

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.209 of 2020

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Pankaj Kumar S/o Prem Kumar Kushwaha R/o House No. 26/10, Purani Labour Colony, P.S. and District- Saharanpur.

... .. Appellant/s

Versus

Sarita Sinha @ Savita Sinha W/o Pankaj Kumar, D/o Laliteshwar Prasad Sinha R/o Chhata Chowk, Kalambagh Road, near Aabkari Godown, P.S.- Kazimohammadpur, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Dharmendra Kumar Paswan, Advocate Mr. Amar Kumar, Advocate Ms. Deepshika, Advocate
For the Respondent/s	:	Mr. Devendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 06.03.2025

Heard learned counsels for the parties.

2. This Miscellaneous Appeal has been filed against the part of the judgment and order dated 04.12.2019 passed by the learned Principal Judge, Family Court, Muzaffarpur in Matrimonial (Divorce) Case No. 142 of 2010 whereby and whereunder the learned Court has allowed the petition and marriage of the respondent with the appellant has been declared dissolved under Section 13 of the Hindu Marriage Act, 1955 and the appellant has been directed to pay a sum of Rs. 15 lakhs to the respondent-wife as one time settlement amount.

3. The appellant has challenged the part of the



judgment wherein the Court has directed to make payment of Rs. 15 lakhs to the respondent-wife as one time settlement, i.e. permanent alimony.

4. The brief facts of the case is that the marriage of the appellant with respondent was solemnized on 23.02.2004 according to Hindu rites and rituals and they lived together for few months but from the initial days of marriage life differences cropped up and the couple lived apart. The respondent filed a dowry torture case against the appellant and also filed a maintenance case. The appellant filed divorce case being Original Suit No. 1169 of 2006 before the Court of Civil Judge (Sr. Division), Saharanpur, U.P. which was transferred to the Family Court, Muzaffarpur, vide order dated 16.03.2009 read with order dated 29.03.2010 in transfer petition (c) No. 412 of 2007 by the Hon'ble Supreme Court and the said original suit was converted into Matrimonial (Divorce) Case No. 142 of 2010. In the divorce petition, appellant pleaded that he was subjected to numerous malicious complaint by the respondent-wife. The appellant remained in custody for about three months. Written statement was not filed by the respondent, however, petition has been filed by her by way of rejoinder stating that the entire ornaments, gifted items were returned and Rs. 15 lakhs is to be paid as one time settlement amount by the appellant to the respondent-wife and she had agreed



for divorce. The learned Trial Court on considering the entire evidence on the record and considering that Opposite Party is ready for divorce, subject to demand of Rs. 15 lakhs as one time settlement amount and vide impugned judgment and order dated 04.12.2019, allowed the petition and held as under (para-8):-

“8. Considering the entire evidences from the record I find that the O.P. is ready for divorce subject to demand of Rs. 15 lacs as one time settlement amount and return all the gifted items including ornaments. While she was in sasural, she was subjected to torture by various means. I find that both the parties are living separately since after two months of marriage. It is a long period which is spent by the parties, there is no chance of reconciliation or resettlement of the marriage tie.

Hence, this court finds it proper to dissolve the marriage tie in between the parties subject to payment of amount of compensation of Rs. 15 lacs to the O.P. wife by the applicant husband. Applicant husband is directed to pay Rs. 15 lacs to the O.P. as per order within three months from the date of this order and after paying the amount of compensation to the O.P. by the applicant, O/C is directed to prepare decree of divorce accordingly.”

5. Against the award of Rs. 15 lakhs as permanent alimony this appeal has been filed on behalf of the appellant.

6. The only question to be decided in this case is



“whether the grant of Rs. 15 lakhs payable by the appellant to the respondent-wife as permanent alimony is justified or not?”

7. Learned counsel for the appellant submitted that the appellant has been unemployed since long time and is living with his parents in Saharanpur and having no source of income. He is unable to make payment of the said amount.

8. Per contra, learned counsel for the respondent-wife submitted that since respondent has no source of income and the appellant is liable to provide permanent alimony to her as decided by the learned Trial Court which is just and proper, requires no interference by this Court.

9. It appears from the record that during the proceeding of this case the appellant in compliance of the order dated 20th April, 2024 paid Rs. 7.50 lakhs to the respondent-wife and also paid Rs. 50,000/- as cost of litigation. In Maintenance Case No.92 of 2006, filed by the respondent-wife under Section 125 of Cr.P.C. vide order dated 15.12.2008, the appellant-husband had been directed to pay a monthly sum of Rs. 3,000/- (Rupees Three Thousand Only) towards her maintenance. The respondent-wife has admitted that appellant has paid Rs. 3 lakh to her against the maintenance order in Maintenance Case No. 92 of 2006.

10. The parties were directed to file their affidavit of



assets and liabilities in the light of the decision of the Hon'ble Supreme Court in the case of ***Rajnesh v. Neha*** reported in (2021) 2 SCC 324 read with ***Aditi @ Mithi v. Jitesh Sharma*** reported in 2003 SCC OnLine SC 1451 and ***Pravin Kumar Jain v. Anju Jain*** reported in 2024 SCC OnLine SC 3678. The parties have filed their affidavit of assets and liabilities.

