

ORISSA HIGH COURT, CUTTACK.

MATA No. 39 of 2013

An appeal under Section 19 of the Family Courts Act, 1984.

Ruby @ Pritipadma Pradhan ... **Appellant.**

Versus

Debasish Pradhan ... **Respondent.**

For Appellant : M/s. Amit Pr. Bose,
R.K. Mahanta,
N. Hota, V. Kar, D. Sahoo
and S.S. Routray.

For Husband : M/s. Niranjana Panda-1,
M.K. Panda and
Miss. S. Mazumdar.

A N D

MATA No.64 of 2013

*An appeal under Section 28 of Hindu Marriage Act, 1955
read with Section 19(1) of the Family Courts Act, 1984.*

Debasish Pradhan ... **Appellant.**

Versus

Ruby @ Pritipadma Pradhan ... **Respondent.**

For Appellant : M/s. Niranjana Panda-1, M.K.
Panda and Miss. S. Mazumdar.

For Husband : M/s. Amit Pr. Bose, N. Hota, V.
Kar, D. Sahoo and
S.S. Routray.

PRESENT :

**THE HONOURABLE MR. JUSTICE VIOND PRASAD
AND
THE HONOURABLE MR. JUSTICE BISWANATH RATH**

Date of hearing : 06.08.2014 Date of Judgment : 20.08.2014

Biswanath Rath, J. Both the above appeals arise out of judgment and order dated 25.3.2012 passed by the learned Family Court, Sambalpur in Matrimonial Case No.19/44 of 2009-2012.

2. MATA 39 of 2013 is at the instance of the wife praying for enhancement of permanent alimony from Rs.12,00,000/- to Rs.25,00,000/- whereas MATA 64 of 2013 is at the instance of the husband praying for reduction in the quantum of permanent alimony. Since both the above appeals arose out of a common judgment and both sides rest their claim on quantum of permanent alimony, we heard the matters together.

3. The case of the husband in the Family Court was that the husband and the wife tied nuptial knot on 5th December, 2006 according to the Hindu Rites and customs. They stayed together as married couple for about two weeks in the house of the husband at Sambalpur. Thereafter they went to Mumbai where the husband was serving in a company. They led a very happy conjugal life for about two months but thereafter the wife found the

husband to be of suspicious nature. She started suspecting the husband whenever the husband was talking with any lady staff on official matter. She started to behave rudely whenever any of his friends and spouses were visiting them. It was further alleged by the husband that whenever he was returning home in the evening being exhausted, the wife was insisting him for sex and if the husband was denying for the same at that point of time, then the wife was denying him sex at night time. She used to quarrel with the husband on petty matters and even going to the extent of threatening him to commit suicide in order to put him in trouble. They came back to Sambalpur on 20.01.2007 and thereafter she voluntarily went away to her parents' house since 27.01.2007 whereafter there was no link with each other.

4. Pursuant to notice by the Family Court, wife appearing in the matter, filed a written statement. Her stand in the written statement was that the husband was dissatisfied with the dowry presented during her marriage and was insisting her to bring cash of Rs.15 lakhs to purchase a flat at Mumbai. She was all along ill treated. Sometimes, she was forced to see phonographic blue films and for oral sex. On refusal by her, she was being assaulted. She admitted the fact that on coming back to Sambalpur on 20.01.2007 on the proposal by the husband to take her to U.S.A., they had sworn a joint

affidavit on 20.01.2007 to obtain the passport. But as her father did not give cash dowry of Rs.15 lakhs and a Car, the husband did not take her to U.S.A., left her in her father's house and refused to take her back. Her further plea in the written statement was that the husband used to frequently talk with a lady in odd hours of late night for long time and had even confessed before her that he wanted to marry her but his parents forced him to marry the present appellant. In July, 2010, wife had gone to Mumbai to the husband's house to assert her right as a wife but the husband lodged a complaint against her at Tilk Nagar P.S., Mumbai and she was prevented from joining the husband. She has specifically denied the allegation of threatening to commit suicide. On the other hand, she took a stand that the husband has treated her with cruelty, deserted her and she claimed that the petition for divorce by the husband has been filed on false pretext. On the above ground, while claiming for rejection of the petition at the instance of the husband, she had filed a counter claim under Section 23A of Hindu Marriage Act, 1955 to dissolve the marriage by decree of divorce, on the ground of cruelty shown by the husband and deserting her for a period of more than two years prior to the date of filing of the petition for divorce and claimed for permanent alimony of Rs.25,00,000/- (rupees twenty five lakhs).

