



C.M.A.No.3566 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2025

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THE HONOURABLE MRS. JUSTICE J.NISHA BANU

and

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.3566 of 2019 and

C.M.P.No.20719 of 2019

Gausalya

..Respondent/Appellant

-VS-

Hemanand

...Petitioner/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, 1984 to set aside the fair and final order dated 01.03.2017 made in F.C.O.P.No.471 of 2013 on the file of the Family Court, Salem.

For Appellant : Mr.P.M.Jayachandran

For Respondent : Mr.V.Nithyanandam

J U D G M E N T

(By J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed, seeking to set aside the order dated 01.03.2017 in F.C.O.P.No.471 of 2013 on the file of the Family Court, Salem, by which, the Family Court, Salem allowed the petition filed by the respondent / husband for divorce.



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2. Learned counsel for the appellant /wife stated that despite the order dated 28.09.2016 passed in I.A.No.43 of 2015 in F.C.O.P.No.471 of 2013 for payment of maintenance to the tune of Rs.25,000/- per month to the appellant herein, payable by the respondent/husband, no maintenance amount has been paid to the appellant/wife. He further stated that subsequently, divorce has been granted and the marriage of the appellant and the respondent was dissolved.

3. Per contra, learned counsel for the respondent / husband contended that though the appellant/wife lived with the respondent/husband for few months, she had claimed a huge amount of Rs.1,50,000/- per month as maintenance. He further contended that within the short period of matrimonial life, she had caused severe mental torture to the respondent / husband and her intention is to grab money from the respondent/husband and not to lead a peaceful marital life with him. He further contended that it is incorrect to state that the respondent/husband had not paid any amount towards maintenance to the appellant/wife, as some amount has been paid to the respondent/wife as maintenance.



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4. The respondent/husband has not adduced any proof in respect of payment of maintenance to the appellant/wife. In such an event, it cannot be inferred that he had paid maintenance during pendency of divorce proceedings. 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 (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.”



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6. In the present case, the respondent/husband has not paid the maintenance amount to the appellant/wife, till date as directed by the Family Court.

7. In view of the above, we are not inclined to uphold the the order dated 01.03.2017 passed in F.C.O.P.No.471 of 2013. This Court has no other option except to set aside the order of the Family Court on the ground of non-payment of maintenance amount.

8. Accordingly, this Civil Miscellaneous Appeal is allowed and the order dated 01.03.2017 passed in F.C.O.P.No.471 of 2013 by the Family Court, Salem is hereby set aside. No costs. Consequently, connected Miscellaneous Petitions is closed.

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

28.01.2025

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To:

The Family Court Judge,

Salem.

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