



C.M.A.No.2390 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2390 of 2022

and

C.M.P.No.19402 of 2022

N.Arivazhagan

...Appellant

Vs.

S.Poorni

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, against the order passed in I.A.No.6 of 2021 in H.M.O.P.No.1392 of 2017 on the file of the Additional Principal Family Court Judge at Coimbatore dated 29.03.2022 and consequently allow the petitioner to participate in the trial.

For Appellant : Ms.R.Pushpalatha for
Mr.C.Deivasigamani

For Respondent : Mr.K.Balasubramaniam



C.M.A.No.2390 of 2022

J U D G M E N T

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

The appeal is against the order allowing an application to strike out the defence for non-payment of maintenance. The appellant, who is the husband suffered an order for payment of maintenance at Rs.6,000/- per month in I.A.No.1 of 2019. The same was challenged in C.M.A.No.2844 of 2021 before this Court and the said appeal was dismissed on 07.01.2022. Upon dismissal of the appeal, the wife filed an application seeking to strike out the defence on the ground that the order for interim maintenance has not been complied with.

2.The said application was resisted on the ground that a review petition has been filed seeking review of the order passed in C.M.A.No.2844 of 2021. The family Judge rejected the said contention and ordered striking out the defence. This appeal is directed against the said order striking out the defence.

3.The learned counsel appearing for the appellant would vehemently contend that the order is a non-speaking order and the remedy of the respondent wife is to seek execution of the order for maintenance



C.M.A.No.2390 of 2022

under Section 28-A of the Hindu Marriage Act and not to seek strike out the defence. The power of the Court to strike out the defence for non-payment of maintenance is undisputable. There is long line of precedents to support the view of the Family Court that the husband cannot defend a main proceeding without paying the maintenance ordered by the Court.

4.The contention of the learned counsel appearing for the appellant that 28-A should be resorted to cannot be accepted. That would amount to giving a premium to the defaulter. We are therefore, convinced that the Family Court cannot be faulted for striking out the defence for non-payment of maintenance. We do not see any merit in the appeal. This Civil Miscellaneous Appeal fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (S.S.K.,J.)
20.01.2023

kkn

Internet:Yes
Index:No
Speaking

3/4



WEB COPY



C.M.A.No.2390 of 2022

R.SUBRAMANIAN, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

KKN

To:-

The Additional Principal Family Court,
Coimbatore.

C.M.A.No.2390 of 2022
and
C.M.P.No.19402 of 2022

20.01.2023