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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 14th September, 2023*

+ **MAT.APP.(F.C.) 69/2016 & CM APPLs. 33766/2016, 15242/2023**

DIPANKAR MAHTO Appellant

Through: Mr. Keshav V. Hegde, Advocate.

versus

RATNA CHOUDHARY Respondent

Through: Ms. Sanya Panjwani, Advocate with
appellant in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. An appeal under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as "*the Act*") has been filed against the judgment dated 19.05.2016 vide which the petition under Section 25 of the Act filed by the respondent/ wife has been allowed and permanent alimony has been granted.
2. The parties got married on 15.01.1999. The respondent/ wife developed Ovarian Cancer in December, 2009 for which she underwent the treatment including chemotherapy and three surgeries. The respondent/ wife claimed that while she was being given treatment, she was deserted by the appellant/ husband who started staying with his office colleague Preeti. He did not contribute even a penny towards her medical treatment which was very expensive.
3. Admittedly, the respondent/ wife is M.Sc. and a Government servant



working in Ministry of Statistics and P.I, New Delhi and was getting a gross salary of Rs.1,20,707/- at the time of filing of the petition. She asserted that 30% of her salary was being deducted towards House Rent Allowance (HRA) while she spent about 60% to 70% of her day to day expenses. She further asserted that all her resources got exhausted for her treatment of cancer. She took financial support in the sum of Rs.25 lakhs and also took advance from her GPF in order to meet her expenses for treatment.

4. The respondent/ wife further asserted that the appellant/ husband is B.Sc. (Hons.) and L.LB and in Government service working in Ministry of Textiles and holding the post of Deputy Jute Commissioner. The appellant also owns three properties aside from having a share in ancestral house and agricultural land located in District Purulia, West Bengal. The respondent had further asserted that the appellant had a luxurious life style and would frequently go for holidays along with family members. The respondent sought permanent alimony of Rs.50 lakhs and Rs.50,000/- per month, transfer of ownership of Flat No.25, First Floor, Sidhi Vinayak Apartments, Indirapuram, Ghaziabad and Rs.5 lakhs as litigation expenses.

5. The **appellant/ husband while denying** the assertions made by the respondent /wife, admitted that the respondent was detected with Ovarian Cancer, but asserted that her last treatment was in 2010 after which she has fully recovered. She is in fact on a senior position in the Government service and her income is more than that of the appellant. She is getting a salary of Rs.1,25,000/- per month.

6. The appellant further admitted that he has ancestral property in District Purulia, West Bengal. He also admitted that he had purchased a flat at Indirapuram in the year 2004 for Rs.11 lakhs, but asserted that Rs.10



lakhs were arranged by him through home loan from LIC Housing Finance Ltd. and Rs.1 lakh from personal loan. It was asserted by him that at that time the respondent/ wife was not residing with him. Moreover, he has now already sold the said property.

7. It is further asserted by the appellant that the respondent has failed to provide clear evidence of her financial status. She has filed the bank statements from January, 1999 to December, 2005 which shows the deposit of Rs.17.8 lakhs. The respondent had a take home salary of Rs.8,530/- in August, 2001 and Rs.10,909/- in April, 2002. With such a limited salary, it is not possible for her to have transacted in the sum of Rs.17.8 lakhs in a span of 7 years. He further asserted that after the divorce was granted by the Court, he got married to Smt. Preeti and has two children with whom he is residing in a property at East Phool Bagan, Kolkatta which he had purchased by taking home loan of Rs.47 lakhs from LIC HFL jointly with his spouse.

8. The appellant further asserted that the respondent/ wife has wrongly claimed that she is incurring huge expenses on her treatment consistently till date as she got fully cured in 2010.

9. On the pleadings, **issues were framed on 29.10.2015** as under :

“(i) Whether the petitioner is entitled for permanent alimony and maintenance from the respondent? OPP”

10. The parties appeared as witnesses in respect of their respective assertions.

11. The learned Principal Judge, Family Court after considering the evidence as led by the parties granted permanent alimony as under :

- Rupees 3,36,000/- towards her medical expenditure for her treatment of cancer;



- Rupees 20 lakhs for enabling the respondent/ wife to purchase a residence for herself;
- Rupees 10,000/- per month w.e.f 22.09.2015 i.e. the date of filing the application for her entire life time as her alimony;
- Rupees 7,000/- per month for hiring a nurse or maid to help the respondent in household work and to take care of her; and
- Rupees 25,000/- as litigation expenses.

12. Aggrieved by the said Judgement, the present appeal has been preferred.

13. **Submissions heard and the record perused.**

14. The **first contention** raised on behalf of the appellant is that the divorce has been granted to the appellant vide judgment dated 21.09.2012 on the grounds of cruelty and desertion. It is the respondent who herself had deserted the appellant and she cannot draw a premium from her own wrong by claiming maintenance.

15. In Rohtash Singh vs. Ramandhari (2000) 2 RCR (CrI.) 286, it was observed that once the divorce is granted to the wife, though the marital ties are severed but the wife continues to be so and is therefore, entitled to permanent alimony. Once, the divorce has been granted, the grounds become irrelevant as she becomes “a divorced wife” and by virtue of that status she is entitled to maintenance. Therefore, the grounds on which the divorce is granted cannot be considered for denying the permanent alimony to the wife. Learned Principal Judge, Family Court has thus, rightly concluded that once the divorce is granted, the divorced wife becomes entitled to maintenance.

