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A.S.No.88 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE DR. JUSTICE D.NAGARJUN

A.S.No.88 of 2021

S.Haneef @ Syed Mohammed Haneef

...Appellant

Vs.

K.Ayesha @ Ayesha Begum

...Respondent

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure read with Section 19 of the Family Courts Act, against the judgment and decree passed in O.S.No.98 of 2012 dated 08.01.2020 passed by the IV Additional Principal Judge, Family Court at Chennai.

For Appellant : Mr.S.Parthasarathy

For Respondent : K.Ayesha @ Ayesha Begum,
Party-in-person



J U D G M E N T

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

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This appeal is by the husband against the dismissal of his suit seeking a declaration that the talaq pronounced by him is valid.

2. We were informed that the husband has not paid the maintenance as directed by the Court in the proceedings under the Domestic Violence Act. This statement made by the wife was denied by the husband. Hence, we called upon the learned counsel for the husband to produce the evidence of payments made by him pursuant to the order made in Domestic Violence case. He has produced some evidence from which we could gather that he has not paid the entire amount and what he has paid in only about Rs.2,15,000/- out of the total due of Rs.7,70,000/-. There is therefore a balance of Rs.5,55,000/- due and payable towards maintenance as of today. We also find that in the proceedings for custody of the child, the husband was directed to pay a sum of Rs.2,79,000/- towards education expenses to the wife and even that amount was not paid. To our query as to the time that will be required by the husband to pay the arrears of maintenance, the learned counsel for the appellant, upon instructions, would submit that he



cannot pay such huge sum. It is settled law that a spouse who has been directed to pay interim maintenance cannot be allowed to prosecute the main proceedings with out paying the same.

3. In the light of the above, we do not think we can allow the husband to prosecute this appeal without paying the maintenance. Hence, this appeal is **dismissed** for non-payment of maintenance ordered to be paid. We permit the respondent/ wife to move the Additional Mahila Court, (Judicial Magistrate, Egmore) before whom the Domestic Violence case in DVC.No.72 of 2017 is pending seeking payment of maintenance or for detention of the husband for non-payment of maintenance. If such an application is filed, the Additional Mahila Court will dispose it of within a period of three (3) months from the date of filing of any such application after giving due opportunity to the husband. No costs.

(R.S.M.,J.) (D.N.R.,J.)
12.10.2023

dsa
Index :No
Internet :Yes
Neutral Citation :No
Speaking order



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To

The IV Additional Principal Judge,
Family Court, Chennai.



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R.SUBRAMANIAN, J.
and
D.NAGARJUN, J.

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