

[2014] 9 .S.C.R. 545

V.K. VASANTHA KUMARI

v.

R. SUDHAKAR

(Civil Appeal Nos. 8459-8462 of 2014)

SEPTEMBER 04, 2014

[J. CHELAMESWAR AND A.K. SIKRI, JJ.]

Family Law:

Permanent alimony – Divorce – High Court holding that the wife should get Rs.40,000/- per month and for this purpose directed Rs.40,00,000/- to be paid to her by husband as permanent alimony – Plea of wife that because of fluctuating rates of interest, on fixed deposits, Rs.40,00,000/- would not constantly fetch Rs.40,000/- per month as interest – Held: Finding of High Court, while determining the question of permanent alimony, of appellant-wife, that she requires Rs.40,000/- per month has become final — In the facts and circumstances of the case, demand made by appellant is justified — Therefore, respondent is directed to pay another Rs.15,00,000/- to appellant towards permanent alimony.

The marriage of the parties was dissolved by a decree of divorce. As regards the permanent alimony, the matter reached the High Court, which considering the need of the appellant-wife and her three grown up children, held that she would need Rs.40,000/- per month as expenses and for this purpose she would need Rs.40,00,000/- to invest. The High Court, therefore, directed the respondent husband to pay to the appellant wife Rs.40,00,000/- as against Rs.24,00,000/- as was directed by the Family Court. The SLP of the respondent-husband challenging the said order of the High Court was dismissed.

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A In the instant appeals, it was contended for the appellant-wife that because of fluctuating rate of interest, fixed deposits of Rs.40,00,000/- would not constantly fetch an income of Rs.40,000/- per month and, therefore, the amount of permanent alimony would need to be increased accordingly.

B Disposing of the appeals, the Court

C HELD: 1.1. The SLP against the order of the High Court that the appellant-wife would need Rs.40,000/- to meet the expenses and for this purpose, the respondent-husband would pay Rs.40,00,000/- as permanent alimony, has been dismissed by this Court. Therefore, the finding of the High Court, while determining the question of permanent alimony of the appellant, that the appellant requires the amount of Rs.40,000/- per month has become final. [para 11] [550-A-C]

D 1.2. In the facts and circumstances of the case, the demand made by the appellant is justified. Therefore, the respondent is directed to pay another Rs.15,00,000/- to the appellant wife towards permanent alimony. [para 13] [550-D-E]

E CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8459-8462 of 2014.

F From the Judgment and Order dated 20.10.2011 of the Division Bench of the High Court of Judicature at Madras in CMA No. 543 and 933 of 2010 and M.P. No. 1/2010 in CMA No. 543 and 933 of 2010 and in M.P. No. 1/2011 in CMA No. 543 of 2010.

G V.K. Vasantha Kumari Appellant-In-Person.

E.C. Agrawala, Dheeraj Gupta for the Respondent.

H The Judgments of the Court was delivered by

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CHELAMESWAR, J. 1. Leave granted. A

2. The instant appeal is filed by the appellant wife being not satisfied with the order of the High Court of Madras in CMA Nos.543 and 933 of 2010 and M.P. No.1 of 2010 and M.P. No.1 of 2011 in the above mentioned CMAs. B

3. The appellant and the respondent were wife and husband. Their marriage took place in 1986. It is an unfortunate case where the relationship between the appellant and respondent ran into trouble. There are three grown up children out of the said wedlock. C

4. In the year 2004, the respondent husband filed FCOP No.571 of 2004 before the IInd Additional Family Court at Chennai seeking divorce from the appellant on the ground of cruelty. The said FCOP was allowed on 3.11.2009. But both the parties carried the appeals No.544 and 932 of 2010. Both the appeals were disposed of by a common order dated 25.1.2011. The appellate decree insofar it is relevant for our purpose reads thus: D

"2. That the Judge and Decree of Court below in respect of clause (1) i.e., the marriage dissolved by the decree of divorce on the ground of cruelty be and hereby is set aside and the marriage is dissolved based on the 'no objection' endorsement made by petitioner in the petition." E

5. The children of the parties filed Suit No.677 of 2004 before the High Court of Madras for partition of the plaint scheduled property. F

6. From the impugned order it can be seen that there are thirteen items in the partition suit referred to above. According to the respondent, some of these items are already sold off. Admittedly, even according to the respondent the family has been maintaining five vehicles. G

7. The partition suit is still pending after a decade. During H

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A the pendency of the abovementioned two proceedings, innumerable interlocutory applications came to be filed by various parties. It may not be necessary and profitable to describe all the proceedings.

