

Court No. - 29

Case :- FIRST APPEAL No. - 880 of 2017

Appellant :- Neeraj Kumar

Respondent :- Smt. Shradha Goel

Counsel for Appellant :- Jitendra Pal Singh Jadaun

Counsel for Respondent :- Arun Kumar Vishvakarma

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Donadi Ramesh,J.

Appeals have been preferred both by the husband and the wife challenging the decree passed by the family court, Mathura on 26.10.2017 in proceedings under Section 25 of the Hindu Marriage Act for grant of permanent alimony. The court below has allowed permanent alimony of Rs.10 lakhs to the wife and Rs.5 lakhs to the minor daughter. Appellant-husband states that the amount determined to be paid to wife is not due and payable while the wife alleges that she is entitled to a higher sum as a permanent alimony.

It transpires that marriage between the parties was solemnized on 29.01.2001. Appeal under Section 13 Cr.P.C. was filed by the wife seeking divorce which was decreed on 02.12.2014. Marriage between the parties was consequently dissolved in those proceedings. However, no orders were passed for payment of permanent alimony. The wife alleges that in proceedings under Sections 125 and 127 Cr.P.C. the husband agreed to pay Rs.10 lakhs to the daughter and Rs.20 lakhs to her on 03.04.2013, but later he turned dishonest and refused to pay such amount. It is thereafter that proceedings were initiated by the wife for payment of permanent alimony. The trial court, on the basis of evidence led in the matter, has decreed the suit of the wife for payment of permanent alimony vide judgment and order dated 26.10.2017. Thus, aggrieved the husband is before the Court. The wife has also filed an appeal seeking further enhancement in the permanent alimony to be paid to her and the daughter.

The matter has been called out in the revised list and although, Shri Jitendra Pal Singh Jadaun, learned counsel is present for the husband, but none appears for the wife. Since the appeal is of the year 2017 and has remained pending for fairly long, we are not inclined to adjourn the matter only on account of absence of learned counsel for the respondent-wife. We have heard Shri

Jitendra Pal Singh Jadaun, learned counsel for the appellant and have perused the materials brought on record.

Perusal of the materials placed on record of this appeal would clearly indicate that the factum of initial marriage between the parties on 29.01.2001 as well as dissolution of marriage pursuant to a decree obtained by the wife under Section 13 of the Hindu Marriage Act dated 02.12.2014 are admitted. It is also admitted that a female child was born out of the wedlock. The materials on record indicates that the wife is not employed and is living with her mother. So far as the husband is concerned, it is asserted that he own an agency for distribution of Kerosene apart from agricultural land and has other income. Husband is the only son of his parents. His two sisters have already got married. There is also a petrol pump owned by the father of the husband. It is also asserted that the father of the husband owns various houses, agricultural land apart from several commercial ventures undertaken by him. Huge amounts were also lying in the FDR and there were several policies obtained by the husband from LIC of which premium is being paid by the husband.

In proceedings under Section 125 Cr.P.C., the wife has been receiving Rs.7,000/- as monthly maintenance amount.

The husband has appeared during trial as DW-1 and has stated that he is a high school fail. The wife had obtained divorce on her own wishes. It is alleged that the wife has been running a coaching for prospective CA students and also uses a four wheeler vehicle. It is further stated that after death of his father, his mother is not well. He has feigned ignorance about previous settlement agreed upon between him and his wife, as per which Rs.30 lakhs were to be paid to the wife. He had, however, prepared a bank draft of Rs.10 lakhs. This bank draft was returned after his counsel informed that the wife is not willing to settle the matter. Father of the husband has also died in the year 2010.

Trial court has taken note of various documents on record which included LIC policy of Rs.10 lakhs in the name of the husband, which was still continuing. There is also a plot in the name of the mother of the husband. The partnership deed has also been produced during trial according to which there existed a firm for running of retail outlet of petroleum products in which the husband was a shareholder. As per the income tax details of the husband he was engaged in the business of potato. The husband otherwise is a co-sharer with his mother of 2.167 hectare land. It has also been placed on record that there is a petrol pump run by a firm in which

the father is a partner. The petrol pump was otherwise in the name of the father of the husband who also owned a house in Babrala, District- Badaun. The trial court has observed on the basis of evidence placed on record that the husband has sufficient income to meet the liability of maintaining his wife and the unmarried daughter. It is thereafter, that the trial court has allowed permanent alimony of Rs.10 lakhs to the wife and Rs.5 lakhs to the daughter.

Although, learned counsel for the appellant contends that the finding of the trial court are perverse but it remains undisputed that the factual assertions made by the trial court with regard to source of earning available to the husband by virtue of various documents placed on record by the wife vide Paper Nos.10C-2 to 10C-8 as well as 7C-17 to 7C-63, are not disputed. The husband admittedly has not led any documentary evidence to contest the claim of the amount. Apart from bare denial, there is no evidence led by the husband to contradict the assertions made by the wife. The fact that a settlement was earlier proposed and a bank draft of Rs.10 lakhs was prepared by the husband to be paid to the wife is also undisputed. It remains equally undisputed that Rs.10 lakhs was not paid to the wife. We, therefore, find substance in the plea of the wife that the husband had agreed to resolve the issues earlier, amicably, but he backtraced later on.

Upon elaborate consideration of the material on record, we find that the husband has sufficient means available with him to pay the amount of permanent alimony to the wife. The fact that there existed a retail outlet in the name of his father which is inherited by the appellant is also not disputed. No evidence has been led to show that the petrol pump no longer exist in the name of the husband. Various other immovable property, referred to by the trial judge, clearly indicates that the husband is a man of adequate financial means and it is, otherwise, his responsibility to maintain his wife and daughter even after the marriage has been dissolved. The fact that the minor daughter was dependant upon the wife and was living with her mother is equally undisputed. Although, the husband has stated that the wife is running a coaching institute and is moving in a four wheeler but such assertions are not backed by any cogent evidence led by the husband during the course of trial. The trial itself was held by the family court after elaborate opportunity given to the husband. Refusal/ failure on part of the husband to lead any evidence would not be sufficient for this Court to extend a further opportunity to the husband to adduce evidence when no procedural infirmity is shown in the proceedings of the trial court. In such circumstances, we find no occasion for this

Court to interfere with the judgment of the trial court in awarding permanent alimony to the wife of the daughter.

Appeal filed by the husband consequently fails and is accordingly dismissed. So far as appeal filed by the wife is concerned, we find that neither anyone has pressed the application during the course of hearing of the present appeal nor otherwise, we find any infirmity in the judgment of the trial court, which may persuade us to enhance the permanent alimony. The claim of the wife, in that regard, is also rejected.

Both the appeals accordingly, are **dismissed**.

Order Date :- 7.1.2025

A Gautam