

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SMT JUSTICE M.G.PRIYADARSINI**

FAMILY COURT APPEAL No.57 of 2012

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

The Family Court Appeal, under Section 19 of Family Courts Act, 1984 is filed by the appellant/husband, challenging the order dated 05.01.2012, passed in O.P.No.275 of 2010, by the Judge, Family Court, Secunderabad, whereby, the subject O.P.No.275 of 2010 filed by the respondent No.1/wife under Section 7(i)(b) of Family Courts Act, is filed by the respondent/wife, seeking declaration of her status as legally wedded wife of the appellant/husband and the consequential relief of mandatory injunction directing the respondent No.3 to delete the name of respondent No.2 as wife and nominee of the appellant/husband from the service records and to include the name of the respondent No.1/wife as nominee of appellant/husband and grant half of the amount of retirement benefits of the appellant/husband, was allowed. The operative portion of the impugned order reads as under:

"In the result, the petition is allowed declaring the petitioner as legally wedded wife of respondent No.1.

The respondent No.3 is directed to delete the name of respondent No.2 as wife of Respondent No.1 and mention the name of the petitioner as wife of respondent

No.1 in respect of her status and an amount of Rs.2,50,000/- has to be deducted from the retirement benefits of respondent No.1 as per the decree in O.P.No.35/2009, out of the remaining amount petitioner is entitled for half of the retirement benefits."

2. We have heard the submissions of learned counsel for both sides and perused the record.

3. Learned counsel for the appellant/husband would submit that though there is ample evidence on record to substantiate that the respondent No.1 is legally wedded wife of the appellant/husband, the Court below ought not have held that the respondent No.1/wife is entitled for half of the retirement benefits to protect her claim of maintenance. It is the choice and prerogative of a person to name any person of his choice as his nominee and there cannot be any compulsion on an employee to nominate only the spouse as his/her nominee and ultimately prayed to set aside the impugned order and allow the appeal as prayed for.

4. On the other hand, the learned counsel for the respondent No.1/wife would contend that there is ample evidence on record to substantiate the marriage performed in between the appellant/husband and the respondent No.1/wife. Having considered the same, the Court below is justified in declaring respondent No.1 as legally wedded wife of the appellant herein. The Court below had apportioned the amounts in terms of the

decree passed in the subject O.P.No.35 of 2009 and the Court below is justified in passing the impugned order. There is no legal infirmity in the impugned order and ultimately prayed to dismiss the appeal.

5. In view of the above submissions made by both sides, the points that arise for determination in this appeal are as follows:

1. Whether respondent No.1 is legally wedded wife of appellant herein?

2. Whether the Court below is justified in directing to deduct Rs.2,50,000/- from the retirement benefits of the appellant/husband in terms of the decree passed in the subject O.P.No.35 of 2009?

3. Whether the Court below is justified in holding that the respondent No.1/wife is entitled for half of the retirement benefits of the appellant/husband to protect her claim of maintenance?

4. To what result?

POINTS:-

6. The case of the respondent No.1/wife is that she is the legally wedded wife of the appellant/husband. To substantiate the case of the respondent No.1/wife, she herself was examined as PW.1 apart from examining PW.2 and got marked Exs.A1 to A27. Ex.A1 is wedding photo. Ex.A2 is order copy in O.S.6/98. Ex.A3 is

representation to DRM Hyderabad. Ex.A4 is order copy in O.P.No.35/09, dated 09.06.2010. Ex.A5 is copy of legal notice, dated 09.06.2010. Ex.A6 is acknowledgment of Ex.A5. Ex.A7 is W.S. in O.S.6/1998. Ex.A8 is first line of DW1 in O.S.6/98 dated 15.11.1999. Ex.A9 is two lines of DW1 in O.S.6/98 dated 15.11.1999. Ex.A10 is first line of DW1 in O.S.6/98 dated 15.11.1999. Ex.A11 is first line of DW1 in O.S.6/98 dated 15.11.1999. Ex.A12 is four lines of DW1 in O.S.6/98 dated 15.11.1999. Ex.A13 is first line of DW1 in O.S.6/98 dated 15.11.1999. Ex.A14 is first line of DW1 in O.S.6/98 dated 15.11.1999. Ex.A15 is first line of DW1 in O.S.6/98 dated 15.11.1999. Ex.A16 is two lines of DW1 in O.S.6/98 dated 15.11.1999. Ex.A17 is three lines of DW1 in O.S.6/98 dated 15.11.1999. Ex.A18 is two lines of DW1 in O.S.6/98 dated 15.11.1999. Ex.A19 is first line of DW1 in O.S.6/98 dated 15.11.1999. Ex.A20 is two lines of DW1 in O.S.6/98 dated 15.11.1999. Ex.A21 is two lines of DW1 in O.S.6/98 dated 15.11.1999. Ex.A22 is first line of DW1 in O.S.6/98 dated 15.11.1999. Ex.A23 is two lines of DW1 in O.S.6/98 dated 15.11.1999. Ex.A24 is copy of complaint dated 11.08.1999. Ex.A25 is CC of FIR in Crime No.152 of 1997. Ex.A26 is CC of petitioner's evidence in CC.184 of 1998 and Ex.A27 is CC of