11. Section 25 of Hindu Marriage Act, 1955 provides for grant of permanent alimony and maintenance. The primary objective of granting permanent alimony is to ensure that the dependent spouse is not left without any support and means after the dissolution of the marriage. It aims at protecting the interests of the dependent spouse and does not provide for penalizing the other spouse in the process.

12. The Hon'ble Supreme Court in the case of ***Rajnesh v. Neha*** (*supra*), provided a comprehensive criterion and list of factors to be looked into while deciding the question of permanent alimony. This judgment lays down and elaborate and comprehensive framework necessary for deciding the amount of maintenance in all matrimonial proceedings, which specific emphasis on permanent alimony and the same has been reiterated by Hon'ble Supreme Court in ***Kiran Jyot Maini v. Anish Pramod Patel*** reported in 2024 SCC OnLine SC 1724.



13. The Hon'ble Supreme Court in *Kiran Jyot Maini*

(*supra*), while discussing the husband's obligation to maintain the wife and the importance of his financial capacity in deciding the quantum, observed under para 26 that:

“26. Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account. The courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort post-separation.”

14. The Hon'ble Supreme Court in the case of *Pravin*

Kumar Jain (*supra*) has taken note of the various judgments to clarify the position of law with regard to determination of permanent alimony and the factors that need to be considered in order to arrive at a just, fair, and reasonable amount of permanent alimony. In para 31 it is held as under:

“31. There cannot be strict guidelines or a fixed formula for fixing the amount of permanent maintenance. The quantum of maintenance is



subjective to each case and is dependent on various circumstances and factors. The Court needs to look into factors such as income of both the parties; conduct during the subsistence of marriage; their individual social and financial status; personal expenses of each of the parties; their individual capacities and duties to maintain their dependents; the quality of life enjoyed by the wife during the subsistence of the marriage; and such other similar factors. This position was laid down by this Court in Vinny Paramvir Parmar v. Paramvir Parmar, and Vishwanath Agrawal v. Sarla Vishwanath Agrawal.”

15. The Hon’ble Apex Court, taking note of **Rajnesh v. Neha** (*supra*) and **Kiran Jyot Maini** (*supra*), in para 32 of **Pravin Kumar Jain** (*supra*) laid down the following eight factors to be looked into in deciding the quantum:

- “i. Status of the parties, social and financial.*
- ii. Reasonable needs of the wife and the dependent children.*
- iii. Parties’ individual qualifications and employment statuses.*
- iv. Independent income or assets owned by the applicant.*
- v. Standard of life enjoyed by the wife in the matrimonial home.*
- vi. Any employment sacrifices made for the family responsibilities.*
- vii. Reasonable litigation costs for a non-working wife.*
- viii. Financial capacity of the husband, his income, maintenance obligations, and liabilities.*

These are only guidelines and not a straitjacket rubric. These among such other



similar factors become relevant.”

16. It is pertinent to mention here that duration of the marriage is also a relevant factor in determining the permanent alimony. The Hon’ble Supreme Court in **Rajnesh v. Neha** (*supra*) in para 74 observed that:

“74. In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.”

(emphasis supplied)

17. In the present case, the parties cohabited for few months only and they are living separately for about two decades. It appears from affidavit of the respondent wife that she is a graduate but she is unemployed having no independent income and is solely dependent upon the alimony. She is residing in a out-house of the residential house of her father having expenses of Rs 20,000/- per month. As per her affidavit, she remained two months in matrimonial house having no knowledge of the property of appellant. On the other hand it appears from the affidavit of appellant husband that his educational qualification is B.Sc (H) and is working in private job having earning of Rs.30,000/- per month with liability to support his elderly parents. He asserted that



he has no assets except a Honda Activa two wheeler. He is residing in a rented house. He also claimed that respondent wife is earning Rs 30,000/- per month from tuition. There is no documentary evidence on record with respect to income/assets of the parties. The parties are aged about 44/45 years having no child born out of their marriage.

18. This Court is conscious of the fact that the cost of living has significantly increased over the years due to inflation and this factor is also required to be considered in the present case as the impugned judgment is of year 2019.

19. Considering the material on record, the argument advanced on behalf of parties, and the totality of facts and circumstances of this case, this Court is of the opinion that one-time settlement amount determined by the learned Principal Judge, Family Court, Muzaffarpur is a fair and balanced decision considering the standard of living enjoyed by the respondent-wife during subsistence of the marriage, the prolonged period of separation and the appellant financial capacity, the social and financial status of the parties, their current employment as well as future prospects, standards of living and their obligations, liability and other expenses, one time settlement amount of Rs. 15 lakhs is a just, reasonable, balanced and fair amount. This amount would also cover all pending and future claims.



20. The appellant has already paid Rs. 7.50 lakhs to the respondent-wife and he is required to pay the remaining amount of Rs. 7.50 lakhs to the respondent-wife within a period of four months from the date of this judgment.

21. This Miscellaneous Appeal stands dismissed with aforesaid directions.

22. Pending I.A(s)., if any, stands disposed of.

(Sunil Dutta Mishra, J)

P. B. Bajanthri, J

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	NAFR
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