16. The **second aspect** is the quantum of maintenance. It is not in dispute



that both, the appellant and the respondent, are Senior Government Officers in Government of India and are getting almost comparable salaries. The respondent/ wife claimed that she suffered from Ovarian Cancer in the year 2009-10 , but admittedly she was fully cured of Cancer in the year 2010. She, however, claimed that she is still being continuing with Naturopathy and is taking other alternate treatment to prevent its re-occurrence and is thereby incurring huge medical expenses. However, she has admitted that she is a CGHS beneficiary and all the bills raised from Government Hospital are reimbursable. She has also admitted in her evidence that she has four brothers who had been supporting her in her treatment for Cancer during the year 2009. Her younger brother Shri Shobhan Chaudhary paid all her medical expenses from December, 2009 onwards. He arranged a loan of Rs.25 lakhs for treatment of chemotherapy and surgery in the year 2009-10, though, she had no document on record to prove her assertions. She asserted that she was able to manage her treatment with the help of her brothers who were paying her deficit budget of Rs.1 lakh per month.

17. The evidence of the parties establishes that the respondent/ wife is a Government servant entitled to medical reimbursement and is having a salary somewhat commensurate to that of the appellant/ husband. She has admittedly being cured of her Cancer in the year 2010. She had made a claim of expenditure of huge amounts on her treatment, but unfortunately has not been able to support the same by any document or cogent evidence. Admittedly, she had been supported by her brothers for her treatment. *In these circumstances, granting of Rs.3,36,000/- towards the reimbursement of medical treatment is not justiciable.*

18. The respondent had also asserted that she has been regularly



undergoing alternate therapy to ensure that the Cancer does not reoccur, but again there is no cogent evidence about her regular expenditure on her medical treatment as asserted by her. This becomes significant and relevant in view of the fact that she is entitled to reimbursement/ treatment from CGHS. Therefore, her claim for maintenance towards medical expenditure is not justiciable.

19. The respondent/ wife had further asserted that she was staying in a Government hostel and her aged 85 year old father is residing with her and is dependent upon her.

20. The respondent however, has admitted that she has four brothers and as per her own submissions two of her brothers had spent huge amount of Rs.25 lakhs aside from Rs.1 lakh per month for her treatment. The four brothers, therefore, share the responsibility of taking care of the father. It did not rest solely on the respondent as was tried to be projected by her. Learned Principal Judge, Family Court has also observed that in case the aged father was dependent upon respondent, then she even get him declared so in her Government records and claim reimbursements for him.

21. We, therefore, are constrained to observe that father though may have been living with her for her support, but cannot be termed as financially dependent upon her or being her responsibility exclusively for his maintenance.

22. The **third aspect** on which much evidence has been led is in respect of the properties owned by the appellant/ husband.

23. Admittedly, he has a share in ancestral house and agricultural land in District Purulia, West Bengal. However, there is no evidence to show what was the annual income that was being generated from his ancestral property.



Be as it may, it atleast reflects that he had ancestral properties, in which he had a share.

24. The respondent/ wife had asserted that appellant/ husband had owned a flat in Indirapuram, Ghaziabad which had been purchased by him in the year 2004. The appellant had asserted that the respondent had left in the year 2003 itself and he had purchased the flat in Indirapuram in 2004 (when she was not residing with him), on payment of sale consideration of Rs.14 lakhs which he had raised through home loan and personal loan. He had asserted that he has sold of the said flat, but from the evidence it has emerged that the property had only been mortgaged and subsequently redeemed on 25.07.2013.

25. Also, admittedly he has purchased another property in East Phool Bagan, Kolkata on payment of Rs.54 lakhs wherein he is residing with his present wife Smt. Preeti and his two children.

26. It is asserted that the appellant has another property No.1 D, Block-4, Manjuri Garden, Ramchandrapur, Narendrapur, Kolkata which he claimed that the property belonged to his brother-in-law, but failed to produce any document in support of his assertions and there was nothing produced to show that he was not the owner of the said property.

27. From the evidence on record, it is evident that appellant has properties in his name and would naturally be having some income from his properties. Yet at the same time, it cannot be overlooked that it has emerged in the evidence that before joining the Government service the appellant was working in private sector and was having a good salary as is reflected from her bank statements. The respondent is a qualified lady having a secured prestigious job in Government of India.



28. The respondent now has the additional responsibility of his wife and two children. Evidently, the appellant has utilized his earnings and resources while working in the Government to arrange a house for himself. The respondent has no other additional obligation except to maintain herself. Having been working in a senior position in Government of India, she would have been able to secure enough funds in a similar manner as the appellant, to take care of her residential requirement.

29. Yet, it cannot be over looked that there is no averment that she has any property whatsoever and, therefore, definitely would require some residential accommodation for stay after her retirement from Government service. As has been observed by learned Principal Judge, Family Court the true incomes have not been revealed by either party, but in the given circumstances, grant of Rs.20 lakhs for her requirement of residence for her remaining life as granted by the learned Principal Judge, Family Court cannot be faulted and is held to be justified.

30. The respondent has also been awarded Rs.7,000/- per month for engaging a nurse or a maid to take care of her. She has also been awarded additional sum of Rs.10,000/- per month for her day to day maintenance. In all Rs.17,000/- per month has been granted to the respondent from the date of application under Section 25 of HMA for her entire life time.

31. As already discussed above, we do not see any justification in granting month to month maintenance in the sum of Rs.17,000/- per month in the light of her own independent source of income and also considering that Rs.20 lakhs have been granted to her in lumpsum for her residential needs. We, therefore, set aside the grant of maintenance @ Rs.17,000/- per month to the respondent.



32. Accordingly we hold that the respondent is entitled to only Rs.20 lakhs towards her permanent alimony in lumpsum and not to other amounts as allowed by learned Principal Judge, Family Court. The impugned order is accordingly modified and the present appeal, along with pending applications, is disposed of in the aforesaid terms.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 14, 2023
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