

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an Appeal

Mahamarakkalage Mahindarathne
Kudabolana, Ambalantota.

Plaintiff

SC Appeal 95/2017
SC/HC(CA) LA 203/2014
SP/HCCA/TA Tangalle 10/2012(F)
DCHambantota FD 4167

Vs

Rate Ralalage Gedera Anuradha Chathurangani
No.634, Hirimbura Road, Labuduwa.

Defendant

AND

Mahamarakkalage Mahindarathne
Kudabolana, Ambalantota.

Plaintiff-Appellant

Vs

Rate Ralalage Gedera Anuradha Chathurangani
No.634, Hirimbura Road, Labuduwa.

Defendant-Respondent

AND NOW BEWEEN

Rate Ralalage Gedera Anuradha Chathurangani
No.634, Hirimbura Road, Labuduwa.

Defendant-Respondent-Petitioner-Appellant

Vs

Mahamarakkalage Mahindarathne
Kudabolana, Ambalantota.

Plaintiff-Appellant-Respondent-Respondent

Before : Sisira J De Abrew J
Nalin Perera J
Vijith Malalgoda PC J

Counsel : Senany Dayartne with Eshanthe Mendis and
Nisala Seniya Fernando for the Defendant-
Respondent-Petitioner-Appellant
Rohan Sahabandu PC with Hasitha Amarasingha
Plaintiff-Appellant-Respondent-Respondent

Argued on : 21.9.2017

Written Submission

Tendered on : 27.9.2017 by the Defendant-Respondent-Petitioner-Appellant.
2.10.2017 by the Plaintiff-Appellant-Respondent-Respondent.

Decided on : 22.1.2018

Sisira J De Abrew J

Plaintiff-Appellant-Respondent-Respondent (hereinafter referred to as the Plaintiff-Respondent) filed an action against his wife to obtain a decree of divorce on the ground of malicious desertion. The Defendant-Respondent-Petitioner-

Appellant (hereinafter referred to as the Defendant-Appellant) filed answer requesting a decree of divorce on the ground of constructive malicious desertion. She also asked for permanent alimony of Rs.5.0 Million. After trial, the learned District Judge holding in favour of the Defendant-Appellant granted her the divorce. He also ordered the Plaintiff-Respondent to pay Rs.18,65000/- as a permanent alimony to the Defendant-Appellant. Being aggrieved by the amount of permanent alimony ordered by the learned District Judge, the Plaintiff-Respondent appealed to the Civil Appellate High Court (hereinafter referred to as the High Court). The High Court holding that the amount of permanent alimony ordered by the learned District Judge was highly excessive, reduced it to Rs.700,000/-. Being aggrieved by the said order of the High Court, Defendant-Appellant has appealed to this court. This court by its order dated 23.5.2017 granted leave to appeal on questions of law set out in paragraphs 17(b), (g) and (h) of the Petition of Appeal dated 24.2.2015 which are set out below.

1. Did the High Court of Civil Appeal err in law by reducing the alimony from Rs.18,00000/- to Rs.700,000/- in the circumstances of the case?
2. Did the High Court of Civil Appeal err in law by failing to take cognizance of the fact that by reducing the amount of alimony sought for when there was no objection from the Respondent in relation to the permanent alimony claimed by the Petitioner?
3. Did the High Court of Civil Appeal err in law by failing to give reasons in reducing the quantum of alimony from Rs.18,00000/- to 700,000/-?

The Plaintiff-Respondent is a Government teacher. The learned District Judge according to the evidence placed before him concluded that the salary of the

Plaintiff-Respondent was Rs.23,000/- at the time of filing the action. The learned District Judge considering the above salary of the Plaintiff-Respondent concluded that the monthly amount entitled by the Defendant-Appellant was Rs.4625/-. There is no dispute about this figure. According to the evidence, at the time of filing the action the Plaintiff-Respondent was 48 years old and the Defendant-Appellant was 34 years old. The learned District Judge concluded that the Defendant-Appellant was entitled to 30 years of alimony at the rate of Rs.4625/- per month. Thus the amount ordered by the learned District Judge was $(4625 \times 12 \times 30 = 16,65,000/-)$ Rs.16,65,000/-. In addition to the above amount the learned District Judge concluded that the Plaintiff-Respondent should pay Rs.200,000/- on the basis that he receives income from his properties. However the learned District Judge in his judgment observed that although the Defendant-Appellant claimed that the Plaintiff-Respondent has two acres of paddy land and five acres of coconut land, it has not been proved. The Plaintiff-Respondent has, in his evidence, stated apart from the government salary he does not get any other income. He has further stated that he does not have five acres of coconut. The learned District Judge has observed in his judgment that the Defendant-Appellant had not proved the amount of monthly income that the Plaintiff-Respondent receives from his paddy and coconut lands. Therefore granting the above sum of Rs.200,000/- is, in my view, wrong and has to be set aside. The learned Judges of the High court in their judgment have considered most of the matters which I have stated above. Considering all the above matters I hold that the learned High Court Judges were correct when they decided to remove Rs.200,000/- from the amount ordered by the learned District Judge.

