

HIGH COURT OF MADHYA PRADESH, JABALPUR

DIVISION BENCH : **HON'BLE SHRI JUSTICE SUJOY PAUL**
HON'BLE SHRI JUSTICE MOHD. FAHIM ANWAR

First Appeal No.1825 of 2019

Dharmendra Tiwari

Vs.

Smt.Rashmi Tiwari

Shri Hitendra Golhani, counsel for the appellant.

Shri Devendra Kumar Shukla, counsel for respondent.

Whether approved for reporting : **Yes**

J U D G M E N T
(02.03.2020)

Per Mohd. Fahim Anwar :

This first appeal under section 19(1) of Family Court Act, 1984 has been filed by the appellant/husband against the judgment and decree dated 23.9.2019 passed by Principal Judge, Family Court, Rewa in RCS HM No.16-A/2017, whereby the application filed by the appellant under section 10 of the Hindu Marriage Act, 1955 for judicial separation was allowed, however directed the appellant to pay maintenance @ Rs.6,000/- per month to the respondent/wife from the date of the order. Being aggrieved by this part of the judgment and decree, the appellant has filed this appeal.

2. The facts of the case in brief are that the appellant and respondent are legally wedded husband and wife and their marriage was solemnized as per Hindu rites and rituals on 14.5.2015 at village Kachnar, District Satna. After marriage

they lived together peacefully for few days. Thereafter the behaviour of respondent/wife became abnormal towards the appellant and his family members and she started treating them with cruelty. It is alleged that the respondent/wife had told the appellant that she wanted to marry some other person and she had married with the appellant under the pressure of her parents. The respondent/wife was unhappy with the poor economic condition of appellant. The respondent/wife threatened the appellant that she will commit suicide and falsely implicate the appellant and his family members. Due to this threat appellant was compelled to reside separately from his joint family. The respondent/wife in January, 2016 consumed poisonous substance and was admitted in SGM Hospital, Rewa by appellant. Thereafter, the wife returned to her matrimonial home on 1.6.2016 and resided till 3.6.2016 in joint family. Thereafter she again left her matrimonial home on 4.6.2016 along with her belongings. The respondent/wife and her family members used to threaten the appellant on mobile phone to falsely implicate him and his family members in criminal case. Thus, the appellant was compelled to file complaint against the respondent/wife. Being annoyed, the respondent/wife filed false dowry complaint at Women Cell, Satna, which was later on transferred to Rewa Police and complaint under section 498-A of IPC read with section 3/4 of Dowry Prohibition Act was registered against the appellant/husband. Thus, the appellant filed a case for judicial separation against the respondent/wife on the ground of cruelty and desertion.

3. The Family Court considered the application filed by the appellant/husband under section 10 of the Hindu Marriage

Act and held that there is material evidence that mental cruelty and harassment were meted out by respondent/wife against the appellant and joint residency of the parties would be injurious to both and dangerous to their life. The Family Court therefore allowed judicial separation between the parties, but directed the appellant/husband to pay Rs.6,000/- per month as maintenance to the respondent/wife.

4. Learned counsel appearing on behalf of appellant/husband has submitted that so far as the part of the judgment and decree, which relates to payment of maintenance @ Rs.6,000/- per month to the respondent/wife is concerned, it is contrary to law. It is submitted that as the Family Court has found that cruelty and harassment were meted out by the respondent/wife to the appellant/husband and his family members, therefore allowed the application filed by the appellant/husband under section 10 of the Hindu Marriage Act and has granted judicial separation, therefore, the order awarding maintenance @ Rs.6,000/- per month to the respondent/wife is not justified. The said part of the judgment is arbitrary and suffers from non-application of judicial mind. Submitting aforesaid, it is prayed that this appeal may be allowed and the order awarding maintenance @ Rs.6,000/- per month to the respondent/wife may be set aside. In support of his contention, learned counsel has relied upon the judgment of the Apex Court in the case of **Trupti Das Vs. Rabindranath Mohapatra** [(2005) 11 SCC 553].

5. On the other hand, learned counsel appearing on behalf of respondent/wife has supported the impugned judgment and decree passed by the learned Family Court

and submitted that the appellant is working as Medical Representative and is earning Rs.25,000/- per month and the respondent/wife is not capable of meeting out her day to day expenses and she is living in her parental house in compulsion, therefore, there is no error in the judgment and decree passed by the Family Court granting maintenance @ Rs.6,000/- per month to the respondent/wife. It is submitted that the appeal is devoid of substance and it be dismissed.

6. There is provision of granting permanent alimony and maintenance under section 25 of the Hindu Marriage Act. Provision of sub-section (1) of Section 25 of the Act is relevant, which reads thus :-

"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."

7. In the case of **Vinod Chandra Sharma Vs. Smt.Rajesh Pathak** (AIR 1988 Allahabad 150) the Allahabad High Court while considering the case held thus :

"4. The power to grant alimony contained in S.25 of the Hindu Marriage Act has to be exercised when the court is called upon to settle the mutual rights of the parties after the marital ties have snapped by determination or

variation by the passing of the decree of a type mentioned in Ss.10, 11 and 13 of the Act. Read with Ss. 23, 26 and 27 of the Act, a decree can be assumed to have been passed when an application for divorce or similar other relief is granted but surely not when the application is dismissed.”

