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C.M.A.No.1303 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.08.2025

Pronounced on: 17.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.No.1303 of 2025
and C.M.P. No.11038 of 2025

Karthik Nagaraj
represented by his General Power of Attorney Agent ... Appellant /
Respondent.

vs.

Rasika Balachander ... Respondent / Respondent

PRAYER: The Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, 1984 to set aside the judgment and decree dated 17.04.2025 passed by the III Additional Principal Family Court, Chennai in I.A. No.4 of 2023 in I.A. No.2648 of 2016 in O.P. No.84 of 2015.

For Appellant : Mr.P.R. Raman, Senior Counsel
for Mr. Anupam Raghuraman



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For Respondents : Mr. R. Thiagarajan for Caveator.

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

The Civil Miscellaneous Appeal has been preferred as against the order dated 17.04.2025 passed by the III Additional Principal Family Court, Chennai in I.A. No.4 of 2023 in I.A. No.2648 of 2016 in O.P. No.84 of 2015 wherein the appellant herein has filed a petition before the Family Court for the relief of grant of divorce in O.P. No.84 of 2015 and the same was allowed and the marriage between the appellant and the respondent was dissolved. During the pendency of the above said original petition, a petition in I.A. No.2648 of 2016 under Section 25 of Hindu Marriage Act was filed by the respondent wife claiming permanent alimony and the same was allowed by granting permanent alimony to the tune of Rs.2.75 crores and directing the appellant to execute release deed in respect of an house property in Plot No.302, G.R. Maithri, Jogupalaya Main Road, Alsoor, Bangalore in favour of the respondent wife within 6 months.

2. Thereafter, the appellant herein preferred a Civil Miscellaneous Appeal in C.M.A. No.1500 of 2018 as against the order passed in I.A.



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No.2648 of 2016, wherein the Hon'ble Division Bench of this Court has partly allowed the petition and the permanent alimony granted by the Family Court of Rs.2.75 crores was reduced to Rs.1.28 crores and as far as the execution of release deed is concerned, the order was confirmed. Apart from that, the appellant was given liberty by the Hon'ble Division Bench of this Court, to move an appropriate application under Section 25(3) of the Hindu Marriage Act, based on the subsequent events if any, so advised. Thereafter, the appellant herein, filed an application in I.A. No.4 of 2023 to set aside the order passed by the Family Court in I.A. No.2648 of 2016 in O.P. No.84 of 2015 dated 10.10.2017 granting permanent alimony in favour of the respondent wife and issue direction directing the release of his share in Bangalore flat as modified by Hon'ble Division Bench of this Court through an order in C.M.A. No.1500 of 2018 dated 31.10.2022 on the ground that the respondent was in live-in relationship with one Girish Nair subsequent to the divorce proceedings. The Family Court dismissed the petition.

3. Thereafter, the appellant preferred an appeal in C.M.A. No.928 of 2024 and the same was also dismissed. Thereafter, the appellant herein



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filed a Review Application in No.211 of 2024 and the same was allowed and the order passed by the Family Court was set aside and the matter was remanded back to the Family Court for adducing evidence. Thereafter, again the Family Court after analysing the evidences adduced on either side, dismissed the petition on the ground that once permanent alimony granted, the same cannot be set aside and the future maintenance alone can be set aside as per Section 25(3) of the Hindu Marriage Act. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been preferred by the appellant husband.

4. The learned Senior counsel appearing for the appellant husband would submit that the respondent was the wife of the appellant and the appellant filed a petition in O.P. No.84 of 2015 for grant of divorce and the same was allowed. During the above said proceedings, the respondent wife filed an application in I.A. No.2648 of 2016 for permanent alimony and the same was allowed by the Family Court by awarding a sum of Rs.2,75,00,000/- as permanent alimony and also directed the appellant to execute the release deed in favour of the respondent wife in respect of the property situated in Bangalore. Against which, the appellant filed a Civil



