V.M.V.J) (S.S.J)  
18.10.2022

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

To

The VII Additional Family Court,  
Chennai.

C.M.A.No.1278 of 2022

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

dm

Pre-delivery order made in  
**C.M.A.No.1278 of 2022**

18.10.2022

