



C.M.A.No.1525 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

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

C.M.A.No.1525 of 2019
and C.M.P.Nos.4245 of 2019, 18699 of 2022,
22122 and 22126 of 2024

Mamta Lodha

..Appellant

Vs.

Narpat Chand Lodha

..Respondent

Prayer: The Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act to set aside the judgment and decree dated 25.10.2018 made in O.P.No.661 of 2014 passed by the III Additional Principal Judge, Family Court, Chennai.

For Appellant : Ms.Mamta Lodha (Party-in-Person)

For Respondent : Mr.Narpat Chand Lodha
(Party-in-Person)



C.M.A.No.1525 of 2019

WEB COPY

JUDGMENT

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

The present Civil Miscellaneous Appeal has been filed against the judgment and decree dated 25.10.2018 allowing O.P.No.661 of 2014 filed by the respondent/husband for divorce on the file of the III Additional Principal Judge, Family Court, Chennai.

2. The appellant/wife has filed a memo of calculation dated 13.06.2024, wherein it is submitted that as per the order dated 13.08.2019 in CrI.R.C.No.1330 of 2018, this Court confirmed the order dated 19.03.2018 passed by the XIX Additional City Civil and Sessions Judge, Chennai, directing the respondent/husband to pay a sum of Rs.30,000/- per month towards maintenance of the appellant/wife and her daughter from May, 2014 and also directed to pay school fees of the minor daughter. It is also submitted that her minor daughter has been suffering from medical ailment and that she has been under constant medical treatment.



C.M.A.No.1525 of 2019

WEB COPY

3. The appellant/wife appeared in person and submitted that the respondent/husband has not paid the school fees of the minor daughter and apart from that, there is huge arrears of maintenance.

4. When the matter came up for hearing on 30.09.2024, the learned counsel for the respondent stated that the respondent/husband is willing to pay the entire arrears of maintenance and therefore, a direction was given to produce a demand draft towards arrears of maintenance. Again on 23.10.2024 and 29.10.2024, when the matter was listed, there was no representation on behalf of the respondent.

5. Thereafter, on 19.11.2024, when the matter was called, the learned counsel for the respondent stated that the respondent has not responded and hence, the matter was adjourned to 03.12.2024 "for final disposal".

6. On 03.12.2024, when the matter came up for hearing, the respondent appeared in person and submitted that the entire arrears of maintenance will be paid within a period of two weeks and hence, sought



C.M.A.No.1525 of 2019

WEB COPY

for an adjournment. Taking into consideration that the matter is of the year 2019, this Court granted an order of interim stay of the order passed by the Court below and directed the respondent/husband to pay the entire arrears of maintenance on or before 03.01.2025, failing which, further orders will be passed based on the available records.

7. In spite of giving number of opportunities, the respondent/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".

8. 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



C.M.A.No.1525 of 2019

WEB COPY

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".

9. As per the above-judgments of the Hon'ble Supreme Court, we cannot allow the respondent/husband to prosecute the appeal without paying the maintenance in spite of giving number of opportunities. Hence, the judgment and decree dated 25.10.2018 made O.P.No.661 of 2014 passed by the III Additional Principal Judge, Family Court, Chennai, is hereby set aside and the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

(J.N.B, J.) (R.S.V, J.)
21.01.2025

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To

1. The III Additional Principal Judge, Family Court, Chennai.
2. The Section Officer,
V.R.Section, High Court of Madras, Chennai - 104.



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