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Miscellaneous Appeal in C.M.A. No.1500 of 2018 and the same was partly allowed and the relief in respect of the execution of release deed was confirmed. The permanent alimony was modified and reduced from Rs.2.75 crores to Rs.1.28 crores. Thereafter, the respondent was living with another person and thereby, she has not remained chaste. Thereby, the appellant husband filed a petition in I.A. No.4 of 2023 before the Family Court to set aside the order passed by the Court in respect of the permanent alimony and direction to execute release deed in favour of the respondent. The Family Court came to a conclusion that "the respondent was in live-in relationship with one Girish Nair subsequent to the decree of divorce. However, the permanent alimony cannot be set aside, since it was payable within a period stipulated in the decree and it is not severable". The above said findings of the Family Court is perverse and as per Section 25(3) of the Hindu Marriage Act, the Court has power to vary, modify and rescind the order passed by the Court, if the respondent has not remained chaste. Therefore, the order passed by the Family Court is liable to be set aside.

4.1. In support of his contention, the learned Senior counsel appearing for the appellant has relied upon the following judgments:



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1. *Vengadesh vs. Subashini - Madras High Court - reported in MANU/TN/9605/2021.*

2. *Ashutosh Bandhobadhyay vs. Mukta Bandhopadhyay - High Court of Calcutta - reported in MANU/WB/1533/2018.*

3. *Raja Gopalan vs. Rajamma - High Court of Kerala - reported in AIR 1967 KER 181.*

4. *Sachindra Nath Biswas vs. Banamala Biswas and others - High Court of Calcutta - reported in AIR 1960 CAL 575.*

5. *Sardari Lal vs. Vishano reported in AIR 1970 J & K 150.*

5. The learned counsel appearing for the respondent wife would submit that the marriage between the appellant and the respondent was already dissolved through a Decree of divorce by the Family Court and the Family Court also awarded permanent alimony to the tune of Rs.2.75 crores and also directed the appellant to execute release deed in respect of the property situated in Bangalore in favour of the respondent wife and the same was challenged by way of an appeal in C.M.A. No.1500 of 2018 by the appellant. The Division Bench of this Court has partly allowed the appeal and reduced the permanent alimony from Rs.2.75 crores to Rs.1.28



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crores and in respect of the execution of release deed is concerned, the order was confirmed by the Hon'ble Division Bench of this Court. Still the appellant has not paid the entire permanent alimony and executed the release deed and the same is pending for execution before the Family Court. While so, with false allegations, the appellant has filed a petition to set aside the order passed by the Court under Section 25(3) of the Hindu Marriage Act. In fact, the appellant made allegations against the respondent that after divorce she is having affair with one Girish Nair. The said allegation is false and incorrect.

5.1. If at all aggrieved by the order of the Hon'ble Division Bench of this Court, his remedy lies elsewhere and not under Section 25(3) of the Hindu Marriage Act. Already the respondent has filed an Execution Petition in respect of the execution of release deed and for recovery of permanent alimony, now only with a view to avoid execution of release deed, he filed this petition. Since permanent alimony was granted earlier, it cannot be set aside under Section 25(3) of the Hindu Marriage Act and if any future maintenance is granted, then the same can be set aside. Therefore, the Family Court has passed a reasoned order by relying upon



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the judgments of *Hon'ble Division Bench of Rajasthan High Court in Pista (Smt) vs. Bheru Lal reported in 2005 SCC Online Raj 831 and Narendra Kumar vs. Sujata Dev reported in AIR 2011 PATNA 135.*

Therefore, the Family Court has correctly declined to grant any relief to the appellant and therefore, the present appeal is liable to be dismissed.

6. This Court heard both sides and perused all the materials available on record.

7. Upon hearing both sides and perusing the records, the *point for determination is whether the appellant is entitled to the relief of rescind the order passed by the Court granting permanent alimony and directing the appellant to execute release deed in favour of the respondent, on the ground that the respondent has not remained chaste.*

8. In this case, the followings facts are admitted by both the parties:

8.1. The marriage between the appellant and the respondent was solemnized on 27.06.2002 and

8.2. The said marriage was dissolved through an order passed by the III Additional Principal Family Court, Chennai in O.P. No.84 of



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2015 dated 10.10.2017.

