

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

Ranasinghe Mudiyansele
Susantha Ranasinghe,
Alahenegama,
Alahenegama.
Plaintiff

SC/APPEAL/31/2018
NWP/HCCA/KUR/57/2014(F)
DC NIKAWERETIYA NO: 76/D

Vs.

Rathugamage Ancy Fernando,
Hiriwewa, Kobeigane.
Defendant

AND BETWEEN

Rathugamage Ancy Fernando,
Hiriwewa, Kobeigane.
Defendant-Appellant

Vs.

Ranasinghe Mudiyansele
Susantha Ranasinghe,
Alahenegama,
Alahenegama.
Plaintiff-Respondent

AND NOW BETWEEN

Rathugamage Ancy Fernando,
Hiriwewa,
Kobeigane.

Defendant-Appellant-Appellant

Vs.

Ranasinghe Mudiyansele
Susantha Ranasinghe,
Alahenegama,
Alahenegama.

Plaintiff-Respondent-

Respondent

Before: Hon. Justice P. Padman Surasena
Hon. Justice A.L. Shiran Gooneratne
Hon. Justice Mahinda Samayawardhena

Counsel: Sapumal Bandara with Vishmi Yapa Abeywardena for the
Defendant-Appellant-Appellant.
Rasika Dissanayake with Shabbir Hassim for the Plaintiff-
Respondent-Respondent.

Written Submissions:

By the Defendant-Appellant-Appellant on 06.04.2018

By the Plaintiff-Respondent-Respondent on 09.05.2019

Argued on: 14.03.2024

Written Submissions:

By the Plaintiff-Respondent-Respondent on 04.04.2024

Decided on: 10.05.2024

Samayawardhena, J.

The plaintiff husband filed action seeking a decree of divorce (*vinculo matrimonii*) on the ground of malicious desertion on the part of the defendant wife. The defendant countersued for a divorce on constructive malicious desertion on the part of the husband. She also prayed for a sum of Rs. one million as permanent alimony. There are no children from this union. After trial, the District Court granted the divorce in favour of the defendant but did not award permanent alimony citing want of evidence. The defendant appealed to the High Court of Civil Appeal against the denial of permanent alimony. The High Court did not interfere with the judgment of the District Court and reiterated that there was no evidence to award alimony. The defendant is before this Court against the judgment of the High Court.

Learned counsel for the defendant cites section 615(1)(b) of the Civil Procedure Code as the provision which empowers the District Court to award alimony after granting the divorce.

Section 615 of the Civil Procedure Code as it stands now reads as follows:

615. (1) The court may, if it thinks fit, upon pronouncing a decree of divorce or separation, order for the benefit of either spouse or of the children of the marriage or of both, that the other spouse shall do any one or more of the following:-

- (a) make such conveyance or settlement as the court thinks reasonable of such property or any part thereof as he may be entitled to;*
- (b) pay a gross sum of money;*
- (c) pay annually or monthly such sums of money as the court thinks reasonable;*

(d) secure the payment of such sums of money as may be ordered under paragraph (b) or paragraph (c) by the hypothecation of immovable property or by the execution of a bond with or without sureties, or by the purchase of a policy of annuity in an insurance company or other institution approved by court.

(2) The court may at any stage discharge, modify, temporarily suspend and revive or enhance an order made under subsection.

In terms of section 615(1)(b) of the Civil Procedure Code, the Court may, if it thinks fit, upon pronouncing a decree of divorce, order for the benefit of either spouse that the other spouse shall pay a gross sum of money as permanent alimony. The legislature has not expressly stated matrimonial fault as a factor in awarding alimony. In terms of this section, alimony can be awarded not only in favour of the wife, but also in favour the husband. This is a clear departure from the earlier position where only the wife could claim for alimony.

Section 615 as it stood before the Civil Procedure Code (Amendment) Law, No. 20 of 1977, read as follows:

615. The court may, if it thinks fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of separation obtained by the wife, order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

(2) In every such case the court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the court seems fit.

Although the repealed section does not explicitly state that the wife must be the innocent party to be entitled to alimony, Courts have interpreted “*the conduct of the parties*” to mean that only the innocent party is entitled to it. The term “*The court may, if it thinks fit*” found in section 615 also lends support to come to that conclusion. As a result, alimony has been denied when the wife is found to be the guilty party.

Hence, in practical terms, the obligation to pay permanent alimony is tied to the concept of matrimonial fault in divorce proceedings. In Sri Lanka, under section 19(2) of the Marriage Registration Ordinance, No. 19 of 1907, as amended, a decree of divorce can be granted on proof of matrimonial fault identified in law, i.e. adultery, malicious desertion and incurable impotency. What is known in some other jurisdictions as “no-fault divorce” is not part of our law (*Tennekoon v. Tennekoon* [1986] 1 Sri LR 90).

In awarding permanent alimony after the grant of divorce, the Court has discretion. However, this discretion needs to be exercised judicially, not arbitrarily, leaving aside the personal beliefs, biases and prejudices of the Judge towards the marriage relationship, divorce, and alimony itself.

When permanent alimony is sought by the innocent spouse from the guilty spouse, the Court needs to consider a variety of factors. The decision regarding the quantum of alimony should depend on the unique facts and circumstances of each individual case. A similar view was expressed by me in respect of alimony *pendente lite* in *Thamel v. Nawaratne* (SC/APPEAL/153/2019, SC Minutes of 28.02.2024).

