

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER  
AND  
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

**FAMILY COURT APPEAL No.449 OF 2018**

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

Aggrieved by the grant of permanent alimony of Rs.10,00,000/- to the respondent/wife, vide order, dated 20.08.2018, passed in O.P.No.1128 of 2012, by the Judge Additional Family Court, Hyderabad, the appellant/husband filed this appeal under section 19 of the Family Courts Act, 1984, seeking to set aside the same. The other part of the impugned order, i.e., grant of divorce under section 13 (1)(ia) of the Hindu Marriage Act, 1955 (for short 'the Act'), is not under challenge in this appeal.

2. We have heard the submissions of Mr. L.Anand, learned counsel, appearing for Mr. P.Nagendra Reddy learned counsel for the appellant/husband, Mr. K.R.Koteswara Rao, learned counsel for the respondent/wife and perused the record.

3. Learned counsel for the appellant/husband would contend that Section 25 of the Act mandates filing of an application for grant of permanent alimony. In the instant case, no such application is filed by the respondent/wife before the Court below.

Further the Court below, without adverting to the living conditions of both the parties, particularly, the income of the both the parties and other circumstances, granted permanent alimony of Rs.10,00,000/- to the respondent/wife, which is erroneous. Grant of permanent alimony of Rs.10,00,000/- in favour of the respondent/wife is exorbitant, without application and without taking monthly income of the appellant/husband into consideration and ultimately prayed to allow the appeal has prayed for.

4. *Per contra*, the learned counsel for the respondent/wife would contend that the Court below had specifically dealt with the issue of grant of permanent alimony in paragraph No.24 of the impugned order, dated 28.08.2018. The respondent/wife studied only up to Intermediate and she has no means to maintain herself. Without there being any application filed under section 25 of the Act, the Family Court is bestowed with the power to grant permanent alimony. As far as the income and status of the parties are concerned, appellant is working as Junior Assistant in Animal Husbandry Department and has sufficient means to pay permanent alimony as ordered by the Court below. Grant of permanent alimony Rs.10,00,000/-by the Court below, in the facts and circumstances of the case, cannot be held to be exorbitant. The Court below is justified in granting permanent alimony of

Rs.10,00,000/- to the respondent/wife and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the point that arises for determination in this appeal is as follows:

*“Whether the Court below is justified in granting permanent alimony of Rs.10,00,000/- in favour of respondent/wife, vide order, dated 20.08.2018 passed in O.P.No.1128 of 2012?”*

**POINT:-**

6. The core contention of the learned counsel for the appellant/husband is that Section 25 of the Act mandates filing of an application for grant of permanent alimony, but in the instant case, no such application was filed by the respondent/wife and hence, the Court below is not justified in granting permanent alimony. Here, it is apt to extract Section 25 of the Act, which reads as follows:

**25 Permanent alimony and maintenance —**

**(1)** any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.

7. Merely because the wife had not presented a separate application praying for grant of permanent alimony, it cannot be said that she is not entitled to the same and that the Family Court is ousted of its jurisdiction to grant permanent alimony. Given the scope and object the Family Courts Act, every Family Court is vested with inherent powers of granting permanent alimony, even in the absence of any application regarding the same. The provisions of Section 25 of the Act have been introduced for the purpose of protecting the interest of such spouse against whom the Court has passed the decree. In matrimonial cases, the approach of the Court should be practical and not based on mere technicalities. The expression 'on an application made to it' employed in Section 25 of the Act should not be construed narrowly but keeping in mind the intent of the Legislature in enacting this provision. Grant of permanent alimony and maintenance under Section 25 of the Act is *sine qua non* if the

prayer is made in that regard, whether in writing or orally. The mode and form of the application under Section 25 of the Act for claiming permanent alimony is immaterial. What is essential is the material before the Court to decide the same. Further, the Court cannot pass any order of permanent alimony and maintenance in vacuum. The Court has to consider the parameters as guided in the provision itself. The relief is incidental in nature and it is not the substantive relief.

8. In the instant case, the appellant/husband is working as Junior Assistant in Animal Husbandry Department in Government of Andhra Pradesh. As per Ex.P9, his gross salary is Rs.28,710/- and his net salary is Rs.23,292/-. The Court below held that the appellant/husband has no exclusive liability to maintain his mother since he has brothers and has own house in Hyderabad. On the other hand, the respondent/wife studied up to intermediate only. It is not the case of the appellant/husband that the respondent/wife has independent income to maintain herself. Since the appellant/husband has sufficient source of income to pay permanent alimony, the Court below is justified in granting permanent alimony of Rs.10,00,000/- to the respondent/wife. The Court below while dealing with determination of permanent alimony, also adverted to the proceedings in M.C.No.77 of 2012

and the order passed in the said case and observed that for non-payment of arrears of interim maintenance of Rs.57,200/-, the respondent/wife filed E.P.No.11 of 2015 which is pending before the Court concerned and the respondent/wife can pursue the said E.P. and recover the said amount.

**9.** In the course of submissions, it is brought to the notice of this Court that the respondent/wife filed a Maintenance Case against the appellant/husband, which was allowed by the Court below directing the appellant/husband to pay monthly maintenance of Rs.4,500/- per month on or before 10<sup>th</sup> day of every calendar month. It is also submitted on behalf of the respondent/wife that from August, 2021, the appellant/husband did not pay monthly maintenance as per the directions of the Court below. One month back, he paid an amount of Rs.5,000/-to the respondent/wife.

**10.** It is also relevant to state that by order, dated 12.04.2019 passed in I.A.No.2 of 2018 in this appeal, this Court was pleased to grant interim suspension of the impugned order, subject to the appellant/husband depositing a sum of Rs.5,00,000/- to the credit of the subject O.P.No.1128 of 2012 on the file of the Court below. When the matter came up before this Court on 22.11.2022, it was

brought to the notice of this Court that not even a single pie was paid by the appellant/husband so far to the respondent/wife.

**11.** Having regard to the totality of the circumstances and in view of the foregoing discussion, we are of the firm opinion that the Court below is justified in granting permanent alimony of Rs.10,00,000/- to the respondent/wife vide impugned order, dated 20.08.2018. There are no circumstances to vary the same. The submissions made on behalf of the appellant/husband do not merit consideration. The appeal is devoid of merit and is liable to be dismissed.

**12.** Accordingly, the appeal is dismissed. No costs.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

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**Dr. SHAMEEM AKTHER, J**

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**NAGESH BHEEMAPAKA, J**

24<sup>th</sup> November, 2022  
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