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9. During the pendency of the above said original petition, the respondent wife filed an application in I.A. No.2648 of 2016 for grant of permanent alimony and to execute release deed in respect of a property situated at Bangalore in favour of the respondent wife and the same was allowed by directing the appellant to pay a sum of Rs.2,75,00,000/- towards permanent alimony to the respondent and to execute a release deed in favour of the respondent wife in respect of a property situated at Bangalore. The said order was challenged before this Court through a Civil Miscellaneous Appeal in C.M.A. No.1500 of 2018, wherein this Court confirmed the order in respect of execution of release deed and modified the order in respect of permanent alimony and reduced the permanent alimony from Rs.2.75 crores to Rs.1.28 crores. Already the appellant paid a sum of Rs.80 lakhs to the respondent and the remaining amount of permanent alimony has to be paid and release deed has to be executed. To that effect, the respondent also filed an execution petition before the Family Court and the same is also pending.



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10. In the meantime, the appellant has filed a petition before the Family Court in I.A. No.4 of 2023 to set aside the order passed by the Family Court in I.A. No.2648 of 2016 dated 10.10.2017 awarding permanent alimony alleging that the respondent is leading a family life with one Girish Nair and thereby, the order of awarding permanent alimony and directing the appellant to execute a release deed in favour of the respondent is liable to be set aside. The said petition was dismissed and thereafter, the appellant herein preferred an appeal in C.M.A. No.928 of 2024 and the same was also dismissed. Thereafter, the appellant filed a Review Application in No.211 of 2024, wherein, this Court set aside the order passed by the Family Court by allowing the review petition and remitted back the matter to the Family Court for fresh consideration. Thereafter, the Family Court passed the impugned order. Aggrieved by the said order, the present appeal has been preferred.

11. Before the Family Court, on the side of the appellant, he was examined as PW1 and marked Ex.P.1 to Ex.P.12. On the side of the respondent, she was examined as RW1 and marked Ex.R.1 to Ex.R.5. After considering the evidences adduced on either side, the Family Court



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dismissed the petition on the ground that the order of permanent alimony cannot be set aside, since it was payable within a period stipulated in the decree and it is not severable. The order of permanent alimony is not for future periodical payments and any order of future payments alone can be rescind due to the subsequent change of circumstances and the power of the Court under Section 25(3) of Hindu Marriage Act to set aside the future payments is reasonable and the said power cannot be invoked to set aside order of permanent alimony / gross sum. However, the Court recorded that 'though the appellant has proved that the respondent was in live-in relationship with one Girish Nair subsequent to the decree of divorce and decree of permanent alimony, the Court is not inclined to set aside the order passed in I.A. No.2648 of 2016.

12. At this juncture, it is relevant to extract provision of Section 25 of Hindu Marriage Act.

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



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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].

13. On a careful perusal of the above said provision of Section 25(3) of the Hindu Marriage Act, it is clear that the Court has power to vary, modify or rescind any such order in such a manner as the Court may deem just, 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 had sexual intercourse with any woman outside wedlock, it may at the instance of the other party. But the Family Court has taken a view that permanent alimony was already paid through a Decree and it is not severable and the order of permanent alimony is not future periodical payment and the order of future payments alone can be rescinded due to subsequent change of circumstances, but failed to consider the words used



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in Section 25(1) of the Act that "gross sum or such monthly or periodical sum".

14. At this juncture, it is relevant to rely upon the following judgments:

14.1. ***Vengadesh vs. Subashini - Madras High Court - reported in MANU/TN/9605/2021***, wherein, this Court held in Para Nos.7 to 9 as follows;-

"7. It is also seen that this Court, on 07.04.2021, has granted an order of interim stay of permanent alimony to the tune of Rs.10,00,000/-. In this regard, it is relevant to refer to Section 25(3) of the Hindu Marriage Act, 1955 as under:-

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, 2[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.

