



C.M.A.No.3050 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.M.A.No.3050 of 2018

K.Sampath ... Appellant

-VS-

T.Geetha ... Respondent

PRAYER : Appeal against the order and decree, dated 05.03.2018, passed in O.P.No.2174 of 2012, by IV Additional Family Court, Chennai.

For Appellant : Mr.N.Sivaprakash

For Respondent : Mr.S.N.Subramani

JUDGMENT

(By Dr.G.Jayachandran,J.)

O.P.No.2174 of 2012, preferred by the wife/petitioner on the ground of cruelty and desertion, along with an application for permanent



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alimony, was allowed by IV Additional Family Court at Chennai, vide order, dated 05.03.2018.

2. The Court below dissolved the marriage solemnised on 01.02.1998 and directed the husband/respondent to pay a sum of Rs.10.00 lakhs each to wife (petitioner) and deserted son, as permanent alimony. Since there was an order of interim maintenance to pay a sum of Rs.4,000/- to wife and Rs.3,000/- to son, the Court below, taking note of the said fact, directed that the amount, already ordered towards interim maintenance, would form part of the permanent alimony. Being aggrieved by the said order and decree, the present appeal is filed by the husband.

3. The sum and substance of the case was that the marriage between the appellant and the respondent was solemnised on 01.02.1998. A male child was born to them through the wedlock. At the time of marriage, towards Sreedhana, 37 sovereigns of jewels, silver articles, utensils and cash of Rs.2.00 lakhs was given to the husband, as per his demand. It was represented by the family members of the respondent/husband that he was a B.Com. graduate, however, later it was found that he studied only up to 8th standard. After marriage, the petitioner's wife was put to physical and mental cruelty at the hands of the respondent and his parents. There was a demand of more dowry, coupled with physical assault. The petitioner/wife returned



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back to the matrimonial home after the delivery of the child. She was illtreated and driven out. This had led to lodging a criminal complaint on 24.02.1999. After warning by police, they both were living together. While so, when the father of the petitioner went to Kancheepuram to see his daughter, there was a quarrel between the petitioner's father and the respondent. The petitioner's father was attacked badly. Same was repeated again on 19.05.2000. It forced the petitioner to lodge another complaint to the police. Due to physical assault, she suffered abortion. As she had been driven out of matrimonial home on 13.05.2000, since then, she was living separately. The cruelty method was intolerable. Be that as it may, the husband, alleging desertion, filed O.P.No.14 of 1999 before Sub-Court, Kancheepuram, for dissolution of marriage. The petitioner-wife preferred M.C.No.361 of 2008, claiming maintenance. Both the divorce petition filed by the husband and the maintenance petition filed by the wife got dismissed on 24.06.2010. While so, on the ground of cruelty and desertion, the wife filed O.P.No.2174 of 2012 before IV Additional Family Court, Chennai, stating that the respondent-husband had deserted her and her son since May,2000, causing cruelty. In the divorce petition, permanent alimony of Rs.75.00 lakhs for herself and minor child was also claimed, stating that the husband owned a hotel by name Rolex at Rajaveedhi, Kancheepuram, and was earning monthly income



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of Rs.75,000/- . That apart, from the family property, he held shares worth more than Rs.2.00 crores.

4. The averments in the divorce petition were denied by the husband, contending that it was incorrect to state that huge dowry was given to him on his demand. There was no suppression of his educational qualification. It was incorrect to say that the petitioner and the respondent were living with the parents of the respondent as a joint family. In fact, soon after the marriage, nuclear family was set up and they were living separately. The petitioner failed to take care of the family and never behaved as a dutiful housewife. Within a month of the marriage, the petitioner started demanding the respondent to shift the residence to Chennai, where her parents were residing. When the respondent refused to shift the family to Chennai, the petitioner started abusing him with filthy words and started picking up quarrel without any rhyme or reason. To succumb to her pressure, false police complaints were given and, at last, she voluntarily withdrew from the matrimonial home on 06.05.2010 and left to her parents house. The other allegations regarding cruelty and physical assault were all denied in the counter. The alleged separation was only due to the bad conduct of the petitioner. Regarding his earning capacity and the claim of permanent alimony, he contended that he was not the owner of the hotel Rolex, but only a



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labourer in the said hotel, earning a monthly salary, and he did not have capacity to pay permanent alimony, as claimed. Moreso, the desertion was by the petitioner, and not by the respondent/husband.

5. Before the Family Court, the petitioner/wife examined herself as P.W.1 and marked five documents as Exs.P-1 to P-5. Learned counsel for the respondent/appellant herein says that the respondent did not move the witness box and in the judgment the learned trial Judge also observed that the respondent was set ex parte and no witness was examined. No exhibit was also marked on his side, which is found to be correct on verification of the records.