5. Upon completion of pleadings of the parties, Family Court framed the following issues :-

- “1. Whether the petitioner has treated the husband with cruelty or vice versa?
2. Whether the husband has deserted the petitioner for a period of not less than two years prior to filing of the petition for divorce or vice versa?
3. Whether the parties are entitle for divorce?
4. Whether the husband is entitle for permanent alimony and maintenance ?”

6. After hearing the parties, while dealing with the issue no.1, the Family Court held that the plea of cruelty advanced by both the parties towards each other, has not been proved and divorce on the plea of cruelty, cannot succeed. Similarly, while dealing with issue no.2, the Family Court came to the finding that it is the husband, who had deserted the wife. Thus, allowed the plea of divorce by the wife on account of desertion by the husband. Consequently, while partly allowing the wife's counter claim under Section 13(1)(i-b) of the Hindu Marriage Act, the Family Court was pleased to reject the application for divorce at the instance of the husband. The Family Court while dealing with issue nos.3 and 4, on dissection of the materials available on record, came to the finding that the husband has joined a company 'VEOL

Medical Technologies' in December 2012 and his home take salary is of Rs.42,349/- (rupees forty two thousand three hundred forty-nine) after deduction towards Provident Fund, Professional Tax and Income Tax, in the premises, granted the permanent alimony in favour of the wife @ Rs.10,000/-(rupees ten thousand) per month and compounding the same for ten years, finally calculated the permanent alimony at Rs.12,00,000/-(rupees twelve lakhs), which was to be paid without having any deduction for any maintenance received in the meanwhile.

7. Being aggrieved by the quantum of the permanent alimony as fixed by the Family Court, wife has preferred MATA No. 39 of 2013 with the following prayer:-

“to admit this appeal, call for the L.C.R. and after hearing the parties set aside the amount of Rs.12,00,000/- fixed as permanent alimony only and enhance the same to Rs.25 lakhs as claimed by the wife to meet the ends of justice;”

8. Similarly being aggrieved by the very same impugned judgment, the husband has preferred the other appeal (MATA 64 OF 2013) with the following prayer:-

“to admit this appeal, call for the case record from the Court below and after hearing the parties modify the amount of permanent alimony passed in the judgment dated 25.3.2013 by the learned Judge, Family Court, Sambalpur in Matrimonial Case No. 19/44 of 2009-2012”

9. When the matter was taken up on 01.08.2014 with the participation of the counsel from both sides, the counsel for the wife though came forward with preparedness of the wife to join the husband, but the counsel for the husband made categorical statement that there is no chance of re-union and further submitted that any further effort for bringing the spouse together, will not yield any fruitful result. For the above statement made by the counsel for the husband, this Court felt it necessary not to make any attempt for bringing those spouses together and decided to proceed for decision in the matter of grant of permanent alimony alone.

10. It is an admitted case of the parties that the husband at the time of marriage, was serving in a company namely, Johnson and Johnson. By the time he left his service in the said company, he was getting Rs.90,000/-(rupees ninety thousand) per month and as per Ext.6, he has left the said job on 2nd January, 2012, on the basis of his resignation. On his own admission, the husband submitted that subsequently he has joined 'VEOL Medical Technologies' on 20th December, 2012 with gross salary of Rs.52,000/-(rupees fifty two thousand) and home take salary of Rs.42,349/-(rupees forty two thousand three hundred forty-nine) after deduction towards Provident Fund, Professional Tax and Income Tax. The husband stays at Mumbai whereas the wife being

deserted, stays with her parental home. She is jobless and is to depend on her parents for her survival.

11. During course of argument, learned counsel for the husband advanced an argument that when the family proceeding was continuing, the wife also initiated a proceeding under Domestic Violence Act, 2005, which is being registered as CRP No.70 of 2011 on the file of Family Court, Bhubaneswar. The counsel for husband further submitted that in the said proceeding, some orders have been passed by the Family Court, Bhubaneswar on 21.03.2011, challenging which, the husband filed RPFAM No.30 of 2011 in this Court and claimed that the RPFAM No.30 of 2011 has been disposed of on 26.07.2013 with some favourable order in his favour. The counsel for the husband has also produced the copy of the order dated 26.07.2013. On perusal of which, we find that the above RPFAM has simply been disposed of finding the proceeding became infructuous.

