



C.M.A.Nos.3410 and 3411 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

CORAM

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

C.M.A.Nos.3410 and 3411 of 2021
and C.M.P.No.19675 of 2021

T. Gopi

... Appellant
in both C.M.As.

Vs.

M. Jayasudha @ Bhavani

... Respondent
in both C.M.As.

Prayer in C.M.A.No.3410 of 2021: This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, 1984 r/w Order XLI Rule (1) of Civil Procedure Code, 1908, against the order and decretal order dated 15.10.2019 passed by the learned V Additional Family Court, Chennai, in H.M.O.P.No.2398 of 2015.

Prayer in C.M.A.No.3411 of 2021: This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, 1984, against the order and decretal order dated 15.10.2019 passed by the learned V Additional Family Court, Chennai, in H.M.O.P.No.4727 of 2014.



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For Appellant : Mr.Meenakshi Sundaram

For Respondent : Mr.Ganapatheeswaran

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COMMON JUDGMENT

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

The present Civil Miscellaneous Appeals have been filed by the appellant/husband against the common judgment and decree dated 15.10.2019 made in O.P.Nos.4727 of 2014 and 2398 of 2015 by the learned V Additional Principal Judge, V Additional Family Court, Chennai, in which the petition in O.P.No.4727 of 2014 filed by the appellant/husband for divorce was dismissed and the petition in O.P.No.2398 of 2015 filed by the respondent/wife for restitution of conjugal rights was allowed.



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2. On perusal of the records, it is seen that on 20.11.2024, when the matters were taken up for hearing, this Court directed the appellant/husband to pay the entire arrears of maintenance to the respondent/wife so as to enable him to argue the matters and adjourned the matters to 04.12.2024. Again on 04.12.2024, when the matters were listed, there was no representation on behalf of the appellant and hence, the matters were directed to be listed on 05.12.2024 under the caption "for dismissal".

3. Thereafter, on 05.12.2024, when the matters were listed under the caption "for dismissal", Mr.Meenakshi Sundaram, learned counsel has entered appearance on behalf of the appellant on change of vakalat and at his request, the matters were adjourned to 06.01.2025.

4. Today when the matters are taken up for hearing, the learned counsel appearing the respondent/wife would state that the appellant/husband has not paid the arrears of maintenance.

5. In spite of giving number of opportunities, the appellant



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/husband has not paid the arrears of maintenance. 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".

6. 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 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".

7. In the light of the above, we are not inclined to allow the



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appellant/husband to prosecute the appeal without paying the maintenance. Therefore, these Civil Miscellaneous Appeals are dismissed for non-payment of arrears of maintenance. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B, J.) (R.S.V., J.)
27.01.2025

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To

The V Additional Principal Judge,
V Additional Family Court, Chennai,



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J. NISHA BANU, J.

and

R. SAKTHIVEL, J.

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