

Karnataka High Court

Mrs Priya Naik V vs Mr.K.S.Sanjay Naik on 25 May, 2023

Bench: Alok Aradhe, Anant Ramanath Hegde

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MAY 2023  
PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

MFA CROSS OBJECTION NO.11 OF 2017 (FC)

IN

MFA NO.5556 OF 2016

BETWEEN:

MRS.PRIYA NAIK V,  
AGED ABOUT 38 YEARS,  
D/O  
R/AT 'RAJESHWARI',  
KRISHNAPURA ROAD,  
SURATHKAL,  
MANGALORE-575014.

...CROSS OBJECTOR

(BY SRI VENKATESH SOMAREDDY, ADVOCATE FOR  
SRI PONNANNA I. C., ADVOCATE)

AND:

MR.K.S.SANJAY NAIK,  
AGED ABOUT 48 YEARS,  
SON OF SUNDAR NAIK,  
RESIDING AT "SUCETHA" NEAR  
GUDDE TEMPLE, KUDLU VILLAGE  
AND POST,  
KASARAGOD - 671 124.

... RESPONDENT

(BY SRI ASHWIN R. A. A/W  
MISS NIDHI KALYANI, ADVOCATE)

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THIS MFA CROSS OBJECTION IN MFA NO.5556/2016  
IS PASSED UNDER ORDER XLI RULE 22 R/W SECTION  
19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT  
AND DECREE DATED 31.03.2016 ON THE FILE OF THE  
PRINCIPAL JUDGE, FAMILY COURT, D.K.MANGALURU,

DIRECTING THE RESPONDENT TO PAY PERMANENT ALIMONY OF RS.25,00,000/- TO THE PETITIONER.

THIS MFA CROSS OBJECTION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.05.2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, ANANT RAMANATH HEGDE J., DELIVERED THE FOLLOWING:

#### JUDGMENT

This Cross objection is filed by the petitioner/wife in M.C.No.27/2013 on the file of Family Court at Mangaluru. The Cross objector is assailing the judgment and decree dated 31.03.2016 wherein the Family Court has awarded Rs.25,00,000/- as permanent alimony as against the claim of Rs.75,00,000/- towards permanent alimony. This Cross objection is in respect of rejected claim of Rs.50,00,000/- and the cross objector is seeking enhancement of alimony.

2. The records reveal that the respondent/husband also filed appeal in MFA 5556/2016 challenging the alimony for Rs.25,00,000/-. However, the husband has satisfied the award of Rs.25,00,000/- in the execution proceeding filed by the wife and thereafter, has withdrawn the said appeal.

3. Briefly stated the facts of the case are as under:

- The marriage of the parties was solemnized on 24.06.1999. Neha, the daughter was born on 31.01.2002 from the wedlock. As the relationship between the parties got strained, the wife filed the petition seeking dissolution of marriage in M.C. No.27/2013 on the file of Family Court, Mangaluru. The petition seeking divorce on the ground of cruelty and desertion was allowed on 21.09.2013 and the Family Court granted permanent alimony of Rs.15,00,000/- to the wife. The husband filed appeal in MFA 9793/2013 challenging the judgment and decree of the Family Court. The wife filed Cross objection 91/2014, in the aforesaid appeal. In terms of judgment dated 14.08.2014, the matter was remitted to the Family Court to fix permanent alimony. The decree for divorce is confirmed, by this Court.

4. After the remand, the Family Court awarded Rs.25,00,000/- as permanent alimony and the wife is seeking enhancement of alimony.

5. Before the Family Court, the wife is examined as PW1 and husband is examined as RW1. On behalf of wife, Exs.P.1 to P.10 were marked and on behalf of husband Exs.R.1 to R.9 were marked.

6. The Family Court has recorded evidence and concluded that the husband is working in Shipping Company and is earning Rs.4,00,000/- per month. Consequently, the Family Court awarded Rs.25,00,000/- as permanent alimony.

7. We have heard the learned counsel appearing for the Cross objector/wife and the learned counsel appearing for the husband. We have also perused the materials placed on record.