6. The trial Court, considering the evidence of the petitioner and the documents relied upon by her, had accepted the plea of cruelty, in the absence of any contra evidence. As far as permanent alimony is concerned, considering the settlement deed Ex.P-5, dated 13.06.2014, executed by the mother of respondent in favour of respondent in respect of the property in Kancheepuram, where the hotel Rolex was functioning, and taking into consideration the guideline value of the said property and also the fact that the respondent had not provided any financial support to the petitioner/wife as well as the child born to them since 2000, awarded permanent alimony of



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Rs.10.00 lakhs to the petitioner-wife and Rs.10.00 lakhs to the son, besides dissolving the marriage, on the ground of cruelty and desertion.

7. In this appeal, the respondent-husband, who is the appellant herein, contended that the Court below erred in appreciating the evidence regarding the alleged ill-treatment or dowry harassment and that except the petitioner, no independent witness was examined to prove cruelty and desertion. He has further contended that the finding of the court below that the respondent was the owner of the hotel Rolex and earning Rs.75,000/- per month was without any basis and that mere settlement deed of the mother in favour of the respondent was not sufficient to ascertain the value of the property or the earning capacity of the respondent.

8. Learned counsel appearing for the appellant would submit that though the respondent had remained ex parte and not contested the matter, the trial Court ought to have appreciated the evidence placed by the petitioner in proper perspective and arrived at a right conclusion. According to him, all the five documents, relied upon by the petitioner, nowhere indicate cruelty or desertion. While so, merely based on the oral evidence of the petitioner, which was self-serving, the Family Court held that the petitioner had proved cruelty and desertion. Similarly, the permanent alimony of Rs.10.00 lakhs each to the wife and the son was without any basis.



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9. Per contra, learned counsel for the respondent submitted that the appellant, after deserting his wife and son, had not cared to contest the divorce petition and also in spite of grant of interim maintenance of Rs.4,000/- to wife and Rs.3,000/- to son passed in I.A.No.1242 of 2014, the same was not paid by him. He had the audacity to file a counter, stating that he was only an employee of the said hotel, earning Rs.8,000/- per month. This was found to be a false averment and Ex.P-5 proved that he was the owner of the property and running the hotel. The Court below, taking note of the value of the property shown in Ex.P-5, had arrived at a right conclusion to award Rs.10.00 lakhs to wife and son, as permanent alimony. In spite of the aforesaid interim order passed as early as in the year 2017, till-date, the appellant has not come forward either to pay the permanent alimony, or the interim maintenance ordered earlier. Therefore, he would submit that the order of the Family Court, dated 05.03.2018, has to be confirmed and liberty be given to the respondent for recovery of permanent alimony.

10. Considering the rival submissions and the documents, the factum of marriage between the appellant and the respondent on 01.02.1998 stands undisputed. The counter filed by the appellant in the petition admits separation, but blames wife for the separation. Though he has filed a counter



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and denied the averments made in the petition, for the reasons best known, he had not participated in the trial. Hence, he was set ex parte and the decree for divorce was granted, based on the evidence adduced by the petitioner. The allegation of cruelty and desertion made in the petition was reiterated by the petitioner in her evidence. In the absence of contra evidence, this Court has no hesitation to confirm the order of the trial Court, dissolving the marriage on the ground of cruelty and desertion. In so far as the permanent alimony is concerned, Section 25 of the Hindu Marriage Act, 1955, 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



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11. The above provision enumerates that permanent alimony can be awarded only to spouse and not to children. In this case, we find that, already, there is an order of interim maintenance passed in I.A.No.1242 of 2014 on 21.04.2017. The trial Court merged the order passed in the interlocutory application with the final order passed in O.P.No.2174 of 2012, by granting permanent alimony of Rs.10.00 lakhs to the child. This Court finds that to that extent, the order of the trial Court, awarding permanent alimony of Rs.10.00 lakhs to son, needs to be interfered with.

12. Accordingly, this Court, while confirming the order of the Family Court, dissolving the marriage and awarding Rs.10.00 lakhs as permanent alimony to wife, sets aside the award of permanent alimony of Rs.10.00 lakhs to son. The interim order of Rs.3,000/- per month in I.A.No.1242 of 2014, dated 21.04.2017, to son is restored. The son is at liberty to seek for recovery of maintenance amount and, if so advised, for enhancement of the maintenance amount as well. The period of pendency of the appeal shall be excluded under Section 14 of the Limitation Act for the purpose of reckoning the limitation, if any application for recovery of interim maintenance or for enhancement of interim maintenance is filed by or on



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behalf of child/son.

13. Civil Miscellaneous Appeal is partly allowed, in the above terms. No costs. Consequently, the connected C.M.P.No.23087 of 2018 is closed.

dixit

(DR.G.J.,J.) (M.S.K.,J.)
26.09.2025

To

IV Additional Family Court,
Chennai.



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