12. The counsel for the wife, on the other hand, submitted that the proceeding vide RPFAM No.30 of 2011 is still pending and in the said proceeding, by order dated 21.03.2011, the Family Court has allowed the application of the wife for interim maintenance directing the husband to pay a sum of Rs.20,000/- (rupees twenty thousand) per month to the wife from the date of application, i.e.,

06.10.2011 with further direction for clearing the arrear maintenance within a month and for making payment of current maintenance by 10th of each succeeding month. To establish the above submission, the counsel for the wife has also produced the copy of the order dated 21.03.2011. On perusal of both the orders produced by the respective parties, we find that the issues raised by both the sides are in no way connected with the subject matter involved in the present two cases and thus we leave the issue open to the parties to remedy out their claims through the forums available to them. The counsel for the wife further argued that calculation of permanent alimony, taking into account 10 years factor, is unsustainable. He further alleged that the allegation of the husband that he had lost his earlier job for the complications created by the wife, is far from truth and the husband has adopted such a course, only in order to deprive the wife from appropriate permanent alimony by joining a job with a lower salary and since the wife is hardly aged about 29 years old, it is difficult on her part to maintain the rest part of her life with the paltry sum of Rs.12,00,000/-(rupees twelve lakhs) as permanent alimony and under the above premises claimed for enhancement of permanent alimony.

13. During the course of argument, learned counsel for the husband relied upon the following decisions as reflected herein below:-

1. AIR 2011 S.C.2748 (Vinny Paramvir Parmar v. Paramvir Parmar)
2. 2013(II) OLR 774 (Biswajit Dash v. Smt. Millan Dash).
3. 2013(Supp-II) OLR 653 (Asish Mohapatra v. Priyadarsini Barik).
4. AIR 2013 S.C. 415(U.Sree v. U.Srinivas)
5. (2011) 12 SCC 1 (Pankaj Mohajan v. Dimple @ Kajal).
6. AIR 2013 S.C. 2176 (K. Srinibas Rao v. D.A. Deepa)
7. 2005(1) OLR(SC)457 (A. Jayachandra v. Aneel Kumar)
8. A 2005 Ori 3 (Usha v. Panigrahi)
9. AIR 1997 S.C. 3397 (Smt.Jasabir v. District Judge)
10. AIR 2003 Ori 62 (Ira Das v. Ramesh R. Mallick)
11. AIR 2012 S.C. 2586 (Vishwanat v. Sau. Sarla).
12. AIR 2014 Guwahati 79
13. AIR 2014 M.P. 71
14. AIR 2014 Uttarakhand 72

14. By taking us to the above decisions, the counsel for the husband tried to bring to our notice, the requirements of law on consideration for permanent alimony as determined by the Hon'ble Apex court as well as different High Courts including this Hon'ble Court. On perusal of the judgments cited at the Bar by the learned counsel for the husband, we find the leading decision of Apex Court (AIR 2011 S.C. 2748) which decision has been

taken into consideration in most of the rest judgments. The Hon'ble Apex court in the above decision has held that for grant of permanent alimony, the income of the husband from his service as well as the property ought to be taken for consideration and at the same time, it is categorically held by the Hon'ble Apex court and followed by the different High Courts that there is no fixed formula for fixing the amount of maintenance and that it has to be in the nature of things which depend on various facts and circumstances of each case. The Court has to consider the status of parties, their respective needs, the capacity of husband to pay having regard to reasonable expenses for his own maintenance and other, whom the respondent is obliged to maintain under law and statute. The Hon'ble Apex Court held that while deciding such matter one has also to take note of the amount of maintenance fixed for the wife and alimony amounts should be such so that she could live comfortably, considering her status and mode of life, she used to live had she lived with her husband and at the same time it is also to be seen that the amount fixed, cannot be excessive affecting the living condition of the other party. In all the above cited decisions, besides above vital guidelines, we also find that the Hon'ble Courts have not only interfered in the quantum of permanent alimony but enhanced the same. In response to the citations relied on by the counsel for the husband, the counsel for the wife though not produced any citation in

his favour, yet banked upon the decisions cited at the instance of the husband and justified his claim for enhancing the permanent alimony.

