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C.M.A.No.1717 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.1717 of 2021

S. Kumaresan ... Appellant

Vs.

G. Devikala ... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, 1984, read with Order XLI Rule (1) of C.P.C., 1908, as amended against the order and decreetal dated 20.12.2019 passed by the V Additional Family Court, Chennai, in H.M.O.P.No.923 of 2019.

For Appellant : Mr.S.Thiagarajan

For Respondent : M/s.E.Angayarkanni

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JUDGMENT

*(Judgment of the Court was delivered by **J. Nisha Banu, J**)*

The present Civil Miscellaneous Appeal has been filed against the order dated 20.12.2019, dismissing O.P.No.923 of 2019 filed by the appellant/husband for divorce on the ground of desertion, passed by the learned V Additional Principal Judge, V Additional Family Court, Chennai.

2. The learned counsel for the respondent/wife would state that the respondent/wife has also filed M.C.No.213 of 2012 for monthly maintenance. The Court below directed the appellant/husband herein to pay a sum of Rs.5,000/- per month to the respondent/wife from the date of the petition i.e. 18.06.2011. She would further state that there is huge amount of maintenance pending and citing the pendency of this Civil Miscellaneous Appeal, the matter is being prolonged for a long time before the Court below.



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3. On perusal of the records, it is seen that the matter is of the year 2021 and the appellant is in arrears of maintenance to be paid to the respondent/wife.

4. It is relevant to point out at this juncture the decision of the Hon'ble Supreme Court reported in ***Kaushalya Vs. Mukesh Jain, (2020) 17 SCC 822***, wherein it has been held as follows:-

"In the event that there is any failure on the part of the respondent to comply with the order for deposit of arrears and month to month installments, it will be open to the appellant to apply before the Family Court to get the defence of the respondent struck off".

5. Further, in the decision reported in ***AIR 2021 SC 569 (Rajesh Vs. Neha)***, the Hon'ble Supreme Court had passed a detailed judgment giving certain Guidelines/ Directions on Maintenance to be followed and in the said decision, the Hon'ble Supreme Court has observed as follows:-

"The Court concluded that if there was non-payment of interim maintenance, the defence of the respondent is liable to be struck off, and the appeal filed by the appellant-wife can be allowed, without hearing the respondent".



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6. In the present case, the appellant has not paid the maintenance till date as directed by the Family Court. Therefore, we can not allow the appellant/husband to prosecute the appeal without paying the maintenance.

7. In the light of the above, we are not inclined to allow the appellant/husband to prosecute the appeal without paying the maintenance. Therefore, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

(J.N.B, J.) (R.S.V., J.)
05.12.2024

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To

The V Additional Family Court,
Chennai.



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and
R. SAKTHIVEL, J.

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