With respect, I am unable to agree with the view expressed in the judgment of the Court of Appeal in *Anulawathie v. Gunapala and Another* [1998] 1 Sri LR 63 at 67 which states that “*the sole criterion upon which alimony should be quantified is the financial status of the defendant.*” Among all the factors, perhaps the most important is the financial status, but not only the financial status of the guilty spouse but also of the innocent spouse.

In addition to the existing financial status of the parties, the Court must consider other factors such as their future earning capacity, the length of the marriage, the reason or reasons for divorce, the standard of living during the marriage, the ages and health of the parties, their station in life or social standing, other financial liabilities, custody arrangements. This is not an exhaustive list.

The underlying principle of ordering permanent alimony is to ensure sufficient support for the former wife after the divorce. It need not be intended to serve as punishment for the husband found guilty of matrimonial fault. The order for alimony should be reasonable and realistic.

It is important to note that although alimony ordered after divorce is termed “permanent alimony”, it is not truly permanent. Section 615(2) states that the Court may at any stage discharge, modify, temporarily suspend, revive or enhance such an order. Therefore, judicial time need

not be unnecessarily spent on deciding the question of alimony in divorce cases.

In the present case, the plaintiff's financial status was not established during the trial. At the commencement of evidence, the plaintiff mentioned his employment as an Assistant Store Keeper at the Maganeguma road construction company, but the details about his salary and expenses were not led by either party. It was also unclear whether this employment was temporary. Before the marriage, he worked as a tax collector on commission basis at the Pradeshiya Sabha, where the defendant also worked. The defendant testified that during the marriage, she had to settle the plaintiff's loans, purchase a motorbike for him, and cover household expenses. The defendant admits that the plaintiff is not from a wealthy background. The defendant does not claim that the plaintiff has any other movable or immovable properties, whether inherited or purchased. She also mentioned that the plaintiff paid maintenance for a child from a previous marriage using her money. It seems the plaintiff does not have permanent employment, while the defendant's employment is permanent. Following the registration, the plaintiff waited two years to bring the defendant to their matrimonial home due to financial constraints. They did not have a separate matrimonial home. The matrimonial home was the plaintiff's parents' home. Constant disputes between the defendant and the plaintiff's mother contributed to the breakdown of the marriage.

In short, while no evidence had been led to demonstrate the financial states of the plaintiff, the defendant, through her evidence and during the cross-examination of the plaintiff, has established that she is in a better financial position than the plaintiff. The District Judge's finding that the defendant did not prove financial status of the plaintiff in order

for the Court to order permanent alimony is flawless. It is that order which was affirmed by the High Court.

Although the repealed section 615 contained guidelines for the exercise of discretion in awarding permanent alimony, the new section lacks any such guidelines. Therefore, in the judgment, the High Court noted that all the criteria identified in the UK Matrimonial Causes Act of 1973 may well be equally applicable to the exercise of judicial discretion in Sri Lanka in order to ascertain the financial status and the need of both parties to the action. Thereafter, the High Court examined each of these criteria identified in the UK Matrimonial Causes Act in relation to the facts of the case at hand and concluded that, since the defendant did not satisfy those criteria, she was not entitled to permanent alimony.

Learned counsel for the defendant-appellant contends that this approach of the High Court is incorrect and could set a bad precedent unless this Court clarifies the correct legal position. It is encouraging to learn that learned counsel is considering broader policy implications beyond the isolated appeal of this case.

In terms of section 23(1)(c) of the UK Matrimonial Causes Act of 1973, similar to the provisions in Sri Lanka, the Court, upon granting a divorce, has the authority to order the payment of a lump sum. Furthermore, section 25(1) of the Act requires the Court, in determining whether to exercise its powers under this section, to consider “all the circumstances of the case”. Additionally, section 25(2) specifies that the Court must particularly consider the following factors:

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion

- of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties to the marriage;
 - (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
 - (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
 - (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

I appreciate that the grounds of divorce, socio-economic culture, and societal values etc. between the UK and Sri Lanka are incomparable, and therefore we cannot mechanically adopt the criteria formulated for the UK legal system without any modification. However, in exercising discretion, it is not inappropriate for our Courts to consider those factors also as guidelines but certainly not as a rigid checklist. Even under the UK Matrimonial Causes Act, it is not an exhaustive list. The quantum of alimony—whether as alimony *pendente lite* or as permanent alimony—

should be decided not based on hard and fast rules but on the unique facts and circumstances of each case.

It may be worth considering the adoption of certain standards to guide the exercise of discretion, as this could enhance predictability and deter arbitrariness. However, it is important to ensure that this does not compromise the flexibility inherent in judicial discretion, which is particularly valuable in the determination of alimony. The legislature has declined to specify any criteria in section 615 of the Civil Procedure Code so that this judicial discretion is preserved.

The questions of law upon which leave to appeal was granted and the answers thereto are as follows:

Q. Did the High Court misdirect itself in law when it applied criteria in the UK Matrimonial Causes Act of 1973 in assessing “financial status”?

A. Applying the UK criteria as a rigid checklist for awarding alimony in the Sri Lankan context is not feasible, but they can be used, among other considerations, as guides to decide the quantum of alimony.

Q. Did the High Court err both in fact and law when it failed to appreciate that, considering all the circumstances of the case, the defendant is entitled to have an order for permanent alimony?

A. No, considering all the circumstances of the case, the defendant is not entitled to have an order for permanent alimony.

I agree with the judgment of the High Court on the question of alimony subject to the views expressed in this judgment. The appeal is dismissed but without costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court