judgment in CC.184 of 1998. On behalf of the appellant/husband, the appellant/husband himself was examined as RW.1 and got marked Exs.B1 to B5. Ex.B1 is original Adhar Card. Ex.B2 is acknowledgment issued for Adhar Card. Ex.B3 is letter issued by SCR. Ex.B4 is family member of particulars and Ex.B5 is undertaking given by the respondent. The Court below after analysing the evidence on record on this issue held that respondent No.1/wife was able to prove that she is the legally wedded wife of the appellant/husband. The findings recorded in this regard are based on oral and documentary evidence, which cannot be faulted with.

7. Now the question that requires answer is whether the Court below is justified in directing to deduct Rs.2,50,000/- from the retirement benefits of the appellant/husband in terms of the decree passed in the subject O.P.No.35 of 2009? Admittedly, the appellant/husband was a railway employee. He took voluntary retirement from service. The Court below was pleased to direct deduction of an amount of Rs.2,50,000/- from the retirement benefits of the appellant/husband in terms of the decree passed in O.P.No.35 of 2009. RW.1 admitted in his evidence that he has not paid Rs.2,50,000/- to the daughter of the respondent No.1/wife as per the orders in O.P.No.35 of 2009, since the Railway Authorities

stopped payment in view of the letter addressed by the respondent No.1/wife. The Court below adverting to this issue, held that during the course of arguments, the appellant/husband made an offer to the respondent No.1/wife to join his company and he is ready to give half of the retirement benefits if she withdraws the petition, which shows his financial capability. Under these circumstances, the Court below is justified in passing a direction to deduct an amount of Rs.2,50,000/- from the retirement benefits of the appellant herein, which cannot be find fault with.

8. Now the question that needs to be answered is whether the respondent No.1/wife is entitled for half of the retirement benefits of the appellant/husband? It has been contended that several amounts have fallen due by the appellant/husband payable to the respondent No.1/wife in relation to maintenance etc. To recover the said amounts, she filed O.P.No.35 of 2009. As per the decree in O.P.No.35 of 2009, Rs.2,50,000/- has to be deducted from the retirement benefits of the appellant/husband. In view of the circumstances, firstly respondent No.1/wife has to establish the amounts which were fallen due and she has to recover those amounts in terms of the order passed in subject O.P.No.35 of 2009 in relation to grant of maintenance etc. However, to recover the due amounts, there is enabling provision under the Code of

Civil Procedure or Domestic Violence Act, as the case may be and the respondent No.1/wife has to resort to the remedies available under law. Without there being any proper calculation and establishing the amounts due/payable to the respondent No.1/wife, the direction of the Court below that the respondent No.1/wife is entitled for half of the retirement benefits to protect her claim of maintenance is unsustainable and to that extent, the order under challenge is liable to be set aside.

9. As regards the contention that the appellant/husband can make any person as his nominee, as rightly contended by the learned counsel for the appellant/husband, it is the choice and prerogative of a person to name anybody of his choice as his nominee and there cannot be any compulsion on an employee to nominate only the spouse as his/her nominee.

10. In view of the above discussion, the impugned order, dated 05.01.2012, is modified as follows:

- i) The direction of the Court below that the respondent No.1 is the legally wedded wife of the appellant/husband and to deduct an amount of Rs.2,50,000/- from the retirement benefits of the appellant/husband are upheld.

- ii) The direction of the Court below that the respondent No.1/wife is entitled for half of the retirement benefits to protect her claim of maintenance is set aside.

11. With the above modification of the impugned order dated 05.01.2012, passed in O.P.No.275 of 2010, by the Judge, Family Court, Secunderabad, this appeal is disposed of.

Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

M.G.PRIYADARSINI, J

9th December, 2022
PNS / BVV