



C.M.A.No.3203 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.12.2024

CORAM

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

C.M.A.No.3203 of 2019

and

C.M.P.No.18260 of 2019

T.S.Ganeshbabu

... Appellant

Vs.

V.Yamini

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act against the order and decree in O.P.No.4215 of 2011 dated 17.06.2019 on the file of V Additional Family Court, Chennai.

For Appellant : Mrs.V.Srimathi

For Respondent : Mr.R.Sreedhar

JUDGMENT

(The judgment of the Court was delivered by J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed by the appellant/husband as against the order and decree dated 17.06.2019



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passed in O.P.No.4215 of 2011 by the V Additional Family Court, Chennai.

2. The said O.P.No.4215 of 2011 was filed by the respondent/wife for divorce and the decree of divorce was granted by the Family Court on the ground of cruelty and desertion. Further, the appellant/husband was directed to pay a sum of Rs.15,000/- per month to the minor daughter namely, Sahana, from the date of the petition i.e., 24.11.2011.

3. When the matter was taken up for hearing on 06.12.2024, learned counsel for the appellant was directed to verify whether the appellant was willing to pay the maintenance or not, otherwise, the matter will be dismissed as per the decision of the Hon'ble Supreme Court reported in (2020) 17 SCC 822 (*Kaushalya v. Mukesh Jain*) and AIR 2021 SC 569 (*Rajnish vs. Neha*).

4. Today, when the matter is taken up for hearing, learned counsel for the appellant would state that the appellant has not paid the maintenance for the child.

5. Learned counsel appearing for the respondent/wife would state that the child 'Sahana Ganeshbabu', who was born on 13.01.2008, is now aged 16 years and studying Twelveth Standard at AV Meiyappan



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Matriculation Higher Secondary School, Chennai. The appellant/husband has not paid a single penny towards the maintenance of the child and the arrears of maintenance has been accumulated to Rs.23,55,000/- as on today. Learned counsel would further state that both the appellant and the respondent have been living separately from the year 2011 and the respondent/wife is having the custody of the child and she wants to obtain Overseas Citizen of India (OCI) certificate to the child 'Sahana Ganeshbabu'.

6. The aforesaid statement made by the learned counsel for the respondent/wife is recorded.

7. It is relevant to point out at this juncture the decision of the Hon'ble Supreme Court reported in ***Kaushalya v. 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."

8. Further, in the decision reported in ***AIR 2021 SC 569 (Rajnesh vs. Neha)***, the Hon'ble Supreme Court had passed a detailed judgment



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giving certain Guidelines / Directions on Maintenance to be followed and in the said decision, the Hon'ble Supreme Court has been 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.

9. In the present case, despite the direction given by the Family Court to pay the maintenance to the child, the appellant did not pay the same till date. Therefore, we do not think we can allow the appellant/husband to prosecute the appeal without paying the maintenance.

10. In the light of the above, we are not inclined to entertain the Appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B, J.) (R.S.V., J.)
17.12.2024

vsi



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To
The V Additional Family Court,
Chennai.



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and
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