8. A perusal of the above provision clearly shows that the party, in whose favour an order has been made under this Section has re-married, the order granting permanent alimony can be modified or rescinded in such manner as the Court may deem fit.

9. In the present case, since the respondent has contracted her second marriage on 25.01.2021, which could be seen from the marriage invitation, photographs and marriage certificate of the respondent, we are of the view that the relief of permanent alimony cannot be granted in favour of the respondent. In view of the same, we are inclined to set aside the impugned order



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passed with regard to the permanent alimony and the same is set aside".

14.2. Ashutosh Bandhobadhyay vs. Mukta Bandhopadhyay - High Court of Calcutta - reported in MANU/WB/1533/2018.

14.3. Raja Gopalan vs. Rajamma - High Court of Kerala - reported in AIR 1967 KER 181.

14.4. Sachindra Nath Biswas vs. Banamala Biswas and others - High Court of Calcutta - reported in AIR 1960 CAL 575.

14.5. Sardari Lal vs. Vishano reported in AIR 1970 J & K 150.

15. On a careful perusal of the above said judgments, it is clear that as per Section 25(1) living in adultery is unchaste conduct, having lived in adultery, the wife is not entitled to any maintenance and as per Section 25(3) of the Hindu Marriage Act, unchaste on the part of the wife or husband had sexual intercourse with any woman outside the wedlock, subsequent to an order for maintenance, was a ground for its rescission. In the case on hand also, the appellant through his evidence proved that the respondent was in live-in relationship with one Girish Nair subsequent to the decree of divorce and the same was also accepted by the Family Court, but the Family Court failed to consider the provisions of Hindu Marriage



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Act in a proper perspective. Therefore, the same is unsustainable.

16. The Family Court has relied upon the following judgments:

16.1. Rajasthan High Court in ***Pista (Smt) vs. Bheru Lal reported in 2005 SCC Online Raj 831***, wherein the High Court of Rajasthan, in Para No.21, held as follows:-

"When the Court makes an order of permanent alimony or for one time payment, it is not founded on any stipulation that any part of sum would be refunded actually either whole or partly. Such sum is not granted on condition against remarriage for all times to come or for any particular period. In fact, it is something different from the obligation to her husband to maintain his divorced wife for his life or until remarriage. The permanent alimony in a way is an estimated sum in lump-sum to discharge the judgment-debtor from his future liabilities unconditionally. On the other hand, the grant of periodical payment by way of maintenance to a divorced wife is in recognition / obligation of the spouse to maintain her so long as she enjoys the continued status of divorcee. On such remarriage that status of divorcee comes to an end and she acquires another marital status as someone's spouse. Under the Hindu Adoption and Maintenance Act as well as under Section 125 Cr.P.C. wife includes a divorcee. Therefore, when the wife remarriage, her claim of maintenance primarily comes to stand against her new husband and coming into existence in new relationship, obligation of maintaining the divorced wife is shifted to the husband, whom she subsequently marries. The future obligation to maintain her by her previous husband comes to an end. That makes a case of permanent alimony different from a case of grant of periodical maintenance. Former is to discharge husband from his obligation for all times in lieu of a settled reason, in the later, he is required to continuously discharge his obligations at interval of every period".

16.2. Narendra Kumar vs. Sujata Dev reported in AIR 2011



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PATNA 135, wherein in Para No.22, held as follows:-

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"Admittedly, Section 25(3) of the Hindu Marriage Act, 1955 was amended by Section 17 of the Marriage Laws Amendment Act, 1976 and under the unamended section the liability to pay maintenance was restricted to the period during which the applicant remained unmarried. After the aforesaid amendment the words "while the applicant remains unmarried" were omitted. By this amendment, the Court is empowered not only to rescind order but to vary or modify it in such manner as it deems just. Therefore, mere remarriage by the wife does not restrict the Court to pass an order for maintenance in favour of the wife. In the aforesaid circumstances even if it is assumed for the sake of arguments that wife-respondent has solemnized her second marriage with the aforesaid Raju Sao, then also, the Court is not handicapped to provide maintenance to her. Moreover, as we have already held that the husband could not succeed to prove the factum of second marriage of his wife with the aforesaid Raju Sao, therefore, the question of rescinding her maintenance amount does not arise".

