

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

FAMILY COURT APPEAL NO.249 OF 2009

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

This Family Court Appeal is filed by the wife challenging the Judgment and Decree dated 06.08.2009, in F.C.O.P.No.17 of 2006, on the file of the Court of the Judge, Family Court, Warangal (for short, the trial court).

2. The marriage of the appellant (wife) was performed with the respondent (husband) on 21.11.2004 at Swarna Palace, Warangal, as per the Hindu Rites and Customs. Since differences arose between the appellant and the respondent, the respondent filed F.C.O.P.No.17 of 2006 before the trial court under Section 13 1(ia) of the Hindu Marriage Act, 1955 (for short, "the Act"), for seeking grant of a decree of divorce by dissolving the marriage. The trial court, after hearing the both sides and perusing the material placed before it, observed that *"the husband established that the wife caused physical and mental cruelty to him and since the wife rejected the husband in the year 2005, he is entitled for divorce."* The trial court further observed that *"though the wife did not file a separate application under Section 25 of the Act seeking permanent alimony, the trial court, by considering her application seeking interim maintenance, directed the husband to pay an amount of Rs.4,00,000/- to the wife towards permanent alimony."*

Accordingly, the trial Court granted decree of divorce by dissolving the marriage of the appellant and the respondent.

3. Sri S.Sridhar, learned counsel for the appellant, submits that the trial court, without there being any evidence to prove the cruelty meted out by the appellant, passed the decree of divorce. While adjudicating the question of permanent alimony, the trial court was required to take into consideration the income of the respondent. Though admittedly the respondent is working as a Software Engineer in the United States of America, the trial Court, on its own, granted a meager amount of Rs.4,00,000/- towards permanent alimony without there being any petition filed by the appellant under Section 25 of the Act.

4. Smt.J.Vijayalakshmi, learned counsel for the respondent, submits that though the respondent is working in the United States of America, he is not having sufficient source of income and is not in a position to pay huge amount towards permanent alimony. She further submits that though no petition was filed by the appellant under Section 25 of the Act, the action of the trial court is justified in granting the permanent alimony by treating the application of the appellant as the one filed under Section 25 of the Act. She further submits that there is no basis to enhance the amount of permanent alimony and no relief can be granted to the appellant.

5. A perusal of the impugned Judgment, it is clear that the trial court, though no petition was filed under Section 25 of the Act with regard to grant of permanent alimony, has converted the application of the appellant for interim maintenance and directed the respondent to pay a sum of Rs.4,00,000/- to the appellant towards permanent alimony. The main grievance of the appellant is with regard to grant of meager amount towards permanent alimony by the trial court, though the respondent is working as Software Engineer in the United States of America and having sufficient income.

6. After arguing for some time, both the learned counsel acceded that the appellant and the respondent are not having any grievance with regard to passing of divorce decree in respect of granting of divorce, but the grievance of the appellant is only to the extent of granting of meager amount towards permanent alimony. They consented for passing of appropriate order setting aside the impugned Judgment to the extent of grant of permanent alimony.

7. In the circumstances, the Judgment and Decree dated 06.08.2009, in F.C.O.P.No.17 of 2006, on the file of the Court of the Judge, Family Court, Warangal, to the extent of granting permanent alimony, is ordered to be set aside, and the matter is remanded to the trial Court for deciding the issue of permanent alimony afresh, in accordance with the law, after giving reasonable opportunity to both sides. The appellant and the respondent are at liberty to lead their evidence before the trial court. This exercise

shall be completed on or before 31.12.2019. The other part of the impugned Judgment and Decree of the trial court shall be intact.

8. Accordingly, the Family Court Appeal is allowed in part. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, J

Date: 13.02.2019
TJMR

T.AMARNATH GOUD, J