The next question that must be decided is whether the amount calculated by the learned District Judge for 30 years on the basis of Rs.4625/- per month is

excessive or not. Learned counsel for the Defendant-Appellant cited the following judicial decisions.

In *Mathew Vs Mathew* 57 NLR 511 the Supreme Court held as follows:

“The Court, when granting a decree of separation in favour of a wife, ordered the husband to pay an annual sum of Rs. 20,400 in monthly instalments of Rs.1,700. With a view to securing for the wife the payment of the annual sum of Rs.20,400 the husband was ordered to hypothecate certain immovable property specified in the decree.

Held, (i) that the order for hypothecation of immovable property did not fall within the ambit of either sub-section 1 or sub-section 2 of section 615 of the Civil Procedure Code and could not therefore stand.

(ii) that the order for paying the annual sum of Rs, 20,400 in monthly instalments did not come within the ambit of sub-section 1 of Section 615 of the Civil Procedure Code but could be treated as an order falling within the ambit of sub-section 2.

Held further, that in deciding the amount of permanent alimony no fetter was imposed by section 615 of the Civil Procedure Code on the discretion of the Judge. Nor was the Judge bound by the amount awarded as alimony *pendente lite*.”

Wijeratne Vs Wijeratne 73 NLR 546 Supreme Court held as follows.

“In an action for divorce, sufficient ground must be shown before the Court can award as permanent alimony a sum in excess of the amount claimed by the wife as alimony *pendent lite*.”

The learned District Judge decided to grant permanent alimony for the next 30 years at the rate of Rs.4625/- per month on the basis that the life expectancy in this country 75 years of age. Can anybody predict the life expectancy of a human being? No one can answer this question because life is uncertain. In this country the Judges have departed the world whilst holding office. It has to be stated here that this situation does not always exist. Court must be reasonable in deciding the amount of alimony. According to the learned District Judge's order the Plaintiff-Respondent should pay alimony for 18 years even after his retirement. The calculation done by the learned District Judge is, in my view, is unreasonable.

The learned District Judge when calculating the amount of Rs.4625/-, observed that another sum could be added considering the inflation in the country. But there is no evidence placed before court regarding the rate of inflation. The learned District Judge appears to have made the said observation to justify the ordering of the amount even after retirement of the Plaintiff-Respondent. Although the Plaintiff-Respondent could earn his salary increments, there is no evidence before court about his salary increments. When I consider all the above matters, I feel that it is not reasonable to order the same amount to be paid even after the retirement of the Plaintiff-Respondent. But the order to pay Rs.4625/- per month prior to retirement of the Plaintiff-Respondent is, in my view, reasonable. At the time of filing the action the Plaintiff-Respondent was 48 years old. His retiring age is 60 years. Therefore the decision to pay alimony for a period of 12 years at the rate of Rs.4625/- per month ($4625 \times 12 \times 12 = 666,000$) is, in my view, reasonable. Since the Plaintiff-Respondent is a Government servant it is reasonable to conclude that after retirement he would get a pension of 80% of his salary. Then considering the amount of Rs.4625/-, the monthly amount after retirement would be $(4625 \times 80/100)$ Rs.3700/-

In my view the conclusion reached by the learned District Judge that the Plaintiff-Respondent should pay Rs.4625/- per month even after the retirement of the Plaintiff-Respondent is erroneous. The next question that must be considered is that the period for which that the Plaintiff-Respondent should pay alimony after his retirement. As I pointed out earlier no one could predict the life expectancy of a human being. In my view it is reasonable to order five years of alimony at the rate of Rs.3700/- per month after the retirement of the Plaintiff-Respondent. This amount would be $(3700 \times 12 \times 5 = 222,000/-)$ Rs.222,000/-. Considering all the above matters, I hold that the Defendant-Appellant would be entitled to receive a permanent alimony as follows:

$$4625 \times 12 \times 12 = 666,000$$

$$3700 \times 12 \times 5 = 222,000$$

The total amount would be Rs.888,000/-

The learned High Court Judges have given reasons when they reduced the amount ordered by the learned District Judge. But in my view the amount ordered by the learned District Judge cannot be considered to be reasonable.

For the aforementioned reasons, I answer the 1st question of law in the affirmative, but the 2nd question of law does not arise for consideration. The 3rd question of law is answered as follows.

“The learned Judges of the High Court did not give sufficient reasons when they reduced the alimony from 18 lakhs to 700,000.”

I have decided that the Defendant-Appellant is entitled to Rs.888,000/- as a permanent alimony. The learned District Judge is directed to amend the decree

accordingly. Subject to the above variation of the amount of alimony, the appeal of the Defendant-Appellant is dismissed. Considering the facts of this case I do not make an order for costs.

Judge of the Supreme Court.

Nalin Perera J

I agree.

Judge of the Supreme Court.

Vijith Malalgoda PC J

I agree.

Judge of the Supreme Court.