17. On a careful perusal of the above said judgments, the Rajasthan High Court held that when the Court makes an order of permanent alimony or for one time payment, it is not founded on any stipulation that any part of sum would be refunded actually either whole or partly. Such sum is not granted on condition against remarriage for all times to come or for any particular period. In fact, it is something different from the obligation to her husband to maintain his divorced wife for his life or until remarriage. the permanent alimony in a way is an estimated sum in lump-sum to discharge the judgment-debtor from his future liabilities unconditionally.



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On the other hand, the grant of periodical payment by way of maintenance to a divorced wife is in recognition / obligation of the spouse to maintain her so long as she enjoys the continued status of divorcee. On such remarriage that status of divorcee comes to an end and she acquires another marital status as someone's spouse. Therefore, that makes a case of permanent alimony different from a case of grant of periodical maintenance. The permanent alimony is to discharge the husband from his obligation for all times in lieu of a settled reason, in the later, he is required to continuously discharge his obligations at interval of every period. Therefore, Section 25(3) of Hindu Marriage Act is not applicable to the permanent alimony.

18. The said view taken by the Rajasthan High Court is totally against the provisions of Section 25 of the Hindu Marriage Act and the Division Bench of Rajasthan High Court failed to consider that the Section 25 of Hindu Marriage Act is applicable to both the husband and wife, the word 'permanent alimony' has not been used in Section 25 of the Act. Per contra, the words used are "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



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applicant". The wordings in Section 25(1) of the Act that "gross sum or such monthly or periodical sum" makes it clear that there is no any difference to apply the conditions of Section 25(3) of the Act. At the time of passing order under Section 25(1) of the Act, the Court need not stipulate conditions found in Section 25(3) in the order itself and it is implied that after decree granted under Section 25(1) of the Act, the party in favour of whom, the maintenance is granted to maintain the conditions of Section 25(3) of the Act. Section 25 is totally different from other enabling provisions, for maintenance to wife and children, found in other enactments and it is applicable only for Hindus. Since the maintenance under Hindu Marriage Act is applicable to husband and wife, the Courts cannot show any leniency to wife alone and when conditions are imposed to both the spouses under Section 25(3) of the Act, it has to be applied equally both the husband and wife. Therefore, the above said observation of the High Court of Rajasthan is out of scope of Section 25 of Hindu Marriage Act.

19. As per Section 25(3) of the Hindu Marriage Act, the party in whose favour, an order has been made, if the conditions mentioned in the



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Section 25(3) of the Hindu Marriage Act is breached by anyone of the party, then the opposite party can approach the Court to vary, modify or rescind the earlier order. As per Section 25(1) of the Hindu Marriage Act, the Court 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.. etc., The word used 'may' shows that it is the discretionary power to the Court and the Section refers to the payments to be made under it by one spouse to another as maintenance and does not use the expression 'permanent alimony', though the expression is used in the marginal note to the Section. The wording of the Section, when it states that "such gross sum or such monthly or periodical sum" makes it clear that once a decree is passed, the Court has discretion to pass an order, however the Court cannot order both a gross sum and a sum for monthly maintenance, the word used in the Section is disjunctive.

20. Under this Section, the obligation of one spouse to provide



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maintenance to another spouse does not come to an end simply on passing a decree for any of the relief and the Court is empowered to direct the amount to be paid by one spouse to another in the form of a gross sum or in the form of monthly or other periodical payments and the direction is limited to the life of the applicant. The Court is also empowered to vary, modify or rescind any such order in view of change in the circumstances of any party. The order may be rescinded upon proof of remarriage or unchastity of the party in whose favour it has been made. Therefore, the Courts cannot differentiate the words 'permanent alimony' and maintenance, however, the High Court of Rajasthan failed to note that the word 'permanent alimony' has not been used in Section 25 of the Act.