8. So there appears to be no dispute that in the cases where judicial separation is sought for under section 10 of the Hindu Marriage Act, there is no barrier for granting permanent alimony or maintenance to the wife for supporting her future life, but that too after considering the income and other property of the person against whom the order is going to be passed.

9. During the course of argument, learned counsel appearing on behalf of the appellant has stressed on the words inserted in section 25 of the Hindu Marriage Act “on application made to the Court for granting the alimony”. In this regard he has relied on the case of **Trupti Das** (supra).

10. On going through the facts of the aforesaid case, it appears that the husband has filed the case for divorce on the ground of desertion and cruelty. The parties led evidence in support of their respective cases. The Family Court granted decree for divorce on both the grounds. Against the said order, matter was taken by the wife to the High Court of Orissa in appeal. The High Court set aside the order passed by the Family Court, whereby a decree for divorce was granted holding that the Family Court was not justified in granting the decree for divorce. Even after recording this finding the High Court in the concluding portion of the judgment suo motu granted a decree of judicial separation, as envisaged under section 10 of the

Hindu Marriage Act and also directed for payment of maintenance to the wife by the husband. In that case the Hon'ble Apex Court has held that if the suit was for divorce, then the decree of judicial separation cannot be granted and simultaneously it has also held that in this situation direction of payment of maintenance is also not permissible. The Hon'ble Apex Court has allowed the appeal and set aside the decree for judicial separation and grant of maintenance.

11. In the instant case, the husband has filed the suit for judicial separation which was granted after allowing his application. In the said suit, wife has filed written reply so in our considered opinion there was no occasion before her to make a prayer for granting her permanent alimony or maintenance because she is not expected to presume that the judicial separation asked by the husband will definitely be granted. On going through the reply filed by the respondent/wife, it is clear that she has not only pleaded regarding the income of appellant/husband, but also has led evidence that the appellant/husband is a Medical Representative and his income is around Rs.25,000/- to Rs.30,000/- per month.

12. A Single Bench of this Court, in **Surajmal Ramchandra Khati Vs. Rukminibai** [(2000) 1 MPLJ 19], has considered section 25 of the Act in the light of section 23(A) of the Act, which is added at the later stage. In the aforesaid case it is held thus : -

"7. While considering provisions of section 25 of the Act, provisions of section 23(A) cannot be ignored which provides that -

“In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner’s adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground; and if the petitioner’s adultery, cruelty or desertion is proved, the Court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.”

It means that in absence the petition filed by other spouse who has been contesting said litigation as respondent, is entitled to claim any relief under the provisions of the Act by making counter claim on the ground of petitioner’s adultery, cruelty or desertion. And such spouse would be entitled to get such relief if he proves the said fact. That spouse would be entitled to get said relief from the Court as if the said spouse had presented a petition seeking such relief on that ground. Thus, keeping in view the spirit of provisions of section 23(A), the spirit behind the enactment will have to be seen. The Act has adopted a broader approach while dealing with matrimonial cases. Therefore, the word ‘on application made to it’ used in sub-section (1) of section 25 will have to be interpreted in a broader view. This word ‘on application made to it’ should not be construed in a strict sense. It does not mean always that such spouse is required to present a separate application for making a prayer for permanent alimony.”

13. In **Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy** (Civil Appeal No.5369 of 2017) decided on 19.4.2017, in this regard although no law appears to have been laid down, but the findings are relevant because in a suit under section 10 of Hindu Marriage Act, for judicial separation, the trial Court has allowed the prayer, granted the decree of judicial separation and also

granted permanent alimony of Rs.2,500/- per month and Rs.2,000/- per month, which was later on enhanced to the extent of Rs.6,000/- per month each to the wife and minor son respectively, in the subsequent miscellaneous suit. In the revision filed by the wife the amount was enhanced to Rs.16,000/- per month and later on in the review petition to the tune of Rs.23,000/- per month by the High Court of Calcutta. The matter which was before the Hon'ble Apex Court was that in a review petition the High Court could not increase the amount. After hearing both the parties, the Court has reduced the amount from Rs.23,000/- per month to Rs.20,000/- per month and specifically held that the alimony which is granted in the suits filed under section 10 of the Act can be altered by filing the application under section 25(2) of the Act.

14. In view of aforesaid, in our considered opinion there is no error or illegality in the judgment and decree passed by the Family Court for judicial separation on account of desertion and cruelty and the Court below has rightly granted permanent alimony to the respondent/wife.

15. Considering the facts and circumstances of the case, the judgment and decree passed by the Family Court needs no interference by this Court and deserves to be upheld.

16. Consequently, this appeal has no merit and is dismissed. The judgment and decree passed by the Family Court is upheld.

M.

(Sujoy Paul)
Judge

(Mohd. Fahim Anwar)
Judge