IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 27th OF MARCH, 2025

FIRST APPEAL No. 1793 of 2023

[redacted]

Versus

[redacted]

Appearance:

Shri Tushar Bhedasgaonkar - Advocate for the appellant.

ORDER

Per. Justice Gajendra Singh

This first appeal filed under Section 28(4) of the Hindu Marriage Act, 1955 has been preferred by the husband, being partially aggrieved by the judgment and decree dated 17.07.2023 passed in RCS HM No.12-A/2023 by First Additional Judge, Garoth, District Mandsaur, under Section 25 of the Hindu Marriage Act, 1955. The appellant/husband has been directed to pay a sum of Rs.12,000/- per month as maintenance to respondent/wife before the 7th of every month.

2. Facts in brief are that appellant/husband preferred an application under Section 13(1) of the Hindu Marriage Act, 1955 for dissolution of marriage solemnized on 08.05.2009 as per Hindu Rituals. The application was filed on 23.03.2023 & respondent/wife remained *ex-parte* before the trial Court and after recording the evidence of the appellant/husband trial Court

granted the decree of divorce on the ground of cruelty as mentioned in Section 13(1)(ia) of Hindu Marriage Act, 1955 and also passed an order under Section 25 of Hindu Marriage Act, 1955.

3. Only the order under Section 25 of the Hindu Marriage Act, 1955 is under challenge.

4. Respondent/wife has not marked her presence before this Court as well.

5. Perusal of the record discloses that no application under Section 25 of the Hindu Marriage Act, 1955 was before the trial Court.

6. On this point, whether without filing a formal application u/S 25 of the HMA, husband can be directed to pay the alimony? In this regard, the High Court of Madras in the case of **Umarani Vs. D. Vivekannandan, 2000 (II) CTC 449,** in paragraph-10 of the judgement has held that *"the Act also does not say that there should be a written application. It only says that an application made to it. It can also be on the basis of oral application."* Thus, held that u/S 25 of the HMA, no formal application is required.

7. The High Court of Bombay in the case of **Vijayashree D/o Ganesh Ingle Vs. Dr. Nishant Arvind Kale, 2021 (3) Mh.L.J. 389**, in paragraphs-8 to 12 of the judgement has held as under :-

"8. With regard to question under consideration before this court, various other High Courts including this High Court have held that the word 'application' as referred to in Section 25 of the Act i.e. 'on application made to it' does not specify as to whether it is oral application or application in writing. It is also held that broader view of Section 25 of the Act is to be taken considering the object and purpose for inclusion of this provision in the Act.

9. The Madras High Court in the case of Umarani Vs. D. Vivekannandan

reported in 2000 SCC Online Mad 50 held that there is no need of written application under Section 25 of the Hindu Marriage Act, 1955 and permanent alimony and maintenance can be granted on the basis of oral application. The relevant para No. 10 in this judgment reads thus :

> *"10. It is true that Section 25 of the Act contemplates an application for the said purpose. When the lower court has not disposed of Section 24 application in time and has disposed of along with the main application, it should have disposed of the application under Section 25 also. Therefore, one more litigation could be avoided and on the basis of very same order, the maintenance could be provided for the wife and child. From the conduct of the respondent, it is clear that he will not pay the maintenance which is legally due to the petitioner. Under these circumstances, asking the petitioner to file another application under Section 25 or asking to file a separate suit and again seeking indulgence of the Court below will be harsh. The Act also does not say that there should a written application. It only says that an application made to it. It can also be on the basis of oral application....."*

10. The Madhya Pradesh High Court in the case of Surajmal Ramchandra Khati Vs. Rukminibai d/o Prabhulal reported in 1999 SCC Online MP 87 held that merely because wife had not presented a separate application praying for grant of permanent alimony, it cannot be said that she is not entitled to the same. It is further observed that the provisions of Section 25 of the Act have been introduced for the purpose of protecting the interest of such spouse against whom the court has passed the decree.

11. This Court in the case of Sadanand Sahadev Rawool Vs. Sulochana Sadanand Rawool reported in 1989 SCC Online Bom 5 held that Section 25 of the Act when it speaks of an application does not specify that the same has to be in writing. An application can be in writing as also by word of mouth. Although this judgment is overruled by the Apex Court on the point of entitlement of the spouse to claim permanent alimony and maintenance even if the the court dismisses the petition and does not pass any decree as contemplated in Section 25 of the Act.

