

THE HON'BLE JUSTICE G.SRI DEVI
AND
THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI
F.C.A.NO.65 OF 2010
JUDGMENT (Per the Hon'ble Smt. Justice M.G.Priyadarsini)

The appellant herein is the husband and the respondent is his divorced wife. The parties will be referred as per the array in the present appeal.

2. The respondent herein filed O.P.No.757 of 2005 on the file of Additional Family Court at Hyderabad under Section 25 of the Hindu Marriage, Act, 1955 (for short 'the Act') read with Section 7 of the Family Courts Act, 1984 against the appellant herein, seeking to grant maintenance of Rs.4,000/- per month, or in the alternative an amount of Rs.5,00,000/- as permanent alimony.

3. The trial court vide order and decree dated 04-02-2010 partly allowed the aforesaid original petition by granting an amount of Rs.2,000/- towards maintenance of the respondent from the date of petition, or else, the appellant herein has to pay to the respondent an amount of Rs.4,00,000/- as permanent alimony. The monthly maintenance was directed to be paid on or before 10th of every month.

4. Assailing the order and decree passed by the trial court dated 04-02-2010 in granting maintenance, the present appeal is filed.

5. The admitted facts on record are that the respondent herein has earlier filed O.P.No.766 of 2003 on the file of Judge, Family Court, Hyderabad against the appellant herein under Section 13(1)(ia) of the Act seeking divorce. During the pendency of the petition, the respondent filed I.A.No.540 of 2003 in O.P.No.766 of 2003 seeking for recovery of Rs.70,000/-, given by her parents towards 'pasupukumkuma' and Rs.30,000/- towards alimony. It is stated that the appellant initially paid an amount of Rs.35,000/- and subsequently as per the directions of the trial court, paid balance of Rs.65,000/-. Vide order and decree dated 06.10.2004, the trial court allowed the said O.P.No.766 of 2003, and the operative portion of the order reads as under:

“Thus in view of my foregoing discussion, I am of the opinion that the respondent treated the petitioner cruelly and that she is entitled to have divorce against him. Accordingly, the point is answered.

In the result, the petition is allowed and the marriage dated 07.04.2002 held between the petitioner and respondent is dissolved by way of decree of divorce. No costs.”

6. Thereafter, the present O.P.No.757 of 2005 was filed under Section 25 of the Act read with Section 7 of the Family Courts, Act, 1984 seeking maintenance.

7. The case of the respondent/ wife in the petition is that she is solely dependant on her parents after divorce, and her mother is suffering with paralysis and her father retired from Government service and with the meager pension, all of them are surviving.

8. It is further stated that out of Rs.1,00,000/- paid by the appellant, Rs.70,000/- was towards pasupukumkuma, which the appellant paid back to the respondent and the balance of Rs.30,000/- granted to the respondent towards maintenance is so meager and that respondent cannot maintain with the said meager amount and that without at least Rs.5,000/-, per month, it is difficult to meet both the ends.

9. The further contention of the respondent is that the appellant is employed in a pharmaceutical company and is drawing Rs.10,000/- per month as his salary and after the divorce, the respondent has not remarried and is continuing to stay with her parents and that she has no other source of income and therefore, she is entitled to claim maintenance from the appellant, especially due to changed circumstances.

10. The appellant filed counter affidavit, and stated that as per the settlement between the parties, he has paid in all an amount of Rs.1,00,000/- towards full and final settlement as future maintenance and hence the respondent is not entitled to claim any maintenance.

11. He further submitted that he is not drawing an amount of Rs.10,000/- per month and that his old aged mother is living with him in a rented house, and that he is working in a private firm, and it is very difficult to meet the day-to-day expenditure. That, the respondent herself is an employee, and her father and brother are also having sufficient income. After divorce he has remarried and got a

child and that there are no changed circumstances for the respondent to claim maintenance, and accordingly sought to dismiss the petition.

12. Basing on the above pleadings, the trial court framed the following issues for trial:

1. Whether this O.P. is maintainable or not?
2. What are the change of circumstances?
3. If so, what is the quantum of maintenance to be paid by the respondent to the petitioner?

13. In support of her claim, the respondent examined herself as P.W.1 and also examined her father as P.W.2 and got marked Exs.P-1 and P-2.

14. On behalf of the appellant, he examined himself as R.W.1 and got marked Exs.R-1 to R-3.

15. Appreciating the entire evidence, the trial court partly allowed the petition. Assailing the same, the present appeal is filed.

16. This court on 31.05.2010 granted interim stay, and the operative portion of the order reads as under:

“Having regard to the facts and circumstances of the case, we grant stay of all further proceedings of the decree and order dated 4.2.2010 in O.P.No.757 of 2005 on the file of the Court of Judge, Additional Family Court, Hyderabad, subject to the condition of the petitioner deposits half of the arrears of maintenance amount up to the month of May, 2010, within six months from today and continue to deposit the maintenance amount at the rate of Rs.2,000/- per month payable from the month of June, 2010 by 10th of every month. In default, the interim order stands vacated. On such deposit of the maintenance amount, the respondent is permitted to withdraw the same without furnishing any security.”

17. Sri Ram Gopal, learned counsel appearing for the appellant mainly contended that in pursuance of the settlement entered into between the parties, the appellant had paid Rs.1,00,000/- towards full and final settlement, and thereafter the decree of divorce was granted, and, therefore, the present petition filed for further maintenance is not at all maintainable. He further, reiterating the averments made in the counter affidavit filed before the trial court, sought to set aside the impugned order.

