VINNY PARMVIR PARMAR

v.

PARMVIR PARMAR

(Civil Appeal Nos. 5831-33 of 2011)

JULY 20, 2011

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Hindu Marriage Act, 1955:

s.25 r/w s.13-B – Decree of divorce by mutual consent – Permanent alimony and maintenance – Factors to be considered by the court – Maintenance of wife fixed by Family Court at Rs.20,000/- per month – High Court, as an alternative also fixed permanent alimony at Rs.40 lakh in lump-sum to be paid by the husband to the wife – Appeal by wife – HELD: No fixed formula can be laid for fixing the amount of maintenance – It has to be in the nature of things which depend on various facts and circumstances of each case – It is relevant to point out that the status and mode of life of the claimant when she lived with her husband is also one of the relevant factors for determining the amount of maintenance – In the instant case, the wife was working as Air Hostess with Cathay Pacific Airlines and getting sizeable income and after the marriage, at the instance of the husband, she resigned from her job – Considering the conditions prescribed in s. 25 relating to claim of permanent alimony/ maintenance and the facts that as on date the wife is not permanently employed and is living with her sister at Mumbai and she does not possess any immovable property at Mumbai, the husband's income from salary as Sr. Commander in Air India, other properties standing in his name, his age being 42 years, future employment prospects and also considering the fact that he has re-married, has a child and has also to look after his parents, the ends of justice would be met by fixing maintenance at the rate of Rs.40,000/

- per month – In the alternative, the amount of permanent alimony/ maintenance is fixed at Rs. 40 lakhs in lump sum to be paid by the husband to the wife which will forfeit all her claims.

In the appeals filed before the High Court against the order of the Family Court, the divorce petition of the respondent-husband was converted into divorce by mutual consent and the marriage was dissolved by a decree u/s 13-B of the Hindu Marriage Act, 1955. The Family Court had fixed maintenance to be paid to the wife at Rs. 20,000/- per month which was affirmed by the High Court. While disposing of the appeals, as an alternative measure, the High Court also fixed the amount of permanent alimony at Rs. 20 lakhs in lump sum to be paid by the husband to the wife. Being not satisfied with the amount of maintenance fixed, the wife filed the instant appeals for enhancement.

The only point for consideration before the Court was: what would be the reasonable amount the appellant-wife was entitled by way of maintenance from the husband in terms of s. 25 of the Act.

Partly allowing the appeals, the Court

HELD: 1.1 As per s. 25, of the Hindu Marriage Act, 1955, while considering the claim for permanent alimony and maintenance of either spouse, the respondent's own income and other property, and the income and other property of the applicant are all relevant material in addition to the conduct of the parties and other circumstances of the case. It is further seen that the court considering such claim has to consider all the relevant materials and determine the amount which is to be just for living standard. No fixed formula can be laid for fixing the amount of maintenance. It has to be in the nature of things which depend on various facts and circumstances

of each case. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The court also has to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party. [para 12] [379-B-E]

Shri Bhagwan Dutt vs. *Smt. Kamla Devi and Anr.* **1975 (2) SCR 483 = (1975) 2 SCC 386; *Chaturbhuj* vs. *Sita Bai,* 2007 (12) SCR 577 = (2008) 2 SCC 316 – relied on.**

1.2 In the instant case, it is not in dispute that before the marriage, the appellant-wife was working as Air Hostess with Cathay Pacific Airlines and getting sizeable income. It is also brought to the notice of the Court that after marriage, at the instance of the respondent, she resigned from her job. The particulars furnished also show that as on date she is living with her sister at Mumbai and she does not possess any immovable property at Mumbai. [para 13] [379-F-G]

1.3 In the light of the details furnished by both the parties, the Court is of the view that the amount of Rs. 1,40,000/- determined as net monthly income of the respondent-husband is not acceptable. Equally, direction for payment of maintenance at the rate of Rs. 20,000/- per month to the appellant-wife is also inadequate. Considering the conditions prescribed in s. 25 of the Act relating to claim of permanent alimony/maintenance and the fact that the appellant is not permanently employed as on date and is residing with her sister at Mumbai, taking note of the respondent's income from salary as Sr.

A **Commander in Air India, other properties standing in his name, his age being 42 years, future employment prospects and also considering the fact that the respondent has re-married, has a child and has also to look after his parents, the ends of justice would be met**
B **by fixing the maintenance at Rs.40,000/- per month. The same shall be payable from the date of her application and shall be continued to be paid in terms of s. 25 of the Act. It is made clear that if there is any change in the circumstance of either party, they are free to approach the**
C **court concerned to modify or rescind the order. In the alternative, the amount of permanent alimony/ maintenance is fixed at Rs. 40 lakhs in lump sum to be paid by the respondent to the appellant which will forfeit all her claims. The respondent is free to opt any one mode**
D **to comply with the same. [para 15] [380-E-H; 381-A-D]**

Case Law Reference:

1975 (2) SCR 483	**relied on**	**para 10**
2007 (12) SCR 577	**relied on**	**para 11**

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5831-5833 of 2011.

