



C.M.A.Nos.2288 & 2289 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI**

C.M.A.Nos.2288 & 2289 of 2017

V.Muthukumar ..Appellant in both the Appeals

Vs.

K.Prameela ..Respondent in both the Appeals

Prayer in C.M.A.No.2288 of 2017:

Civil Miscellaneous Appeal filed under Section 19 of Family Court Act against the fair and decreetal order dated 23.09.2016 passed by the learned Principal Judge, Family Court Coimbatore in H.M.O.P.No.787 of 2010 and prays to set aside the same.

Prayer in C.M.A.No.2289 of 2017:

Civil Miscellaneous Appeal filed under Section 19 of Family Court Act against the fair and decreetal order dated 23.09.2016 passed by the learned Principal Judge, Family Court Coimbatore in H.M.O.P.No.288 of 2012 and prays to set aside the same



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For Appellant
in both the Appeals : Mr.L.Mouli
For Respondent
in both the Appeals : Mr.S.Chandrasekar

COMMON JUDGMENT

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

These Appeals have been filed by the husband challenging the common order passed in favour of the wife for restitution of conjugal rights and the order of maintenance passed by the Principal Family Court, Coimbatore.

2. The appellant/husband filed H.M.O.P.No.787 of 2010 for divorce on the ground of cruelty. The respondent/wife filed H.M.O.P.No.288/2012 for restitution of conjugal rights and also filed M.C.No.33/2012 for maintenance. The Family Court passed a common order, dismissing the petition filed by the husband for divorce and allowing the petition filed by the wife for conjugal rights and directed the appellant/husband herein to pay a monthly maintenance of Rs.2,500/- to the respondent/wife and Rs.2,500/- to the child, totally Rs.5,000/-.

3. Today, when the matter is taken up, the learned counsel for the



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respondent/wife has filed a memo of calculation stating that the appellant did not pay maintenance both to the respondent/wife and their son till date from 27.02.2012 onwards and the outstanding arrears from 27.02.2023 to 31.08.2024, i.e., 151 months x Rs.5,000/- comes to Rs.7,55,000/-.

4. 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 (Rajnesh 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:

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 appellant has not paid the maintenance till date as directed by the Family Court. Therefore, we do not think we can allow the appellant/husband to prosecute these appeals without paying the maintenance.

7. In the light of the above, we are not inclined to allow the appellant/husband to prosecute the appeals without paying the maintenance. Therefore, both the Appeals are dismissed. No costs.

(J.N.B,J.) (R.K.M., J.)
20.09.2024

Index : Yes / No
Internet : Yes
vsi

To

The Motor Accidents Claims Tribunal,



C.M.A.Nos.2288 & 2289 of 2017

(Special District Judge), Erode

WEB COPY

J. NISHA BANU, J.
and
R.KALAIMATHI, J.

vsi

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