18. On the other hand, Sri A. Mahadev, learned counsel appearing for the respondent, supporting the impugned order and decree of the trial court, sought for dismissal of the appeal.

19. In view of the facts and circumstances of the case, and rival submissions of both the counsel, the issue that arises for consideration is, *'whether the impugned order warrants any interference?'*

20. The main contention of the learned counsel for the appellant is that as the parties have entered into settlement dated 19.02.2003 and in pursuance of the same, as the appellant has paid Rs.1,00,000/- towards full and final settlement and that both the parties have agreed not to indulge in any civil or criminal cases, the present application filed for maintenance is not maintainable.

21. In a judgment of a learned single Judge of this court in A.S.No.4500 of 2004 dated 14.07.2002 similar facts are involved. The husband therein pleaded in a petition filed under Sections 18 and 20

of the Hindu Adoption and Maintenance Act, 1956, that he was not liable to pay any maintenance, in view of the fact that wife executed an agreement relinquishing her right to receive maintenance. This court, while not accepting his contention, held that even if the wife executes an agreement relinquishing her right to receive any maintenance in future, that would be contrary to the public policy and unenforceable, and that she would be entitled to seek for maintenance, if she is unable to maintain herself. The relevant portion of the order is as under:

26. The law on the aspect of maintenance is no longer *res integra*. The High Court of Bombay in the decision reported in RAMESHWAR S/O SANDU KACHKURE vs. STATE OF MAHARASHTRA¹, held that “*an agreement, by which the wife relinquishes her right to receive maintenance any time in future, is contrary to public policy and consequently unenforceable.*” Similar is the view expressed by different High Courts in TEJASWINI D/o ANANDRAO TAYADE AND ANR. Vs. CHANDRAKANT KISANRAO SHIRSAT AND ANR², RAJESH R. NAIR vs. MEERA BABU³, SHAHNAZ BANO v. BABU KHAN⁴, RANJIT KAUR v. PAVITTAR SINGH⁵, RAMCHANDRA LAXMAN KAMBLE v. SHABHA RAMACHANDRA KAMBLE⁶.

27. Thus from the above judgments, it is clear that even if the wife executes an agreement relinquishing her right to receive any maintenance in future, that would be contrary to the public policy and unenforceable, and that she would be entitled to seek for maintenance, if she is unable to maintain herself. In the present case, however the husband failed to prove the alleged agreement, and it is a fact that wife is living separately with the girl child, and is unable to maintain herself, and hence is claiming maintenance. In these circumstances, and in the light of the settled legal position, which is noted above, the judgment of the trial court in totally rejecting the claim of the plaintiff No.1 for maintenance, is highly deplorable, and cannot be sustained.

22. Apart from the above legal position, it could be seen that during the pendency of the present O.P., when the trial court rejected the O.P. for grant of maintenance, on the ground that it is not

¹ CrI.W.P.No.295 of 2017 dated 16.03.2018

² 2005(3) MH. L.J. 137

³ 2013 CRI.L.J. 3153

⁴ 1985 SCC OnLine Bom 200

⁵ 1991 SCC OnLine P & H 693

⁶ 2018 SCC OnLine Bom 7039

maintainable, the respondent filed FCA.No.11 of 2008, and this court vide order dated 23.04.2008, considering Section 25 of the Act, set aside the order of the trial court, and remanded the matter. This court held that Section 25(1) of the Act is incidental to the decree granting substantial relief under the Act. That sub-section (2) of Section 25 provides that if the court is satisfied that there is a change in the circumstances of either party at any time after granting maintenance under sub-section (1), the court may at the instance of either party vary, modify or rescind such order passed under sub-section (1), and that therefore, the right of maintenance is a continuing right even through the decree was granted. It was further held that there is no bar for filing this O.P. for grant of maintenance though the matter had already reached finality.

23. The above order passed by the Division Bench of this court has attained finality, as no appeal is stated to have been preferred. Hence, the appellant is estopped to raise this ground and in view of the aforesaid order, the trial court was only required to decide the quantum of maintenance to be granted to the respondent.

24. Now coming to the issue of maintenance, the case of the respondent, who was examined as P.W.1, is that after grant of divorce, she has been living with her parents, and has not remarried, and her father has retired from Government service, and is getting meager pension, and that her parents are suffering from ailments and that she has no independent source of income.

25. The appellant, who was examined as R.W.1 though stated that he is getting only an amount of Rs.10,000/- per month, failed to file any salary certificate to substantiate his stand and further, he could not also prove that the respondent is working somewhere and has sufficient means to maintain herself.

26. Considering these facts and circumstances, the trial court, in our considered view, rightly granted maintenance of Rs.2,000/- per month, which is very reasonable when compared to the present standard of living, from the date of the petition, or alternatively directed the appellant to pay an amount of Rs.4,00,000/- towards permanent alimony.

27. For the foregoing reasons, we do not find any reason to interfere with the order and decree of the trial court; the appeal is devoid of merits and the same is liable to be dismissed.

28. In the result, the appeal is dismissed. Interlocutory Applications pending, if any shall stand closed. No order as to costs.

G.SRI DEVI,J

M.G.PRIYADARSINI,J

DATE: 11--08—2022

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