

(2017) 01 KAR CK 0361
In the Karnataka High Court
Case No : 7237 of 2015(FC)

Mr.Noel Lewis Pinto

APPELLANT

Vs

Mrs Shalet D"souza Nee Sharlette Di"souza

RESPONDENT

Date of Decision : 30-01-2017

Acts Referred:

Family Courts Act, 1984, Section 19 -
Divorce Act, 1980, Section 37, Section 36, Section 10(2), Section 10(1)(10), Section
10(1)(9)

Citation : (2017) 01 KAR CK 0361

Hon'ble Judges : S.Abdul Nazeer, K.S.Mudagal

Bench : DIVISION BENCH

Advocate : Karunakar P., Dilraj Rohit Sequeira

Final Decision : Dismissed

Judgement

1. This is the husband's appeal under Section 19 of the Family Courts Act challenging the judgment and decree dated 10.04.2015 passed by the Family Court, Dakshina Kannada, Mangalore in M.C.No.178/2013. By the impugned judgment and decree the trial Court has allowed the petition of the present respondent under Section 10(1)(ix) and (x) and 10(2) of Indian Divorce Act for dissolution of marriage, rejected the counter claim of the appellant for restitution of conjugal rights and awarded permanent alimony of Rs.7,50,000/- and litigation expenses of Rs.10,000/-.

2. The appellant is the respondent before the trial Court. The respondent filed the petition against the appellant under Section 19 of the Family Courts Act for a decree of dissolution of marriage, costs etc initially before the Senior Civil Judge, Mangalore, D.K. in M.C.No.73/2012. The said petition was returned for presentation before the proper Court and ultimately, was presented before the Family Court, Mangalore, D.K. and registered in M.C.No.178/2013. For the purpose of convenience the parties will be referred to hereafter with their ranks before the trial Court.

3. There is no dispute that the marriage of the petitioner with the respondent was solemnized on 19.11.1990 at the Guardian Angel church, Mangalore and subsequently the same was registered with the Christian Marriage Registrar on 21.07.2009. Out of the said wedlock, the couple have a girl child by name Sherlie. The petitioner sought a decree of dissolution of marriage alleging that

(i) the respondent married her misrepresenting that he is a Polytechnic diploma holder and on the basis of such qualification has a good job at Abu Dabi and later, it was revealed that he was only a 10th standard drop out and doing a mean manual job;

(ii) respondent was a lazy wayward person without any commitment to the job or the family & failed and neglected to maintain her and her child;

(iii) he is addicted to alcohol and watching pornography and perverted sexual behavior and when she couldn't appease his unnatural lust he used to assault her violently;

(iv) he is guilty of bestiality;

(v) Such conduct of the respondent has made it harmful to her to live with him;

(vi) He has deserted her and her child since February 2009

4. The petitioner claimed alimony of Rs.15,000/- per month and litigation expenses of Rs.20,000/- by filing an interim application under Section 36 of the Indian Divorce Act.

5. The respondent contested the petition denying all the allegations. As against that he imputed infidelity to the petitioner and contended that she herself has deserted him. Further, he filed counter claim for restitution of conjugal rights. He denied the claim for alimony on the ground that wife herself is employed and earning Rs.20,000/- per month and he is working as a mean labour and suffering health setback.

6. Before the trial Court on behalf of the petitioner PWs 1 to 5 are examined and Exs.P.1 to P.35 are marked. On behalf of the respondent, RWs 1 to 5 are examined and Ex.R.1 to R.18 are marked. After hearing the parties, the trial Court allowed the petition holding that all the grounds urged by the petitioner are proved. Further, the trial Court granted permanent alimony of Rs.7,50,000/- and dismissed the counter claim of the respondent for restitution of conjugal rights.

7. Though the appeal is filed challenging the entire judgment and decree, during hearing the counsel for the appellant restricted the claim in the appeal memo only to the extent of grant of alimony. Having regard to that, the only question that arises for the consideration of this Court is, "Whether the order of the trial Court granting alimony of Rs.7,50,000/- suffers any infirmity warranting the interference of this Court?"

8. While granting the decree for dissolution of marriage, Section 37 of the Indian Divorce Act empowers the District Court to grant alimony to the wife in a gross sum or in an annual sum. While granting such alimony, the Court is required to take into consideration the fortune of the wife, the ability of the husband and conduct of the parties to arrive at a reasonable sum of alimony.

9. The petitioner claimed that though the respondent was working all along, he did not take care of herself and her daughter and he was spending all his income for boozing and he was not interested to work regularly. She further claims that she worked in a private firm for livelihood and off late she gave up that employment due to her ill health therefore, she needs maintenance for herself and her daughter. She contended that her brother purchased a house at Konaje in the name of the respondent and he is deriving rental income from the said house.