15. Before delving upon the question of permanent alimony involved in the present case, it is desirable to revisit here the relevant provision as contain in Section 25 of the Hindu Marriage Act, which reads as under :-

“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 husband 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 husband’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 husband.”

16. Aforesaid section has been subject matter of plethora of decisions by the Apex Court and as guidelines some of those decisions cited below:-

1. **Vinny Parmvir Parmar v. Paramvir Parmar**; A.I.R. 2011 S.C. 2748. Hon'ble Supreme Court in Para-12 held as follows:-

“**12.** As per Section 25, while considering the claim for permanent alimony and maintenance of either spouse, the husband's own income and other property, and the income and other property of the applicant are all relevant material in addition to the conduct of the parties and other circumstances of the case. It is further seen that the court considering such claim has to consider all the above relevant materials and determine the amount which is to be just for living standard. No fixed formula can be laid for fixing the amount of maintenance. It has to be in the nature of things which depend on various facts and circumstances of each case. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The courts also have to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party. These are all the broad principles courts have to be kept in mind while determining maintenance or permanent alimony.”

2. In the case of **U. Sree v. U. Srinivas**; A.I.R. 2013 S.C. 415, Hon'ble Supreme Court in paragraphs 31, 32, 33 and 34 held as follows:-

“31. The next issue that emerges for consideration pertains to the grant of permanent alimony. It is noticeable that the wife had filed a case for grant of maintenance and residence under the Hindu Adoptions and Maintenance Act, 1956 at Hyderabad. The High Court has granted Rs.12,500/- per month from the date of filing of the petition for maintenance and Rs.5 lacs each to the wife and son towards permanent alimony. Whether the High Court should have granted Rs.12,500/- as maintenance need not be addressed by us inasmuch as we are inclined to deal with this issue of grant of permanent alimony in a different backdrop. As is evincible from the orders of this Court when the matters were listed on 9.4.2012, the Court had taken note of the fact that the wife and son have been living separately at Hyderabad for about 16 years and, in that context, the following order was passed:-

“Looking to the financial and social status of the parties, we request the learned senior counsel appearing for the husband to ask his client to arrange for one flat for the petitioner and their son that they can life in the said flat comfortably. On this suggestion, being given by the Court, learned senior counsel appearing for the husband prayed for time to seek instructions.”

32. On 30.04.2012, the following order came to be passed:-

“As per the Order passed by this Court on 09.04.2012, learned senior counsel appearing for the husband informed that the husband is ready and willing to buy a flat for the petitioner in Hyderabad, so that she will have a roof over her head for all the times to come.

However, the details of the same are required to be worked out.

It is, therefore, desirable that both the parties should remain present in this Court on 10.07.2012.

Without prejudice, a sum of Rs.10 lakhs by way of Demand Draft is being paid by the husband to petitioner-wife. Other Rs.10 lakhs is in deposit with the Family Court at Chennai. Petitioner will be at liberty to withdraw this amount.”

33. We have reproduced the aforesaid orders to highlight that the husband had agreed to buy a flat at Hyderabad. However, when the matter was listed thereafter, there was disagreement with regard to the locality of the flat arranged by the husband and, therefore, the matter was heard on merits. We have already opined that the husband has made out a case for divorce by proving mental cruelty. As a decree is passed, the wife is entitled to permanent alimony for her sustenance. Be it stated, while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. In *Vinny Parmvir Parmar v. Parmvir Parmar*, while dealing with the concept of permanent alimony,

this Court has observed that while granting permanent alimony, the Court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party.