12. The Division Bench of the Punjab and Haryana High Court in the case of Mukesh Kumar Vs. Sunita in FAO-M-46 OF 2010 while relying on the

judgment in the case of Sadanand Rawool (supra) and Surajmal (supra) held that the approach to be adopted in matrimonial cases has to be practical and not based on mere technicalities. The expression "on application made to it" occurring in Section 25 of the Act should not be construed narrowly but keeping in view the intent of the legislature in enacting this provision. The purpose behind this provision appears to be to safeguard the interest of the spouse against whom the decree had been passed. It is further held that grant of permanent alimony and maintenance under Section 25 of the Act is sine-qua-non if the prayer made in that regard whether in writing or orally and there can either be a separate written application claiming permanent alimony and maintenance under Section 25 of the Act or in the written statement or even by oral prayer."

8. Our own High Court in the case of **Surajmal Ramchandra Khati Vs. Rukminibai, 1999 SC OnLine MP 87**, in paragraphs 6 to 8 of the judgement has held as under:-

> *"6. Shri Ukas further placed reliance on the provisions of Section 25 of the Hindu Marriage Act 1955 (hereinafter referred to as Act for convenience) wherein it has been provided that—*
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> *"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 respondent 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 respondent'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 respondent."*
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> *7. While considering provisions of section 25 of the Act, provisions of section 23(B) cannot be ignored which provides that—*
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> *"In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground; and if the petitioner's adultery, cruelty or desertion is proved, the Court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground."*
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> *It means that in absence the petition filed by other spouse who has been*

contesting said litigation as respondent, is entitled to claim any relief under the provisions of the Act by making counter claim on the ground of petitioner's adultery, cruelty or desertion. And such spouse would be entitled to get such relief if he proves the said fact. That spouse would be entitled to get said relief from the Court as if the said spouse had presented a petition seeking such relief on that ground. Thus, keeping in view the spirit of provisions of section 23(B), the spirit behind the enactment will have to be seen. The Act has adopted a broader approach while dealing with matrimonial cases. Therefore, the word 'on application made to it' used in sub-section (1) of section 25 will have to be interpreted in a broader view. This word 'on application made to it' should not be construed in a strict sense. It does not mean always that such spouse is required to present a separate application for making a prayer for permanent alimony. After all, provisions of section 25 of the Act according to me have been introduced in the Act for the purpose of protecting the interest of such spouse against whom the Court has passed the decree. When such spouse happens to be a wife, the society and law would not afford to see such spouse seeking sanctuary on the streets at the stake of losing her soul and virtues. When the decree of divorce is passed, the law would be definitely interested in seeing that some arrangement has been made for the purpose of enabling such spouse wife to have some money with her which would enable her to live safely and with dignity of womanhood. Such provisions would be made if she is left to maintain herself with a child begotten out of the wedlock which has been dissolved by decree of divorce dissolving such marriage. It would create difficult situation for such discarded wives and children increasing the possibility of vagaries and unchastity. Therefore, it will have to be seen whether a prayer has been made by such spouse any way in the written statement or by separate application. Keeping in view the spirit of the enactment of the Act, it would be safe if such a prayer is made in the written statement.

8. In the present matter in para 2 at page No. 4 of the written statement, the respondent has made a prayer to the Court to grant Rs. 3000/- per month to her from the appellant as permanent alimony. In my view this is sufficient. The divorced wife cannot be thrown on streets after dissolution of the marriage by a decree of divorce without granting permanent alimony to her if such a prayer has been made by her in her written statement, when the Act has adopted broader view as indicated under section 23A of the Act."

9. In the case of **Abhishek Parashar Vs. Neha Parashar, 2023 (1) MPLJ 648,** the Division Bench of this Court, in paragraphs-42 to 47 of the judgement has held as under:-

"42. Learned counsel for the wife by placing reliance on the Division Bench Judgments of this Court in Rituraj Singh (supra) and Dharmendra Tiwari (supra) contended that no express application is required to be filed under section 25 of the Hindu Marriage Act and this Court without such application can decide the question of alimony. It is noteworthy that SLP filed against the judgment of this Court in Rituraj Singh (supra) was dismissed (SLP No. 27693 of 2019) on 3-2-2022. However, a plain reading of this order makes it clear that:—

(i) Leave was not granted and SLP was not converted into a civil appeal. Thus, in the light of judgment of Supreme Court in (2000) 6 SCC 359 : 2000 MP LJ OnLine (SC) 2, Kunhayammed v. State of Kerala, it cannot be presumed that judgment of this Court in Rituraj Singh got stamp of approval from the Supreme Court and doctrine of merger has played its role. (ii) The Apex Court while deciding the SLP of Rituraj Singh has not specifically dealt with and examined section 25 of the Hindu Marriage Act.

