

HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA
AND
HONOURABLE SMT JUSTICE M.G.PRIYADARSINI
FAMILY COURT APPEAL No.446 of 2017

JUDGMENT: *(per Hon'ble Dr. Justice Chillakur Sumalatha)*

This Family Court Appeal is the outcome of the order that is rendered by rendered by the Family Court, Ranga Reddy District at L.B.Nagar in FCOP.No.802 of 2012, dated 23.10.2017.

2. The respondent, being the wife of the appellant, moved an application under Section 9 of the Hindu Marriage Act, 1955, before the Family Court seeking restitution of conjugal rights. Having considered the pleas taken by both the parties and the evidence produced, the learned judge of the Family Court came to a conclusion that an order of restitution of conjugal rights cannot be passed. The learned judge thereby dismissed the said FCOP. However, an amount of Rupees Twenty Lakhs was granted to the respondent-wife towards permanent alimony. The appellant-husband was directed to pay the

said sum within one month from the date of the order.

Aggrieved by the same, the appellant is before this Court.

3. Heard the submissions made by the learned counsel for the appellant. Learned counsel appearing for the respondent failed to make his submission.

4. Without referring and disputing any of the observations made by the learned judge of the Family Court in the impugned order regarding the merits of the case, learned counsel for the appellant contended that the appellant is aggrieved by the impugned order only to the extent of awarding permanent alimony to the respondent. Learned counsel stated that there is neither negligence nor any mistake on part of the appellant and it is the respondent who left the company of the appellant more than a decade ago, that too, leaving their daughter. Learned counsel submitted that it is the appellant who got the said daughter educated all through. Learned counsel stated that the appellant to fulfil the aspiration of his daughter, started working at U.S.A, accumulated amount and spent for her daughter as she exhibited an intention to become doctor. Learned counsel stated that the daughter of

the appellant has completed her M.B.B.S. and also PG and now, she is aspiring to enter into super speciality programme at U.S.A. and the appellant is making necessary arrangements to that effect. Learned counsel submitted that because of the ill-health, the respondent could not lead marital life with the appellant and though the appellant took the respondent to U.S.A., she returned to India within 25 days and started residing alone. Learned counsel further stated that the respondent is taking treatment at Anuvamshika Ayurveda Vydyasala, Tenali, Guntur District. Learned counsel apprehends that in case, the said sum of Rupees Twenty lakhs is given to the respondent, the persons who always surround her would meddle with the said sum and exhaust the same within no time. Learned counsel submitted that as the respondent was at fault and as the appellant is the sufferer, the Family Court ought not to have awarded any amount towards permanent alimony and further, the amount awarded is excessive. Learned counsel finally sought to set aside the award of the Family Court ordering permanent alimony in

favour of the respondent or at least to reduce the same considerably.

5. It is not in dispute that after marriage, the appellant and the respondent led happy marital life for a considerable period. The appellant in his counter clearly made a mention that trouble started after four years of marital life. The version of the appellant is that the respondent started behaving abnormally losing her balance and the reason for the same is her mental ill-health. The appellant also narrated that one of the sisters of the respondent committed suicide after 25 years of her marital life, that too, without any reason and thereafter, another sister committed suicide after 12 years of her marital life without any reason and thereafter, the psychological and mental condition of the respondent started deteriorating day-by-day. Further, it is clearly borne by record that the respondent was taken to U.S.A. by the appellant, but within 25 days she returned to India.

6. The respondent who got examined herself as P.W-1, during the course of her cross-examination clearly admitted that the appellant and his employer took her to a

Psychiatrist at U.S.A. However, she volunteered that they never allowed her to speak with the doctor. In this regard, the observation of the learned judge of the Family Court is that a Psychiatrist will not treat any patient without hearing the patient. She also stated during the course of cross-examination that it is her mother-in-law who took care and maintained her daughter since her age of three months. She further stated that it is the appellant who provided all facilities and got her daughter educated. She deposed that as the appellant made stupid allegations against her, she filed the case for restitution of conjugal rights. She stated that she took treatment at Spandana Psychiatric Hospital, Vijayawada. However, she volunteered that she took treatment for obesity. She admitted that she is undergoing treatment for bi-polar mental disorder. She further admitted that due to love towards her, the appellant has spent money for her treatment with a hope that she would become normal. She also admitted that the appellant spent money for maintenance and education of her daughter and got her daughter admitted at medical college in a foreign country. She also admitted that she is

taking treatment periodically at Anuvamshika Ayurveda Vydyasala, Tenali, Guntur District. However, her version is that on very few occasions, she becomes aggressive.

7. Having considered the pleas taken by both the parties and expressing an opinion that order of restitution of conjugal rights is undesirable, the learned judge of the Family Court negatived the request of the respondent. However, having considered her position, the learned judge awarded a sum of Rupees Twenty lakhs as permanent alimony.

8. It is not the case of the appellant that he is not in a position to pay such a sum. Also, it is not his version that the respondent is not entitled for such sum. His only apprehension is that the said sum will not be utilised for the welfare of the respondent and the persons who surround the respondent would misuse the said sum.

9. It is borne by record that the respondent is suffering from some psychiatric problem. That does not mean that the respondent cannot take care of her financial issues. Also, when the manner in which the respondent stood for cross-examination is considered, we are of the view that

the respondent can be considered to be sufficiently sane so as to take care of her necessities and spend the amount for the same. Also, by the contention of the appellant himself, it is clear that the respondent is under medication since long time and she requires further follow-up treatment. Though it is brought on record that the appellant, as father is taking good care of his daughter, there is every obligation on his part even to attend the necessities of his wife. Admittedly, the couple are living separately not due to adamant attitude or negligent behaviour on part of the respondent, but due to her mental illness, for which she cannot be blamed. Also, we are of the considered view that awarding a sum of Rupees Twenty lakhs towards permanent alimony is not unreasonable. As earlier indicated, it is not the version of the appellant that he is incapacitated to pay such amount. Also, we have already made an observation to the effect that the respondent can be termed to be sane enough to spend the amount awarded as permanent alimony for her treatment and towards her maintenance. Therefore, we hold that the well-reasoned order of the Family Court needs no interference.

10. Resultantly, this Family Court Appeal is dismissed, confirming the order that is rendered by the Family Court, Ranga Reddy District at L.B.Nagar in FCOP.No.802 of 2012, dated 23.10.2017. Each party do bear their own costs.

11. Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

JUSTICE M.G.PRIYADARSINI

03.02.2023
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