34. Keeping in mind the aforesaid broad principles, we may proceed to address the issue. The husband himself has asserted that he has earned name and fame in the world of music and has been performing concerts in various parts of India and abroad. He had agreed to buy a flat in Hyderabad though it did not materialize because of the demand of the wife to have a flat in a different locality where the price of the flat is extremely high. Be that as it may, it is the duty of the Court to see that the wife lives with dignity and comfort and not in penury. The living need not be luxurious but simultaneously she should not be left to live in discomfort. The Court has to act with pragmatic sensibility to such an issue so that the wife does not meet any kind of man-made misfortune. Regard being had to the status of the husband, the social strata to which the parties belong and further taking note of the orders of this Court on earlier occasion, we think it appropriate to fix the permanent alimony at Rs.50 lacs which shall be deposited before the learned Family Judge within a period of four months out of which Rs.20 lacs shall be kept in a fixed deposit in the name of the

son in a nationalized bank which would be utilized for his benefit. The deposit shall be made in such a manner so that the husband wife would be in a position to draw maximum quarterly interest. We may want to clarify that any amount deposited earlier shall stand excluded.”

17. Thus, after considering the above position of law, it is evident that the following principles emerge from the judgments available in the field:-

- (a) Maintenance depends upon the summation of all the facts of the situation involved in the particular case.
- (b) For granting maintenance, the scale and mode of living, the age, habits, wants and class of the life of the parties has to be regarded.
- (c) Maintenance being such that the wife could live in a reasonable comfort; considering her status and mode of life which she was used to while living with her husband.
- (d) During the pendency of the suit for maintenance, which may take a considerable time to attain finality, the wife cannot be forced to face starvation till she is subsequently granted maintenance from the date of the filing of the suit.
- (e) Maintenance must necessarily encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed.
- (f) Maintenance, necessarily must encompass a provision for residence.

Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head.

- (g) Maintenance must vary according to the position and status of a person. It does not only mean food and raiment.
- (h) It is to be seen that the amount fixed cannot be excessive of affecting the living condition of the other party.

18. Now, coming to the question of sufficiency or insufficiency in the amount of the permanent alimony, keeping the above broad principles in mind, we find from the facts of the case that the husband was working in Jonson and Jonson Company. He was getting Rs.90,000/- (rupees ninety thousand) per month and as per Ext.6 he has left the said job on 2nd January, 2012, on the basis of his resignation. On his own admission, husband submitted that subsequently he has joined 'VEOL Medical Technologies' on 20th December, 2012 with gross salary of Rs.52,000/- (rupees fifty two thousand) and home take salary of Rs.42,349/- (rupees forty two thousand three hundred forty-nine) after deduction towards Provident Fund, Professional Tax and Income Tax. Further, since the husband has accepted the decree of divorce granted in favour of the wife in the lower court proceeding, we now

proceed to take issue of appropriate permanent alimony in the case at hand.

19. From the perusal of the number of decisions by the Hon'ble Apex court, shown at the Bar, each of the decisions makes it clear that the paramount consideration for granting permanent alimony a court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to the reasonable expenses for his own maintenance and others whom, he is obliged to maintain under law and statute. Further, taking note of the fact that the amount for maintenance fixed for wife should be such, as she can live in reasonable comfort considering her status and mode of life when she was used to live with her husband. It is also the duty of the court to see that the amount so fixed, cannot be excessive or affect the living condition of other parties. Apart from the wife maintaining herself, she has also to bear all her future medical expenses besides attending to the requirements at her family end considering the fact that there is no chance of re-union, the fact that on record the husband's salary is Rs.52,000/- in all and looking to the age of the wife which is hardly 29 years at the time of filing of MATA Case and the life expectancy of a female being 70 at the minimum, we feel it appropriate to enhance the monthly permanent alimony to Rs.11,500/-(rupees eleven thousand five

hundred) per month and taking into consideration, compounding the same for 15 years, the whole permanent alimony we make it round at Rs.20,00,000/-(rupees twenty lakhs) without deduction of any amount which has already been paid to the wife under the direction of different courts in the meanwhile, which will forfeit all her claims. This amount of permanent alimony will be paid to the wife within three months in two equal installments, 1st installment falling on 15th of September, 2014 and the 2nd installment on 15th of November, 2014. On failure of payment of installments in time, the amount shall carry interest @10% per annum and the wife will be free to take recourse to law for its realization.

Under the above directions, we allow MATA No.39 of 2013, while we dismiss MATA No.64 of 2013, but, there shall be no order as to costs.

.....
Biswanath Rath, J.

Vinod Prasad, J:- I agree.

.....
Vinod Prasad, J.

Orissa High Court, Cuttack.
 The 20th day of August, 2014./ *Dutta.*