

# SUPREME COURT OF INDIA

Suvarnalata

Vs.

Mohan Anandrao Deshmukh

C.A.No.2994 of 2010

(Altamas Kabir and Cyriac Joseph JJ.)

05.04.2010

## JUDGEMENT

### **Altamas Kabir, J.**

1. Leave granted.

2. In this appeal the appellant has challenged two orders passed by the Aurangabad Bench of the Bombay High Court. The first is the judgment and order dated 18th November, 2003, dismissing Family Court Appeal No.30 of 2003 and the second is the judgment and order dated 30th August, 2005, passed in Review Petition No.9108 of 2005, dismissing the Review Petition as well.

3. At the very beginning it may be mentioned that the respondent-husband filed a petition for divorce in the Family Court at Aurangabad on 29th July, 1999, on the ground that the appellant herein is a patient of schizophrenia. The said petition came to be allowed by the Judge, Family Court and decree of divorce was passed in favour of the respondent- husband.

4. Aggrieved by the decree, the appellant moved the High Court which affirmed the judgment and decree of the Family Court.

5. This appeal arises out of Special Leave Petition (C) No.9482 of 2007 and when notice was issued on 14th May, 2007, the same was limited to the question of the findings of the Courts below relating to the mental disorder of the appellant.

“Notice was also issued as to payment of a lump sum amount by the respondent-husband to the appellant since it was expressly stated on her behalf that she did not wish to challenge the final decree of divorce granted in favour of the respondent-husband. When the matter came up for final hearing, Ms. Nandita Rao, learned Advocate appearing for the appellant, urged that the respondent has remarried after obtaining the decree of divorce and as a result, since the appellant did not wish to

affect the respondent's second marriage, she had chosen to confine her challenge to the judgments of the Courts below to the findings on issue No.2 alone framed by the Family Court, namely, as to whether she is suffering from any mental illness? After referring to the findings of the Judge, Family Court on the aforesaid issue, wherein the case of the respondent-husband had been accepted and the issue 4 was affirmed in the affirmative, Ms. Rao then referred to the judgment passed by the same learned Judge of the Family Court at Aurangabad on 28th December, 2002, on the question of custody of the minor daughter, Naveli, born of the marriage between the parties, being Petition A-60 of 2001 filed by the respondent-husband. Ms. Rao pointed out from the judgment that the stand of the respondent-husband that he had better credentials to be granted custody of the minor daughter than the appellant, was negated by the same learned Judge after taking into consideration the same evidence alleging that the appellant suffered from schizophrenia. Ms. Rao pointed out that the same learned Judge realized that the earlier order passed by her in the divorce proceedings had been obtained on a mis-representation of facts which amounted to fraudulent behaviour on the part of the respondent-husband. Ms. Rao pointed out that the learned Judge of the Family Court observed that after seeing the appellant in Court at the time of trial and at the time when she gave evidence, it was difficult for her to come to the conclusion that the appellant was schizophrenic. Another circumstance mentioned in the judgment of the Family Court in the custody matter relating to the insertion of Copper-T by Dr. Sakulkar, a Gynaecologist, fully negated the respondent's claim that during the period in question the appellant had refused to cohabit with the respondent which amounted to cruelty on her part towards the respondent. Ms. Rao submitted that since the respondent had remarried, the appellant-wife did not wish to go into the details and was, therefore, confining her submissions in the appeal to the quantum of payment of a lump sum amount by way of permanent alimony.”

6. Ms. Rao submitted that the respondent was leading a luxurious life and it was only incumbent for the respondent to provide a residence to the appellant and their minor daughter, and to pay a sum of Rs.75 lakhs by way of permanent alimony.

She prayed for an order accordingly.

7. Appearing for the respondent-husband, Mr. Ananthbhusan Kanade, learned Advocate, attempted to emphasize the findings of the Courts below regarding the alleged mental disorder of the appellant, but focused more on the amount claimed by the appellant towards permanent alimony. He submitted that the claims made by the appellant were not only without any foundation, but exorbitant and that the fact that respondent had purchased an Innova car did not justify the claim of the appellant.

8. Mr. Kanade also submitted that the claim of the appellant regarding payment of a lump sum amount by way of permanent alimony under Section 25 of the Hindu Marriage Act, 1955, was not maintainable in view of the pendency of four matters relating to grant of

maintenance under Section 125 of the Criminal Procedure Code and under Section 18 of the Hindu Adoption and Maintenance Act, 1956, for the minor daughter. Since on 14th May, 2007, notice was issued on the application for condonation of delay and also on the Special Leave Petition on the question of the findings relating to mental disorder and payment of lump sum amount to the appellant and since it was also recorded that the petitioner did not wish to challenge the final decree of divorce granted in favour of the husband, we shall confine our judgment and order to the said aspects only.

9. As far as the prayer for condonation of delay in filing the Special Leave Petition is concerned, we are of the view that sufficient grounds have been made out to condone such delay, particularly because a large portion of the delay was on account of the pendency of the Review Petition which had been filed against the judgment and order of the High Court dismissing her appeal. The delay in filing the Special Leave Petition is, accordingly, condoned.

10. As far as the question of findings relating to the mental disorder of the appellant is concerned, we are inclined to accept the subsequent finding arrived at by the same learned Judge of the Family Court, who had decreed the suit of the Respondent No.1 for divorce, in the custody proceedings.

“Having regard to the observations made by the learned Judge while passing orders on the custody petition of the minor, in our view, we should desist from making any further observation in the matter, as we are concerned with the effect such findings may have on the minor child. Suffice to say that we are unable to accept and agree with the findings regarding the appellant's alleged mental disorder/schizophrenia and have little or no hesitation in holding that such findings cannot be sustained and have been rightly rejected by the learned Judge of the Family Court.”

11. This brings us to the last question involving the quantum of permanent alimony under Section 25 of the Hindu Marriage Act. As we have already pointed out hereinbefore, the said prayer is not only maintainable but also justified in the facts and circumstances of the instant case. The statements made in paragraphs 7 to 12 of the Rejoinder Affidavit filed by the appellant to the Counter Affidavit filed on behalf of the respondent Nos. 1 and 2, have not been denied by the respondents, except to the extent that the vehicle indicated had been purchased by the respondents after obtaining a loan. The list of assets owned by the respondent No.1, set out as Annexure-1 to the rejoinder affidavit, indicates that the respondent No.1 is sufficiently well-off to provide for a suitable lump sum amount towards permanent alimony as maintenance to the appellant and her daughter, Naveli, though may not be to the extent as claimed by the appellant. Since it is not possible for us on the general information supplied, to arrive at the estimated income of respondent No.1, we are of the view that while retaining the matter in this Court, the Family Court may be directed to take additional evidence to ascertain the estimated income of the respondent No.1 from the list of assets indicated by the appellant, and, thereafter, to send the same to this Court for passing final orders in this appeal.

12. It is, therefore, ordered that the appeal be kept pending for a period of three months and the records be remitted to the learned Judge, Family Court at Aurangabad, to take additional evidence relating to the estimated income of the Respondent No.1, keeping in mind the list of assets annexed by the appellant to her Rejoinder Affidavit and to send back the same to this Court for final disposal of the instant appeal. Such additional evidence is to be taken within two months from the date of receipt of a copy of this order by the learned Family Judge, Aurangabad, and the same is to be sent to this Court within a fortnight thereafter.

13. Let a copy of this order be sent to the Judge, Family Court at Aurangabad, Maharashtra, forthwith and the parties are directed to appear before the said Court on 26th April, 2010 for the aforesaid purpose.