



C.M.A.No.2771 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM

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

C.M.A.No.2771 of 2019

Navappan
S/o. Late Kannan

..Appellant

Vs.

1. Kavitha
W/o. Navappan

2. Loganathan
S/o. Arumugam

..Respondents

Prayer: The Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act against the order and decree in M.O.P.No.261 of 2008, dated 30.08.2018 on the file of the learned Judge, Family Court at Puducherry.

For Appellant : No appearance

For Respondent No.1 : Mr.R.Thiagarajan

For Respondent No.2 : No appearance



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JUDGMENT

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

The present Civil Miscellaneous Appeal has been filed against the the order and decree in M.O.P.No.261 of 2008, dated 30.08.2018 on the file of the learned Judge, Family Court at Puducherry.

2. The appellant/husband had filed M.O.P.No.261 of 2008 for divorce on the ground of cruelty. The learned Judge, Family Court, Puducherry, by order dated 30.08.2018, had dismissed the petition. The respondent/ wife had also filed M.C.No.51 of 2008 for maintenance.

3. When the matter came up for hearing on 20.09.2024, it was stated by the learned counsel for the respondent that a sum of Rs.7,00,000/- is pending towards arrears of maintenance and on that day, the learned counsel for the appellant sought for short accommodation and hence, the matter was adjourned to 04.10.2024 under the caption "for orders". Again on 04.10.2024, when the matter was listed under the same caption, there was no representation on behalf of the appellant.

4. Later, when the matter came up for hearing on 23.10.2024, the



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learned counsel for the respondent stated that arrears of maintenance has not been paid and the maintenance case before the Court below has been adjourned stating that the appeal is pending before this Court.

5. Since pendency of the appeal before this Court will not preclude the respondent from proceeding with the execution proceedings, this Court directed the learned trial Judge to proceed with the Execution proceedings and adjourned this appeal to 20.11.2024. Again on 20.11.2024, when the matter came up for hearing, the learned counsel for the appellant sought for an adjournment and hence, the case was directed to be listed on 25.11.2024.

6. Thereafter, when the matter was listed on 06.12.2024, the learned counsel for the appellant stated that the appellant is willing to produce a Demand Draft for the entire arrears of maintenance and considering the submission made, this Court adjourned the case to 13.12.2024 for production of the Demand Draft by the learned counsel for the appellant.



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7. Today, when the matter is listed, there is no representation on behalf of the appellant. On perusal of the records, it is seen that in spite of giving number of opportunities, the appellant has not paid the arrears of maintenance to the respondent/wife.

8. 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".

9. 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



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allowed, without hearing the respondent".

10. In the present case, the appellant has not paid the arrears of 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.

11. 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 for non-payment of arrears of maintenance. There shall be no order as to costs.

(J.N.B, J.) (R.S.V, J.)
18.12.2024

asi

J. NISHA BANU, J.
and
R.SAKTHIVEL, J.

asi



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To
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The Judge,
Family Court at Puducherry.

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