From the Judgment & Order dated 24.04.2009 of the High Court of Bombay in the matter of Family Court Appeal No. 110
F of 2004 and 127 of 2004 read with the Review Order dated 17.07.2009 passed in Review Petition Stamp No. 15671 of 2009.

Nidish Gupta, D.K. Monga, Vivek Sharma, Naresh Bakshi, Arun Monga for the Appellant.
G

Indu Malhotra, Prena Priyadarsani, Vikas Mehta for the Respondent.

The Judgment of the Court was delivered by

H **P. SATHASIVAM, J.** 1. Leave granted.

2. These appeals are filed against the final order dated 24.04.2009 passed by the High Court of Bombay in Family Court Appeal Nos. 110 of 2004 and 127 of 2004 and the order dated 17.07.2009 in Review Petition Stamp No. 15671 of 2009 whereby the appellant's appeal was dismissed in entirety and the petition filed by the respondent in Family Court for divorce on ground of cruelty was converted into divorce by mutual consent and the marriage was dissolved by a decree under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act").

3. Since the parties have dissolved their marriage by consent and a fresh decree of divorce by consent has been directed, the other question adjudicated before the High Court was about the amount of maintenance/permanent alimony in terms of Section 25 of the Act. By the impugned order, the High Court confirmed the order passed by the Family Court fixing the amount of permanent alimony at Rs. 20,000/- per month. While disposing of the appeals, as an alternative measure, the High Court also fixed the amount of permanent alimony at Rs. 20 lakhs in lump sum to be paid by the husband to his wife within a period of 3 months from the date of the order. Being not satisfied with the maintenance fixed at Rs. 20,000/- per month, the appellant-wife filed these appeals for enhancement by pointing out her difficulties and the income of the respondent.

4. Heard Mr. Nidish Gupta, learned senior counsel for the appellant-wife and Ms. Indu Malhotra, learned senior counsel for the respondent-husband.

5. The only point for consideration in these appeals is what would be the reasonable amount the appellant-wife is entitled by way of maintenance from the husband in terms of Section 25 of the Act.

6. Considering the fact that after the marriage the appellant herein resigned from the post of Air Hostess in Cathay Pacific Airlines and after dispute between them she was not employed

A and getting regular income, she was staying with her sister at Mumbai and also taking note of the financial status of the husband, namely, his salary as a Sr. Commander in Air India and rental income from his properties, the Family Court fixed maintenance at Rs. 20,000/- per month which was affirmed by
B the High Court. While arriving at such amount, the Family Court has determined the income of the husband as Rs. 1,40,000/- per month.

Discussion:

C 7. Mr. Nidish Gupta, learned senior counsel for the appellant, by drawing our attention to various factual details placed before the Family Court, High Court and in this Court, submitted that from the salary slips it is seen that even after income tax deductions the respondent's income from salary
D and allowances alone for the period 01.04.2009 to 31.03.2010 was Rs. 83,19,031/-. In support of the above claim, the appellant has produced TDS certificate issued by his employer/the Income-Tax Department. According to him, apart from the above salary income, the respondent has rental income
E between Rs. 7,20,000 and Rs. 10,80,000 from his properties. He further highlighted that in addition to the salary and the rental income, the respondent has huge bank deposits, investment in shares and mutual funds. He also highlighted that the respondent being 42 years of age and a Sr. Commander in
F Air India has a promising career with bright chances of further promotions. With these facts and figures, Mr. Nidish Gupta prayed for intervention of this Court by fixing reasonable amount towards maintenance and welfare of the appellant.

8. In reply to the same, Ms Indu Malhotra, learned senior
G counsel for the respondent-husband submitted that the figures furnished by the appellant before the courts below as well as in this Court are exaggerated. In any event, according to her, the income shown above includes allowance and other benefits which cannot be construed as actual salary or income as
H claimed. She also pointed out that apart from the salary from

Air India he owns 1 acre of land in Pune and 1 Bedroom flat in Mumbai. All other properties, according to the learned senior counsel, belong to his father and he is not entitled for anything from it at this moment. She further highlighted that at present respondent-husband has married and having a child apart from taking care of his parents. She finally submitted that the amount determined by the Family Court as affirmed by the High Court is quite reasonable and, therefore, there is no valid ground for interference by this Court exercising jurisdiction under Article 136 of the Constitution of India.

9. Before considering the rival claims based on facts and figures, it is useful to refer to Section 25 of the Act which reads as under:-

> **"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

A an order has been made under this section 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 B any such order in such manner as the Court may deem just."

