

**(2014) 06 GAU CK 0035**

**Gauhati High Court**

**Case No:** Mat Appeal No. 46 of 2012

Suchitra Das

APPELLANT

Vs

Banashree Das

RESPONDENT

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**Date of Decision:** June 24, 2014

**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 25

**Hon'ble Judges:** Abhay Manohar Sapre, C.J; Ujjal Bhuyan, J

**Bench:** Division Bench

**Advocate:** R. Hazarika, Learned Counsel, Advocate for the Appellant; Pran Bora, Learned Counsel, Advocate for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

Abhay Manohar Sapre, C.J.

With the consent of the parties, this appeal is heard finally.

2. This is an appeal by the appellant-husband u/s 28 of the Family Courts Act against the judgment and decree dated 19.5.2012 passed by the District Judge, Jorhat in Title Suit (Marriage) No. 46 of 2008.

3. By the impugned order, the learned District Judge allowed in part the petition filed by the wife (respondent herein) u/s 25 of the Hindu Marriage Act for grant of permanent alimony by way of maintenance payable by the husband to her amounting to Rs. 5 lakhs payable in two equal installments.

4. So the short question that arises for consideration in this appeal is - whether the learned District Judge was justified in allowing the petition filed by the respondent-wife for grant of permanent alimony of Rs. 5 lakhs.

5. The facts of the case lie in a narrow compass. They however need mention in brief infra.

6. The appellant is the husband whereas the respondent is his wife. After the marriage, the appellant and respondent did not pull on well and disputes started between them resulting in their separation which eventually ended in dissolution of their marriage.

7. Since the respondent did not have any independent personal income for her survival and, therefore, she filed a petition u/s 25 of the Act before the learned District Judge, Jorhat claiming permanent alimony from her former husband out of which this appeal arises. According to the wife (respondent), the appellant is running a grocery shop and earns sizeable regular income from the shop.

8. The appellant (husband) denied the claim of the respondent but admitted that he is running a shop. The parties adduced evidence in support of their stand.

9. By the impugned judgment/decreed, the learned District Judge on appreciation of oral evidence partly allowed the petition and awarded a total sum of Rs. 5 lakhs to the wife. It was directed that this amount be paid in two equal installments of Rs. 2,50,000/-.

10. It is this judgment and decree, which is impugned by the husband in this appeal.

11. Having heard the learned counsel for the parties and on perusal of the records of the case, we are inclined to allow the appeal in part and in consequence thereof modify the impugned judgment and decree by reducing the permanent alimony from Rs. 5 lakhs to Rs. 4 lakhs for the reasons given below.

12. On perusal of the evidence adduced by the parties, we notice that it is an admitted fact that the appellant is running a grocery shop. In the present day scenario, a person running a grocery shop, though smaller in size can reasonably earn a good amount on day to day basis. However, there is no direct evidence to sustain a finding that the appellant would therefore be in a position to pay Rs. 5 lakhs and that too in two equal installments out of his total earning from his grocery shop.

13. Having regard to all factors arising on the basis of evidence and the fact that appellant has paid a sum of rupees one lakh to wife which also indicate his financial capacity, we are of the view that it would be just and proper to award Rs. 4 lakhs towards permanent alimony to the wife in place of Rs. 5 lakhs as awarded by the learned District Judge.

14. The respondent-wife is, therefore, held entitled to claim permanent alimony of Rs. 4 lakhs from the appellant. Since the appellant has paid Rs. 1 lakh to the wife and hence this amount is adjustable against the total amount of Rs. 4 lakhs. The appellant shall, therefore, pay Rs. 3 lakhs in five equal installments which would be payable as under at the rate of Rs. 60,000/- (Rupees sixty thousand) on the dates specified against each installments to respondent (wife).

15. The appeal thus succeeds and is allowed in part. The impugned judgment and decree is modified as mentioned above.

16. We, however, grant liberty to the respondent to approach the Court for modification of this order in the event, the appellant fails to comply with the schedule of payment in time. The respondent may also in addition to approaching the court can apply for execution of this order in accordance with law against the appellant.

17. Cost and lawyers fee payable by appellant to respondent is quantified at Rs. 5,000/-. It be paid along with the first installment by the appellant to the respondent.