

THE HON'BLE JUSTICE G. SRI DEVI
AND
THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI
F.C.A.No. 396 of 2018

JUDGMENT: (Per Hon'ble Justice G. Sridevi)

This appeal is filed under Section 39 of the Special Marriage Act, 1954, aggrieved by the order and decree dated 23.02.2018 passed in O.P.No.290 of 2016 on the file of the Judge, Additional Family Court, Hyderabad.

2. Brief facts of the case are that the respondent herein, who is the wife of the appellant herein, filed a petition under Sections 10 (x), 36 and 41 of the Divorce Act, to grant decree of divorce by dissolving the marriage between the appellant and the respondent herein on the ground of cruelty and to grant permanent custody of minor child namely, Samuel born on 15.09.2016 and to award Rs.1.00 Crore towards maintenance to herself and minor child.

3. After considering the material available on record, by order, dated 23.02.2018, the trial Court allowed the O.P. granting decree of divorce and dissolved the marriage of the appellant and respondent solemnized on 30.10.2014 at Lutheran Church, Lakdi-ka-pool, Hyderabad and the permanent custody of the minor child namely Samuel was given to the mother and also directed the appellant

herein to pay Rs.25,00,000/- each to his wife and son towards their lumpsum maintenance within six months from the date of the said order. Challenging the same, the present appeal has been filed by the husband.

4. Heard both sides and perused the record.

5. A perusal of the impugned order would show that admittedly, the appellant and respondent herein are the wife and husband and their marriage took place on 30.10.2014. It is also an admitted fact that immediately after the marriage, the wife joined the society of her husband at U.S.A. and out of their wedlock one male boy by name Samuel was born on 15.09.2015. In order to prove her case, the wife examined herself as P.W.1 and marked Exs.A1 to A17. Neither oral nor documentary evidence has been adduced by the husband.

6. As regards the grant of decree of divorce, the trial Court has categorically held that the wife has proved that during her stay with her husband at U.S.A., the husband meted out cruelty on her on several occasions, demanded additional dowry of Rs.15,00,000/- and did not even provide proper food and medical facilities. No contra evidence has been produced by the husband to disprove the same. Therefore, the trial Court has rightly granted decree of divorce by

dissolving the marriage between the appellant and respondent, which was solemnized on 30.10.2014.

7. Insofar as the custody of the minor boy, the trial Court observed that since the son was aged about 2 ½ years and he is under the care and custody of the respondent herein prior to the date of filing of the O.P., and has categorically held that the child, with such age has to be given to the custody of the mother alone because in such infant age child requires more care. Therefore, the said finding warrants no interference by this Court.

8. Insofar as the maintenance is concerned, a perusal of the impugned order would show that while awarding maintenance, the trial Court has categorically held that now the wife is not doing any job and after her marriage she has resigned the job and joined the company of her husband in U.S.A. and unable to bear the harassment meted out by her in the hands of her husband she came back to India. It is further held that the appellant-husband is working in U.S.A. with a gross salary of 30 US \$ per hour and his wife and minor son expects same standard of living on par with him. Taking into consideration the minimum necessities of life that are required for the wife and son and the salary of husband, the trial Court has rightly awarded Rs.25,00,000/- each to the wife and son towards their lumpsum

maintenance. Absolutely, no ground is made out by the learned counsel for the appellant to interfere with the well reasoned order passed by the learned trial Court. Therefore, the appeal sans merit and the same is liable to be dismissed.

9. Accordingly, the F.C.A. is dismissed, confirming the order dated 23.02.2018 passed in O.P.No.290 of 2016 on the file of the Judge, Additional Family Court, Hyderabad. There shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

G. SRI DEVI, J

SMT. M.G.PRIYADARSINI, J

22.08.2022
gkv/tsr