



C.M.A.No.1417 of 2017

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.1417 of 2017
and
C.M.P.No.7547 of 2017

S.Jagadeeswari ... Appellant

Vs.

R.V.Sudharshan ... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act against the fair and final order dated 06.05.2016 made in H.M.O.P.No.70 of 2007 on the file of the Court of the Principal Family Judge, Coimbatore.

For Appellant : Mr.S.Thangavel

For Respondent : Mr.S.K.Karthik Raja

JUDGMENT

This Appeal has been filed by the appellant/wife challenging the



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order dated 06.05.2016 passed by the learned Principal Family Judge, Coimbatore, in H.M.O.P.No.70 of 2007, allowing the petition filed by the respondent seeking divorce.

2. When the matter was taken up for hearing on 03.10.2024, the learned counsel for the appellant/ wife stated that the arrears of maintenance to the tune of Rs.37,20,000/- has not been paid by the respondent till that date. Therefore, as the respondent/husband was ready to pay the amount and sought time, the respondent / husband was directed to produce a demand draft for the entire arrears of maintenance on 14.10.2024. When the matter was taken up on 14.10.2024, the learned counsel for the respondent sought time to produce the demand draft. Hence, the matter was adjourned to 21.10.2024. Since, the demand draft was not produced, the matter was again adjourned to 29.10.2024. When the matter was called on 29.10.2024, there was no representation for the respondent and subsequently, though the matter was adjourned twice i.e., on 19.11.024 and 03.12.2024 at the instance of the learned counsel for the appellant, the demand draft was not produced by the respondent side.

3. Today(17.12.2024), when the matter is taken up, the learned



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counsel for the appellant/wife would state that though this Court directed the respondent to pay the arrears of maintenance as ordered by the learned Principal Family Judge Coimbatore, the respondent/husband has not paid the same. Learned counsel for the respondent would state that the appellant can file an Execution Petition before the lower Court.

4. Once the respondent does not pay the maintenance amount, his defence has to be struck off. The respondent herein is not entitled for divorce. 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."

5. Further, in the decision reported in ***AIR 2021 SC 569 (Rajnish 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 been observed



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as follows:

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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.

6. In the present case, the respondent has not paid the maintenance till date as directed by the Family Court. Therefore, the appeal filed by the appellant/wife has got to be allowed.

7. In view of the above findings that the respondent has not paid the maintenance as directed by the Family Court, we are inclined to set aside the order passed by the Family Court. Accordingly, the order dated 06.05.2016, passed by the learned Principal Family Judge, Coimbatore, in H.M.O.P.No.70 of 2007 is set aside. The Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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

vsi

To
The Principal Family Judge,
Coimbatore.



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and
R. SAKTHIVEL, J.

vsi

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