10. On the other hand, the respondent contended that he is working as a labour and the petitioner herself is working with Supreme Bajaj and earning salary of Rs.20,000/- per month therefore, she is not entitled for alimony.

11. Learned counsel for the respondent vehemently argued that the petitioner herself contends that the respondent was a lazy person, wayward and spent all his money on alcohol and therefore, having regard that the trial Court has committed error in awarding alimony of Rs.7,50,000/-. He further argued that the respondent is suffering from several ailments and therefore, the order of alimony is acting oppressively against him.

12. So far as the financial standing of the parties, though the petitioner alleged that the respondent is a wayward and spend thrift but there is no dispute that the petitioner has not inherited any property from her parents or from any other source. Though she has admitted that she was working in Supreme Bajaj, she contended that she has resigned the said post in September '13 due to her ill health.

13. As on the date of her evidence, she was 45 years old and presently, she is about 48 years old. To substantiate her contention that she has resigned her job, she examined PW 5 - Yogesh - the Deputy Sales Manager of Supreme Bajaj. Ex.P.34 is the certificate issued by the manager of the said Company stating that she worked as Executive Accounts from 1.10.2010 to 1.10.2012 and she has not worked since 30.09.2012. PW5 is an independent witness and nothing worth is elicited in his cross examination to impeach his evidence or the document - Ex.P.34.

14. At one breath, the respondent states that he was only a plumbing labour and his income was far low as compared to the income of the petitioner. At the next breath, when she says that the house property in Konaje was acquired out of the contribution of her brother, the respondent asserts that he has acquired that property out of his own earnings. If that evidence of RW1 is to be accepted, then his contention that he is penniless cannot be accepted. The respondent cannot be

permitted to blow hot and cold together.

15. RW1 has admitted that he has let out one portion of the said property, which is yielding rent. Further, RW1 in his cross examination at page 25 admits that he purchased 5 cents of Government land at Konaje from one Manujunath under a sale deed - the certified copy of which is at Ex.P.20. Ex.P.20 shows that the said site is purchased for Rs.40,000/- on 01.03.2000. In his cross examination at page 29, RW1 admits that he is working as a painting labourer. At page 32 of his cross examination, he states that he does not know if the petitioner has left her job with Supreme Bajaj with effect from 31.10.2012. But he does not deny that suggestion.

16. RW1 in his cross examination at page 26 states that his wife is always telling truth before him. In the light of such clear admission, there is no reason to disbelieve the evidence of PW1 that she has resigned the job due to her health condition and she has no income of her own. According to RW1 himself, his daughter requires Rs.5000/- per month for educational expenses. Therefore, it is clear that the petitioner is presently unemployed and she has the burden of maintaining herself and her daughter. This is all about the financial status of the parties.

17. So far as the conduct of the parties for consideration in granting alimony, the trial Court has recorded the finding that the respondent is guilty of desertion, cruelty, rape, sodomy and bestiality. Since the respondent restricted his appeal only to the relief of alimony, those findings still operate against him. Apart from that, the respondent imputed infidelity to the petitioner and produced Ex.R.4 - an abnoxious email contending that that is the screen shot of the chatting between the petitioner and one Melwynmonteiro. Though he did that, he himself admitted in his cross examination at page 26 in unequivocal terms as follows:

"According to me my wife is not at all having any affair with any one. According to me till this day my wife is loyal and having very good character. According to me, my wife is obedient to me. My wife is always telling truth before me. According to me between myself and my wife, no quarrel took place at any point of time. According to me as my wife bears good character and obedient that is the reason it is my wish that she should come and join with me".

18. In the light of such clear admission, the allegations of the respondent that wife is living in adultery is totally malicious and uncharitable. The respondent did not even take pain of proving Ex.R.4. According to RW.1's deposition at page 22 paragraph 4 the said email was handed over to one Mani Mascarenhas. The said Manie Mascarenhas is not examined. A searching examination of the said email shows that it was generated on the account of one Manie Mascarenhas¹⁹. So far as the fortune of the petitioner is concerned, the respondent has not placed any material on record to show that she owns any property. The evidence on record shows that she herself was more qualified than the respondent and on her marriage with this person, the only fortune she acquired is the misfortune of

humiliation, cruelty and baseless and uncharitable allegations.

20. So far as the ground of ill health of the respondent, the records produced by him at Ex.R.7 show that the alleged ailment was a renal calculi in March 2012 and surgery for hernia during the same month. There is nothing to show that the said ailments have caused any total functional disability to the respondent.

21. The respondent has a house to live but, the petitioner and her daughter, do not have their own shelter to live. Taking into consideration all these aspects, the trial Court has awarded alimony of Rs.7,50,000/-. Therefore, the order of alimony is based on the sound appreciation of law and evidence and does not call for any interference by this Court. Hence, the appeal fails and dismissed accordingly. No order as to costs.