

Court No. - 39

Case :- FIRST APPEAL No. - 34 of 2009

Appellant :- And Another

Respondent :-

Counsel for Appellant :- Shree Ram Gupta, Ram Gupta, Smt. Abha Gupta

Counsel for Respondent :- Manish Gupta, Manish Tandon

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Smt. Abha Gupta, learned counsel for the appellants and Sri Manish Tandon, learned counsel for the respondent.

2. Present appeal has been filed under Section 19 of the Family Court Act, 1984 arising from judgment and order dated 14.09.2007 passed by Principal Judge, Family Court, Kanpur Nagar in Case No. 114 of 2003 (

), whereby the learned Court below has passed a decree under Section 25 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') providing for lumpsum alimony Rs. 1,40,000/-. At the same time, it has adjusted to Rs. 38,000/- granted to Km. under the earlier decree dated 18.7.1996, whereby the divorce Case No. 728 of 1994 (

) had been decreed under Section 13 of the Act on the ground of cruelty.

3. Upon hearing learned counsel for the parties, it transpires that the parties were married on 18.6.1993. Their daughter was born in the year 1994. She would be about 30 years of age. The parties separated on 8.8.1994. During the period of separation, under order passed under Section 125 Cr.P.C. on 06.06.1995,

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maintenance at the rate of Rs. 500/- (in all), had been awarded to the appellants. Further, order dated 17.07.2000 under Section 127 Cr.P.C. that amount of monthly maintenance was revised to Rs. 1000/- per month (collectively). While the recoveries may have remained pending, compromise has also been disclosed reached between the parties. In the proceedings for execution under Section 127 Cr.P.C., whereunder vide further order dated 13.01.2011, the Principal Judge, Family Court concluded those proceedings with the following order:

"आदेश

दिनांक 13/01/2011

आवाज दिलाई गई। उभय पक्ष उपस्थित है। 25000-0 रु० की चेक श्रीमती किरन गुप्ता को दिया जा चुका है। विपक्षी को निर्देश दिया जाता है। कि वह किरन गुप्ता को रु० 13000-00 की धनराशि और उपलब्ध कराये। विपक्षी ने आश्वासन दिया कि कल 13000-00 की चेक धनराशि वह न्यायालय में जमा कर दें। कागज सं० 15 संधि पत्र के आधार पर यह वाद निरस्त किया जाता है।"

4. The divorce decree granted in favour of the respondent was confirmed by this Court on 23.03.1999 upon dismissal of First Appeal No. 339 of 1996.

5. In such circumstances the learned Court below has vide its order impugned judgment and order dated 14.09.2007 provided for lumpsum alimony at the rate of Rs. 1,40,000/-, However, it has provided for deduction of Rs. 38,000/- paid by the respondent to Km. (as noted above).

6. As to the employment status of the parties, it has been disclosed that the appellant no.1 had earlier worked as a private tuition teacher. However, she did not have a permanent job. On the other hand, the respondent has retired from the post of Clerk at District Court Kanpur Nagar in the year 2022. He is also disclosed to have remarried after dismissal of the First Appeal No. 339 of 1996. He has three children born from the second marriage. Sri Manish

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Tandon, learned counsel for the respondent would state that the respondent has two siblings with special needs to take care of. Also, he has a widowed sister living with him.

7. In such circumstances, he would submit that the respondent has discharged all his legal liabilities towards appellants. Considering that his pay is about less than Rs. 7500/-, the Court below has computed the alimony claimed, adequately at Rs. 1,40,000/-.

8. While money may always be short to fulfill all human needs, the Courts may not look at the pay package of the parties alone to determine the amount of alimony that would be awarded. In the entirety of facts and circumstances where the marriage between the parties survived only for three years and they have remained separated since then and also considering the fact that the respondent remarried, in accordance with law giving rise to his further responsibilities and financial liabilities, as also considering the fact that earlier the respondent was saddled with the liabilities under Section 125 Cr.P.C., primarily, we do not find any good ground to interfere with the order of the award of maintenance of permanent alimony to the extent it has been quantified to Rs. 1,40,000/-. In that, we also take note of the compromise entered into between the parties as was noted by the learned Principal Judge, Family Court, Kanpur Nagar in his order dated 13.01.2011 in Case No. 76 of 2009.

9. At the same time, we find force in submission advanced by learned counsel for the appellants that the learned Court below has erred in deducting Rs. 38000/- from the amount of permanent alimony awarded to the appellant no. 1. Whatever was paid to the daughter born to the parties, may not have been adjusted against the amount payable to the appellant no.1.

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10. On the suggestion of the Court, Sri Manish Tandon, learned counsel for the respondent states that the respondent is willing to pay further amount of Rs. 50,000/- to the appellants against the deduction made by the learned Court below. Let that amount be paid out within a period of one month through deposit made before the learned Court below.

11. The amount so deposited may be released in favour of appellant no.1 subject to both appellants giving an undertaking before the learned Court below to withdraw from all cases/proceedings instituted against the respondent include those seeking more money either towards alimony or maintenance and further undertaking not to institute any other proceeding civil or criminal. If no such undertaking is furnished within a period of four months, the amount may be returned to the respondent forthwith.

12. With the above observations, the appeal is partly allowed.

Order Date :- 2.8.2024

Noman

(Donadi Ramesh, J.) (S.D. Singh, J.)