10. In *Shri Bhagwan Dutt vs. Smt. Kamla Devi and Anr.* (1975) 2 SCC 386, though this Court has considered the amount of maintenance payable to wife under Section 488 of C the Code of Criminal Procedure, 1898, the principle laid down is applicable to the case on hand. In para 19, this Court held:

"19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as D to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is E taken into account together with the earnings of the husband and his commitments."

11. In *Chaturbhuj vs. Sita Bai,* (2008) 2 SCC 316, which also relates to maintenance claim by deserted wife under Section 125 of the Code of Criminal Procedure, 1973. The F following statement in para 8 is relevant which reads as under:

".....Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself G in the way she was used to in the place of her husband. In *Bhagwan Dutt v. Kamla Devi* it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable H to maintain herself" does not mean that the wife must be

absolutely destitute before she can apply for maintenance under Section 125 CrPC." A

12. As per Section 25, while considering the claim for permanent alimony and maintenance of either spouse, the respondent's own income and other property, and the income and other property of the applicant are all relevant material in addition to the conduct of the parties and other circumstances of the case. It is further seen that the court considering such claim has to consider all the above relevant materials and determine the amount which is to be just for living standard. No fixed formula can be laid for fixing the amount of maintenance. It has to be in the nature of things which depend on various facts and circumstances of each case. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The courts also have to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party. These are all the broad principles courts have to be kept in mind while determining maintenance or permanent alimony. B C D E F

13. It is not in dispute that before their marriage, the appellant-wife was working as Air Hostess with Cathay Pacific Airlines and getting sizeable income. It is also brought to our notice that after marriage, at the instance of the respondent, she resigned from her job. The particulars furnished also show that at present she is living with her sister at Mumbai and she does not possess any immovable property at Mumbai. G

14. According to the respondent-husband, at the time of filing of petition under Section 25, she suppressed her employment and income thereon and on this ground her entire H

A case has to be rejected. The fact remains, though she was employed for a shorter period which was not stated so subsequently, she clarified that she had earned only an amount of Rs. 1.5 lakhs from casual assignments from July, 2004 to September, 2009. She also asserted that her income was not
B fixed or regular and she is struggling to take up casual assignments of interior decoration even though she was not formally trained for the same. She also explained that at particular time her employment with JJ Valaya Couture was only transitory in nature and was not permanent, it was not a source
C of regular and permanent income for her and that she had not been issued even any letter of appointment setting out the terms of employment and she further explained that at the relevant time she was earning an ad hoc remuneration of Rs. 20,000/- per month. There is no reason to either reject or disbelieve her
D explanation. In the same way, though she had highlighted salary income of the respondent, admittedly, those figures include allowances and other payments under various heads of salary. The respondent has also placed certificates from income tax authorities such as Form 16C etc.

E 15. In the light of the details furnished by both the parties, we are of the view that the amount of Rs. 1,40,000/- determined as net monthly income of the respondent-husband is not acceptable. Equally, direction for payment of maintenance at the rate of Rs. 20,000/- per month to the appellant-wife is also
F inadequate. It is relevant to point out that the status of the appellant before her marriage is also one of the relevant factors for determining the amount of maintenance. It is not in dispute that before her marriage with the respondent, she was working as an Air Hostess in Cathay Pacific Airlines and after marriage
G she resigned from the said post. Considering the conditions prescribed in Section 25 of the Act relating to claim of permanent alimony/maintenance and the fact that the appellant is not permanently employed as on date and residing with her sister at Mumbai, taking note of the respondent's income from
H salary as Sr. Commander in Air India, other properties standing

in his name, age being 42 years, future employment prospects and also considering the fact that the respondent re-married, having a child and also to look after his parents, we feel that the ends of justice would be met by fixing maintenance at the rate of Rs.40,000/- per month instead of Rs.20,000/- per month as fixed by the Family Court and affirmed by the High Court. The same shall be payable from the date of her application and continue to pay in terms of Section 25 of the Act. The respondent is granted one year time from 01.08.2011 to pay all the arrears payable in six equal instalments. It is made clear that if there is any change in the circumstance of either party, they are free to approach the Court concerned to modify or rescind. As suggested and fixed by the High Court, in the alternative, we fix the amount of permanent alimony/ maintenance at Rs. 40 lakhs in lump sum to be paid by the respondent within a period of six months from 01.08.2011 which will forfeit all her claims. The respondent is free to opt any one mode to comply with the same. If the respondent opts the first method, the same is subject to the conditions prescribed in sub-Section (3) of Section 25 of the Act. The appeals are allowed to the extent mentioned hereinabove. No order as to costs.

A B C D E

R.P. Appeals Partly allowed.