8. There is no dispute over the fact that the husband is working in a Shipping Company. The Family Court has recorded a finding that the husband is earning Rs.4,00,000/- per month. Said finding is based on Exs.P.8 to 10. The learned counsel for the wife would contend that considering the income of the husband, the permanent alimony of Rs.25,00,000/- awarded by the Family Court is not sufficient. It is his contention that the daughter of the parties is residing with the wife and wife is taking care of her expenses and based on the materials placed on record, the Family Court ought to have awarded Rs.75,00,000/- as permanent alimony.

9. Learned counsel for the husband would contend that the wife is capable of earning and the husband is not having a permanent avocation. Considering the nature of the work of the husband, the Family Court awarded Rs.25,00,000/-. It is his further contention that Rs.25,00,000/- awarded by the Family Court itself is on higher side and the husband had questioned the said decree by filing an appeal before this Court. Later, the said appeal was withdrawn with an intention to put a quietus to the litigation and with an assurance from the wife that she would not press her claim for enhancement of alimony, and the husband has paid Rs.25,00,000/-. He further contended that wife has not acted as per her assurance and is prosecuting this appeal.

10. There is no dispute over the fact that the wife and her daughter are living together and the wife is taking care of her daughter. The records also reveal that husband is earning Rs.4,00,000/- per month. Though it is urged on behalf of the husband that his employment is not a permanent employment, nothing is placed on record to show that he was removed from service and was unemployed at any point of time during the pendency of proceeding. The husband has not produced corroborative evidence to hold that the wife is earning sufficient income to maintain the lifestyle similar to the one she led before separation from her husband. It is well settled principle of law that the alimony payable, should be, to the extent possible good enough to lead the similar lifestyle which was led before the separation. The circumstance suggesting decrease in the income of the husband or any other circumstances suggesting incapacity of the husband to pay higher amount of alimony and to ensure almost similar lifestyle, are not made out.

11. This Court during the course of hearing also sought to know as to what is the present income of the husband. Learned counsel appearing for the husband on instructions, submitted that the husband is earning \$5,000/- per month.

12. The decree for Rs.25,00,000/- alimony awarded by the Family court is challenged by the husband and the said amount is paid in the year 2021 before the Executing Court in an Execution Petition filed by the wife. Though, it is urged on behalf of the husband that said amount is paid relying on the assurance of the wife that she will not prosecute the cross objection seeking enhancement of alimony, except the submission made at the bar, there is nothing on record to show that such an assurance was made by the wife. Had it been so, same would have been part of the record or the parties would have presented the compromise petition. This being the position, the contention of the husband regarding wife's assurance cannot be accepted.

13. The daughter was born in the year 2002. Admittedly, the wife has raised her daughter and is taking care of her. The wife was aged 35 years when the petition was filed. She has a long life ahead. The husband was aged 45 years when the petition was filed. Though the wife has made a claim to award the permanent alimony of Rs.75,00,000/-, this Court is of the view that it is not justifiable to award Rs.75,00,000/- towards permanent alimony. However, this Court is of the view that Rs.25,00,000/- awarded by the Family Court is inadequate. Taking into consideration the income of the husband and the fact that the wife has to perform the marriage of her daughter and also taking into consideration the cost of living, this Court is of the view that the cross objector/wife is entitled to permanent alimony of Rs.50,00,000/- as against the decree for Rs.25,00,000/- awarded by the Family Court.

14. For the aforementioned reasons, the impugned judgment and decree passed by the Family Court is modified and permanent alimony of Rs.50,00,000/- is granted by enhancing the alimony by Rs.25,00,000/-. The respondent/husband in this cross objection shall pay the amount of Rs.25,00,000/-, the enhanced alimony within three months from this date. If the amount is not paid, it shall carry interest @ 6% p.a. from this date till payment. Hence, the following:

#### ORDER

(i) MFA Crob. No.11/2017 in MFA No.5556/2016 is allowed in part and impugned judgment and decree dated 31.03.2016 passed in M.C.No.27/2013 by the Family Court, Mangaluru are modified and permanent alimony is enhanced to Rs.50,00,000/- by modifying the decree for permanent alimony of Rs.25,00,000/- granted by the Family Court.

(ii) The enhanced alimony of Rs.25,00,000/- shall carry interest @ 6% per annum as aforesaid in case payment is not made within three months from today.

Sd/-

JUDGE Sd/-

JUDGE BRN