43. The legal journey shows that way back in the case of Jitbandhan (supra) Justice G.P. Singh considered the language used in section 25 of the Act and came to hold that said provision does not permit the Court to decide the question of alimony in absence of an express application. The ratio of this judgment was followed by Division Bench in Chhaya Kshatriya (supra). In Chhaya Kshatriya (supra), this Division Bench also considered the previous judgments of Bhikalal and Meerabai (supra). This principle was followed by Single Bench in Mahesh Prasad (supra). Lastly, another Division Bench in Manoj (supra) (decided on 23-10-2012) poignantly held that without an application made to the Court under section 25 of the Hindu Marriage Act, the Family Court cannot decide the aspect of alimony.

44. The aforesaid journey makes it clear that view taken by Justice G.P. Singh way back in the year 1982 in the case of Jitbandhan (supra) was consistently followed by various Division Benches. The cleavage of opinion is because of subsequent Division Bench judgments in Rituraj Singh and Dharmendra Tiwari (supra) wherein the subsequent Division Benches opined that in order to claim alimony, it is not necessary to prefer a written application. A careful reading of judgment of Rituraj Singh (supra) shows that the Division Bench has not reproduced and considered section 25 of H.M. Act. Section 25(1) of H.M. Act 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 respondent shall 55 (***) 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 respondent's own income and other property, if any, the income and other property of the applicant 56, (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 respondent. (Emphasis Supplied)

45. In both the subsequent judgments i.e. Rituraj Singh (supra) and Dharmendra Tiwari (supra), the Division Benches have not considered the previous judgments of this Court passed in Jitbandhan, Chhaya Kshatriya, Bhikalal, Meerabai, Mahesh Prasad and Manoj v. Raksha (supra). Thus, ancillary question is, out of the two views, which view/judgment will be binding on us. In our view, the curtains on this aspect are drawn by a Special Bench (five Judges) of this Court in the case of Jabalpur Bus Operators Association v. State of M.P., reported in (2003) 1 MP LJ 513 wherein it is held as under:—

",……. Similarly, Division Bench is bound by the judgment of earlier Division Bench. In case, it does not agree with the view of the earlier, Division Bench, it should refer the matter to larger Bench. In case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in which case the decision of latter Division Bench shall be binding. The decision of larger Bench is binding on smaller Benches." (Emphasis Supplied)

46. We also find substance in the argument of Shri Shroti based on the judgment of Supreme Court in the case of State of Bihar v. Kalika Kuer, (2003) 5 SCC 448 : 2003 MP LJ Online (SC) 45 wherein it was held that if previous binding judgment is not considered by the subsequent Bench, the judgment of subsequent Bench is per incuriam. Thus, it can be safely held that in absence of application preferred under section 25 of H.M. Act, no directions can be issued by this Court for grant of permanent alimony. Apart from this, for deciding the aspect of permanent alimony various factual aspects regarding income, expenditure etc. of the parties are required to be taken into account by the Court. In Rajnesh v. Neha, (2021) 2 SCC 324 : (2021) 3 MP LJ (SC) 22 : (2021) 1 MP LJ (Cri) (SC) 187, the Apex Court held as under:

"73. Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the Court concerned, for fixing the permanent alimony payable to the spouse." (Emphasis Supplied)

47. So far judgment of Apex Court in Ramesh Chand Rampratapji (supra) in concerned, it is noteworthy that Court focussed and interpreted the expression 'at the time of passing any decree' mentioned in section 25(1) of the H.M. Act. The observation of Supreme Court in para-17 of said judgment about 'ancillary' and 'incidental' power of the Court, in our humble view, is not the ratio or principle laid down. This is trite that precedent is what is actually decided by the Apex Court and not what is logically flowing from it. [See : State of Orissa v. Sudhansu Sekhar Misra, (1968) 2 SCR 154, Regional Manager v. Pawan Kumar Dubey, (1976) 3 SCC 334, Ambica Quarry Works v. State of Gujarat, (1987) 1 SCC 213, Commr. of Customs (Port) v. Toyota Kirloskar Motor (P) Ltd., (2007) 5 SCC 371]. Hence, this judgment is of no assistance to respondent-wife."

10. Thus, from the judgement of this Court, it is clear that atleast an application demanding permanent alimony is required, that may be either in a written statement or by a separate application.

11. Thus, without demanding permanent alimony in the written statement or by a separate application, learned Trial Court would not have granted permanent alimony to the respondent/wife.

12. From other point of view, the judgement of the Apex Court in the case **of Vinny Parmar Vs. Paramvir Parmar, AIR 2011 SC 2748,** has considered in Section 25 that,

> *"while considering the claim of permanent alimony and maintenance of either spouse, the respondent's 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.*
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> *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.*
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> *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."*

13. From the above discussion para 17(2) of the impugned judgment and decree dated 17.07.2023 cannot be sustained and is hereby quashed. The decree be drawn accordingly.

14. With the copy of this judgment the record of the trial Court be returned back. Copy of the decree be sent to the respondent.

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

(GAJENDRA SINGH)
JUDGE

akanksha