



WEB COPY



C.M.A.No.627 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

and

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.627 of 2023

Ramesh Sannilo

..Appellant

Vs.

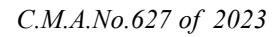
G. Kalpana

..Respondent

Prayer: The Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act to set aside the order dated 30.09.2022 passed by the Principal Family Judge, Coimbatore, in H.M.O.P.No.319 of 2017.

For Appellant : Ms.S.Vennila

For Respondent : Mr.V.Sachin Vinayak
for Ms.I.Abrar Mohamed Abdullah



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

2. The appellant/husband filed H.M.O.P.No.319 of 2017 for divorce on the ground of cruelty. The respondent/wife also filed M.C.No.197 of 2017 for maintenance. The Family Court, Coimbatore, passed a common order, dismissing the petition filed by the husband for divorce and directed the appellant/husband herein to pay a sum of Rs.10,000/- per month each to the minor petitioners therein as maintenance i.e. in total Rs.20,000/- per month from 06.10.2017 till the first petitioner therein (minor) attains majority and till the date of marriage of the second petitioner therein (minor).

3. When the matter came up for hearing on 29.08.2024, the learned counsel appearing for both sides submitted that the mediation



C.M.A.No.627 of 2023

WEB COPY

failed and sought for accommodation for arguing the case and hence, at request of the learned counsel for the parties, the case was adjourned to 12.09.2024. Again, on 12.09.2024, when the matter was called, at request of the learned counsel for the appellant, the case was adjourned to 26.09.2024. Thereafter, on 26.09.2024, when the matter was taken up, the learned counsel for the appellant stated that the appellant/husband will pay the arrears of maintenance and sought for short accommodation. At request of the learned counsel appearing for both parties, the matter was directed to be listed on 18.10.2024.

4. On 21.10.2024, when the matter was called, there was no representation on behalf of the appellant and hence, the Registry was directed to list the matter on 22.10.2024 under the caption "for dismissal". Accordingly, the matter is listed today under the same caption. Today when the matter is taken up for hearing, the learned counsel appearing for the appellant seeks for short accommodation.

5. On perusal of the records, it is seen that the appellant is in arrears of huge amount of maintenance to be paid to the respondent/wife.



C.M.A.No.627 of 2023

WEB COPY

6. 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".

7. 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 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".



C.M.A.No.627 of 2023

WEB COPY

8. 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 the appeal without paying the maintenance.

9. 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.)

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

22.10.2024

asi

To

The Principal Family Judge,
Coimbatore.



WEB COPY



C.M.A.No.627 of 2023

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

asi

C.M.A.No.627 of 2023

22.10.2024