B 8. The appellant moved an interlocutory application under Section 24 of the Hindu Marriage Act, 1955 for grant of interim maintenance in the divorce original petition filed by the husband. The said Interlocutory Application No.3475 of 2004 was dismissed by the Family Court on 3.2.2007. Against the said order, the appellant herein filed a Civil Revision being CRP C (PO) No.1168 of 2007 before the High Court of Madras which was disposed of by an order dated 15.10.2008. The relevant portion of the order is as follows:

D "5. In the result, this Civil Revision Petition is disposed of with a direction to the IInd Additional Judge, Family court, Chennai to dispose of the divorce petition along with application for permanent alimony, that would be filed by the petitioner herein/wife and also the arrears of maintenance on the basis of the details that would be filed E by her, within the period stipulated by the Hon'ble 1st Bench of this court, while disposing of the OSA No.179 of 2008 on 14.07.06."

F 9. Pursuant to the said direction of the High Court, the appellant herein filed another Interlocutory Application No.409 of 2009 in the Original Petition No.571 of 2004 referred to above seeking permanent alimony of Rs.1 lakh per month. The said interlocutory application came to be disposed of by an order dated 3.11.2009 by the IInd Additional Family Court, Chennai granting an amount of Rs.24 lakhs as permanent G alimony.

H 10. Aggrieved by the said order, the respondent husband herein carried the matter in appeal (by CMA No.543 of 2010) to the High Court. Not satisfied with the amount granted, the appellant wife also carried the matter in appeal (by CMA

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No.933 of 2010) before the High Court. Both these matters A
came to be disposed of by the impugned order. The operative
portion of the impugned order reads as under:

“36. Since the appellant is having three children, in the B
event of vacating the existing premises, if she takes on
lease at least a three bed room flat in a decent locality,
she would have to spend at least Rs.25,000/- per month,
apart from the other expenses. But the appellant is
occupying the respondent house. Since, the appellant had
submitted that her first daughter is employed, she would C
also be earning. The appellant, as pointed out above is
having two properties at Injambakkam and sea Shore town
worth about Rs.2 crores. Taking into consideration all these
aspects, we are of the considered view that the appellant
may require at least Rs.40,000/- per month to meet the D
expenses. For getting Rs.40,000/- per month as return she
may have to invest Rs.40,00,000/-. The Family court
awarded a sum of Rs.24,00,000/- as permanent alimony.
Considering the present cost of living, we are of the
considered view that the permanent alimony awarded by
the IInd Additional Family Court, Chennai is on the lower E
side and the same should be increased to Rs.40,00,000/
-. Accordingly, the permanent alimony awarded by the
Family Court is increased to Rs.40,00,000/-.

37. Therefore, the fair and final order of the Family Court F
passed in IA No.409 of 2009 in H.M.O.P. No.571 of 2004
on the file of the IInd Additional Family Court, Chennai is
modified by awarding Rs.40,00,000/- (Rupees Forty Lacs
only) as permanent alimony to the appellant/petitioner.

38. In the result, C.M.A. No.933 of 2010 is partly allowed G
and C.M.A. No.543 of 2010 stands dismissed. M.P. (MD)
No.1 of 2011 in CMA No.543 of 2010 is dismissed and
M.P. (MD) No.1 of 2010 is closed. No costs.”

11. Aggrieved by the said order the respondent herein H

A carried the matter to this Court in SLP Nos. 2506-2507 of 2012
 which was dismissed by an order of this Court on 30.01.2012.
 Thereafter, the respondent deposited the amount of Rs.40
 lakhs and the same is recorded by this Court vide order dated
 26.11.2013. Therefore, the finding of the High Court, while
 B determining the question of permanent alimony of the appellant,
 that the appellant requires the amount of Rs.40,000/- per month
 has become final. The issue in the instant appeal is limited. The
 appellant has prayed that having regard to the fluctuating rate
 of interest on fixed deposits, the amount of Rs.40 lakhs will not
 C constantly fetch an interest of Rs.40,000/- per month, an
 appropriate order be passed to ensure that she gets a monthly
 sum of Rs.40,000/- towards her maintenance.

12. We have heard the learned counsel for the respondent.

D 13. In the facts and circumstances of the case, we find
 justification in the demand made by the appellant. We,
 therefore, direct the respondent to pay another Rs.15,00,000/
 - (rupees fifteen lakhs) to the appellant wife towards permanent
 alimony within a period of thirty days from today.

E 14. The appeals are accordingly disposed of with no order
 as to costs.

JUDGMENT

F After the order is pronounced, a prayer is made by Mr.
 Ankur Saigal, learned counsel appearing for the respondent
 husband that the respondent be given a period of two months
 to comply with the direction given today. We, therefore, direct
 the husband to make the payment within a period of 8 weeks
 G from today instead of 30 days, as directed in the judgment.

Rajendra Prasad

Appeals disposed of.