21. Section 25 of the Hindu Marriage Act, is a special provision for maintenance, enabling both the spouses. As per Section 25(3) of the Hindu Marriage Act, if a party, in whose favour, an order has been passed under Section 25(1) of Hindu Marriage act, has remarried 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



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such manner as the Court may deem fit. Therefore, from reading of Section 25(3) of the Hindu Marriage Act, it is clear that where the maintenance order passed under Section 25(1) of the Act, if any one of the conditions were breached, then the other party can approach the Court. Therefore, in view of the above said discussions, this Court is of the opinion that this Court is unable to accept the view of the Rajasthan High Court.

22. As far as the judgment in *Narendra Kumar vs. Sujata Devi reported in AIR 2011 Pat 135* is concerned, the Patna High Court observed that after the Marriage Laws Amendment Act, 1976, the words "while the applicant remains unmarried" were omitted. By this amendment the Court is empowered not only to rescind order, but to vary or modify it in such manner as it deems just, therefore, mere remarriage by the wife does not restrict the Court to pass an order for maintenance in favour of the wife. The said view taken by the Patna High Court is also totally against the Section 25(3) of the Hindu Marriage Act. If that is the intention of the legislature, they need not maintain the conditions to both the wife and husband in Section 25(3) of the Act and they could delete the conditions



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found in Section 25(3) of the Act. Moreover in Section 25(3), in the year 1976, the words substituted as "it may at the instance of other party, vary, modify or rescind any such order, in such manner, as the Court may deem just". Prior to the amendment, the words employed in Section 25(3) of the Act is that "it should rescind the order". But in the amendment, the words are that "it may, at the instance of other party, vary, modify or rescind any such order".

23. Therefore, the intention of the legislation is to keep the conditions in Section 25(3) of the Act. The view of Patna High Court appears that Section 25 of the Hindu Marriage Act is only applicable to the wife. Prior to the amendment of 1976, the words used that "while the applicant remains unmarried" and in the amendment, those words were omitted and not deleted the conditions imposed in Section 25(3) that "remarried 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", therefore, the words used in Section 25(3) shows that the conditions are common to both husband and wife and order under Section 25(1) is subject to conditions under Section 25(3) after the decree. Moreover in the same amendment substituted the words "the conduct of



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the parties and other circumstances of the case", therefore, the mere omission of the words "while the applicant remains unmarried" cannot take away the conditions of Section 25(3) and the intention of the legislature to include the words "the conduct of the parties and other circumstances" and the substitution in Section 25(3) also to be considered. While so, the Courts can not interpret as if Section 25(3) is only applicable for future maintenance and not applicable for the past maintenance and permanent alimony. Therefore, this Court is unable to accept the views of the High Courts of Patna and Rajasthan.

24. On the other hand, the Hon'ble Division Bench of Madras High Court, in the case of *Vengadesh vs. Subashini* has taken a view that the party in whose favour, an order has been passed under Section 25(1) of the Act, has remarried, the order granting permanent alimony can be modified or rescinded in such manner as the Court may deem fit. Therefore, this Court is also agree with the view taken by the Hon'ble Division Bench of this Court in the said *Vengatesh's* case. As far as permanent alimony is concerned, it is also a form of maintenance and it is to be paid as lumpsum amount that includes the past and future maintenance. However, the term 'permanent alimony' has not been used in Section 25 of the Act, whereas



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the words used are "gross sum or such monthly or periodical sum".

Therefore, the said conditions mentioned in Section 25(3) of the Hindu Marriage Act, will be applicable to all the orders passed by the Courts under Section 25(1) of the Act irrespective of nature of payment i.e., gross sum or such monthly or periodical sum. If the views of the High Courts of Rajasthan and Patna are accepted, then either the spouse can approach the Court for permanent alimony, then after remarriage, again approach the Court as against the spouse of the 2nd marriage for permanent alimony, that is not the intention of the legislature. The order passed under Section 25(1) of the Act for maintenance is payable till maintaining the conditions under Section 25(3) of the Hindu Marriage Act. Once any one of the conditions breached after the decree, then the other party can approach the Court under Section 25(3) of the Act. There are other enactments provided for maintenance of wife and children, but the only provision providing permanent alimony and maintenance to either spouse is under Section 25 of the Act.

