



*C.M.A.Nos.1816 of 2022
and
CMA.831 of 2020*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2025

CORAM

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

C.M.A.No.1816 of 2022
and
C.M.P.No.13039 of 2022
and
C.M.A.No.831 of 2020
and
C.M.P.No.8342 of 2020

M.Raju
S/o Mani

..Appellant in both the Appeals

Vs.

S.Radhika
D/o Surendhar Raj

...Respondent in both the Appeals.

Prayer in CMA.No.1816 of 2022: This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, 1984 against the common order dated 27.04.2022 passed in O.P.No.3848 of 2017 on the file of III Additional Family Court, Chennai.



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Prayer in CMA.No.831 of 2020: This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, 1984 against the judgment and decree dated 18.08.2017 made in HMOP.No.1513 of 2013 on the file of the Principal Judge, Family Court, Chennai, in-charge of the II Additional Family Court, Chennai.

For Appellant : Mr.Harinath

For Respondent : Mr.D.Nellaiappan

JUDGMENT

(The judgment of the Court was delivered by J.Nisha Banu,J.)
CMA.No.1816 of of 2022 has been filed by the appellant/husband against the order dated 27.04.2022 passed in O.P.No.3848 of 2017 by the learned III Additional Family Court, Chennai, allowing the petition filed by the respondent /wife for restitution of conjugal rights. CMA.No.831 of 2020 has been filed by the appellant/husband against the order dated 18.08.2017 made in HMOP.No.1513 of 2013, in which, the petition filed by the appellant/husband seeking divorce was dismissed.

2. Today, when the matter is taken up, the learned counsel for the respondent/wife stated that the appellant/husband has not paid



C.M.A.Nos.1816 of 2022
and
CMA.831 of 2020

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maintenance amount to the respondent/wife and their son, as ordered in M.C.No.80/2018 by the Family Court from the year 2018.

3. 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."

4. 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 been 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,



C.M.A.Nos.1816 of 2022
and
CMA.831 of 2020

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and the appeal filed by the appellant-wife can be allowed, without hearing the respondent.

5. In the present case, the appellant has not paid the maintenance amount to the respondent/wife and their son, till date as directed by the Family Court.

6. In view of the above, we are not inclined to allow the appellant/husband to prosecute the appeals without paying the maintenance. This Court has no other option except to dismiss the Appeals as the appellant cannot maintain the appeals without paying the maintenance. Accordingly, the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B, J.) (R.S.V., J.)
20.01.2025

vsi

To

1. The Principal Judge, Family Court, Chennai.

2. III Additional Principal Judge, III Additional Family Court, Chennai.



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