

(2017) 07 MAD CK 0035

MADRAS HIGH COURT

Case No: 746 of 2006 and M P (MD) No 1 of 2006

B.Vijayakumar

APPELLANT

Vs

S.Saraswathy

RESPONDENT

Date of Decision: July 27, 2017

Acts Referred:

- Constitution of India, Article 227 - Power of superintendence over all courts by the High Court
- Hindu Marriage Act, 1955, Section 25 - Permanent alimony and maintenance

Hon'ble Judges: T.Ravindran

Bench: SINGLE BENCH

Advocate: T.Ravindran

Final Decision: Dismissed

Judgement

1. Impugning the fair and decreetal orders, dated 07.04.2006, passed in I.A.No.276 of 2005 in H.M.O.P.No.8 of 2005, on the file of the

Additional Subordinate Judge, Thanjavur, the civil revision petition has been preferred invoking Article 227 of the Constitution of India.

2. I.A.No.276 of 2005 has been preferred by the respondent herein under Section 25 of the Hindu Marriage Act, 1955 for an order awarding

Rs.5,00,000/- as permanent alimony and maintenance as agreed by the revision petitioner in the joint memo of compromise, dated 24.03.2005,

filed before the Court and directing him and his men to discharge the fixed deposit receipt and pay the same to her.

3. As seen from the case of the respondent herein in the above said application, she has preferred a petition for divorce against the revision

petitioner and as the revision petitioner had agreed for compromise to get divorce, the terms of the compromise were reduced into writing and as per the terms of the said compromise, the revision petitioner has to pay a sum of Rs.5,00,000/- in lump sum towards the future maintenance of the respondent and it is also found that the amount was deposited in the Bank in the name of two persons and it was mutually agreed that after the order of divorce, the amount deposited in the Bank should be appropriated with all interest by the respondent herein. Accordingly, it is the case of the respondent herein that the marriage between her and the revision petitioner had been dissolved on 24.03.2005 and when she had approached the revision petitioner to discharge the fixed deposit and pay the said lump sum of Rs.5,00,000/- towards her future maintenance, it is stated that on some pretext or the other, the revision petitioner is avoiding the payment and inasmuch as the revision petitioner herein is liable to pay the amount after discharging the fixed deposit and inasmuch as the revision petitioner had failed to do so by honouring the terms of the compromise, she has been necessitated to lay the application.

4. The above said application preferred by the respondent herein was resisted by the revision petitioner on the footing that even before the divorce has been ordered by the Court, the respondent demanded the entire amount to be paid to her and inasmuch as one of the joint holders of the Bank deposit was not available at that point of time, the amount could not be withdrawn and hence, the revision petitioner's father had arranged the payment of Rs.5,00,000/- to the respondent in order to get peace and put an end to the litigation and paid the amount to her and the respondent, after the receipt of the entire amount, cannot again seek to claim the amount lying in the Bank deposit and further according to the revision petitioner, the respondent has relinquished her right to seek maintenance in the divorce proceedings, which was also recorded by the Court and in such view of the matter, according to him, the respondent cannot reopen the issue further and seek future maintenance once again from the revision petitioner by way of the present application and further, according to him, the application is not legally maintainable and hence, it is liable to be dismissed.

5. The above application was taken up for consideration and the Court below, after noting the fact that under the terms of the compromise filed before the Court the revision petitioner herein had agreed to pay a lump sum of Rs.5,00,000/- towards future maintenance to the respondent, finding that even though the H.M.O.P., had been disposed of, inasmuch as the revision petitioner had not honoured the terms and conditions of the compromise and paid the amount as promised by him and also further finding that Section 25 of the Hindu Marriage Act provides for the payment of the permanent alimony and maintenance at any stage of the matter even after the passing of the decree in the main proceedings and inasmuch as the revision petitioner herein despite admitting to pay the amount had not made the payment and on the other hand claimed to have made the payment through some other mode, for which there is no material, held that the application preferred by the respondent herein is maintainable and directed the matter to be posted on 12.04.2006 for adduction of evidence.

6. Challenging the same, it is found that the present civil revision petition has been preferred.

7. As seen from the materials placed, on the subsequent hearing dates, the revision petitioner did not participate in the proceedings and accordingly, the Court below, considering the evidence adduced by the respondent both oral and documentary, allowed the application preferred by the respondent herein on 18.04.2006.

8. It is found that the revision petitioner has not challenged the final order passed by the Court below, dated 18.04.2006, in I.A.No.276 of 2005.

However, he has only challenged the impugned order, dated 07.04.2006 of the Court below holding that the application preferred by the respondent herein is legally maintainable.

9. It is not in dispute that the respondent herein has moved a petition seeking for divorce against the revision petitioner. It is also not in dispute that the parties have entered into a compromise and pursuant to the same also filed a Memorandum of Compromise before the Court, wherein the revision petitioner had agreed to pay a lump sum of Rs.5,00,000/- to the respondent towards future maintenance. The said amount was deposited

in the Bank in the name of two persons and it was agreed that on the Court passing order of divorce the respondent is entitled to get the amount.

Now, according to the respondent, inasmuch as the revision petitioner has failed to honor his commitment and not discharged the fixed deposit, she has been necessitated to prefer the application seeking for appropriate reliefs.

10. The case of the revision petitioner that even though he had deposited the amount agreed to be paid towards the respondent's future maintenance in the Bank deposit, which has been incorporated in the terms of the compromise and the respondent had been given liberty to get the amount after order of the Court allowing the divorce petition, according to him, as the respondent insisted for the payment of the said sum even before the Court had passed order of divorce, he had made arrangement to pay the amount through his father and as the respondent had received the amount, she is not entitled to seek for the claim of the amount again lying in the Bank deposit and hence, the application is not legally maintainable.

11. However, as per the contention put forth by the revision petitioner, to establish that he has paid the said amount of Rs.5,00,000/- to the respondent even prior to the order of divorce, there is no material forthcoming. Merely because the respondent in the divorce proceedings had agreed that she has received the payment cannot be held that she indeed received the payment. As rightly contended by the respondent's counsel the said admission is only given in pursuance of the terms of the compromise entered into between the parties and filed before the Court on the date of grant of order of divorce and in such view of the matter, it is found that the contention of the revision petitioner that the respondent had already received the amount as such cannot be countenanced. As seen above, there is no reliable material placed on the part of the revision petitioner that the respondent had already received the amount agreed to be paid by the revision petitioner towards future maintenance as incorporated in the terms of compromise.

12. In such view of the matter, it is found that the Court below has rightly noted that inasmuch as the respondent is entitled to seek maintenance

and permanent alimony even subsequent to the passing of the Decree and further since the revision petitioner had failed to honour his commitment

given under the terms of compromise filed before the Court, held that the respondent is entitled to seek for the payment of the said sum by filing

necessary application on account of the failure of the revision petitioner to fulfil his promise as per the terms of the compromise.

13. Considering the impugned order in its entirety, it is found that the Court below has rightly held that the application filed by the respondent

herein seeking for permanent alimony and maintenance of Rs.5,00,000/- as agreed to be paid by the revision petitioner is maintainable and it is

perfect both legally as well as factually and it does not warrant any interference from this Court.

14. Resultantly, the civil revision petition is dismissed with costs.

Consequently, connected miscellaneous petition is closed.