25. Therefore, the conditions under Section 25(3) of the Act are mandatory, if any breach of conditions, the other party can approach the



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Court and there is no any such difference between the words stated in Section 25(1) as 'gross sum or such monthly or periodical sum' to invoke the provision under Section 25(3) of the Act. The order passed under Section 25(1) of the Hindu Marriage Act is subject to Section 25(3) of the Hindu Marriage Act and if any condition breached, then at the option of other party, the Court can vary, modify or rescind the order. Therefore, as per Section 25(3) of the Hindu Marriage Act, the Court has power to vary, modify or rescind the order passed by the Court under Section 25(1) of the Act, if any conditions mentioned in Section 25(3) of the Act, is breached.

26. Moreover, in this case, already the Hon'ble Division Bench of this Court in C.M.A. No.1500 of 2018 had given liberty to the appellant to file appropriate application under Section 25(3) of the Hindu Marriage Act based on the subsequent event, if any so advised. Therefore, the respondent wife had very well knowledge about the conditions of Section 25(3) of the Hindu Marriage Act at the time of passing order in the appeal itself. Now, she cannot turn around to say that the conditions under Section 25(3) of the Act are not applicable to the permanent alimony granted to her. As against the order of the Hon'ble Division Bench in



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C.M.A. No.1500 of 2018, no further appeal is filed and the same has become final. In view of the above discussions, the order passed by the Family Court that as per Section 25(3) of the Act granting permanent alimony cannot be rescinded is erroneous and unsustainable and the same is set aside.

27. As per the findings of the Family Court, the respondent has been in living-in relationship with one Girish Nair and the said finding has not been challenged by the respondent by cross objections. The main ground in this appeal is applicability of Section 25(3) of the Hindu Marriage Act for the permanent alimony already awarded and the same has been decided in the previous paras, therefore, this court need not go into other aspects. In the present case, though the order has been passed to pay a sum of Rs.1.28 crores and to execute release deed in respect of a property situated at Bangalore in favour of the respondent wife, the appellant has already paid Rs.80 lakhs to the respondent wife and for the remaining amount of Rs.48 lakhs and for the execution of release deed, an Execution petition is pending. Therefore, the respondent, by leading family life with one Girish Nair, breaching conditions under Section 25(3) of the Hindu Marriage Act,



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she is not entitled to any further amount from the appellant. Since already Rs.80 lakhs was paid, the appellant is not liable to pay the remaining amount and he need not execute release deed in favour of the respondent as the respondent breached the conditions of Section 25(3) of the Hindu Marriage Act.

28. The Family Court failed to consider the above said aspects and wrongly applied the law and declined to allow the petition, thereby, the order passed by the Family Court is unsustainable and liable to be set aside, accordingly, set aside.

29. In the result, the Civil Miscellaneous Appeal is allowed. The order passed by the Family Court in the petition in I.A. No.4 of 2023 is set aside and I.A. No.4 of 2023 is partly allowed.

30. The order passed in I.A. No.2648 of 2016 in F.C.O.P. No.84 of 2015 is modified in respect of permanent alimony to the effect that the amount of Rs.80 lakhs which was already paid to the respondent wife towards permanent alimony need not be disturbed and in respect of the



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remaining amount of permanent alimony to the tune of Rs.48 lakhs and for the execution of release deed, the order of the Family Court in I.A. No.2648 of 2016 is rescinded. There shall be no order as to costs. The connected civil miscellaneous petition is closed.

(R.S.K.J.) & (P.D.B.J)

17.09.2025

mjs

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

To

The III Additional Principal Judge,
Family Court,
Chennai.



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R. SURESH KUMAR,J
and
P.DHANABAL,J

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Pre-delivery judgment in
C.M.A.No.1303 of 2025

17.09.2025