



C.M.A.No.4534 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

CORAM

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

C.M.A.No.4534 of 2019

S. Suriyaprabha ... Appellant

Vs.

S. Karthikeyan ... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, 1984, to set aside the judgment and decree dated 30.08.2019 made in H.M.O.P.No.457 of 2015 on the file of the Principal Family Court, Coimbatore.

For Appellant : Mr.C.Prabakaran

For Respondent : Mr.V.Manohar

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JUDGMENT

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

The present Civil Miscellaneous Appeal has been filed by the appellant/wife against the order judgment and decree dated 30.08.2019 allowing the petition filed by the respondent/husband for divorce in H.M.O.P.No.457 of 2015 passed by the Principal Judge, Principal Family Court, Coimbatore.

2. The appellant/wife had also filed M.C.No.155 of 2016, in which, the Court below directed the respondent/husband to pay a sum of Rs.9,000/- to the appellant/wife and a sum of Rs.3,000/- to the minor child as monthly maintenance and a sum of Rs.20,000/- towards the litigation expenses.

3. The learned counsel for the appellant/wife would state that challenging the order passed in the maintenance case, the appellant/wife preferred CrI.R.C.No.1269 and 1430 of 2019 before this Court and this Court, by order dated 17.08.2022, enhanced the said amount from a sum of Rs.12,000/- to a sum of Rs.18,500/-. The learned counsel for the



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appellant has also filed a calculation memo dated 23.01.2025. As per the memo, a sum of Rs.9,81,500/- has been received by the appellant/wife from the respondent/husband till 06.01.2025. The balance amount of Rs.8,70,000/- has to be paid by the the respondent/husband as on 06.08.2024.

4. The learned counsel for the appellant would further state that the respondent/husband is in huge arrears of maintenance and the order passed by this Court has not been complied with by the respondent.

5. 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



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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. As per the judgment of the Hon'ble Supreme Court, if the husband does not comply with the order of the Court, the defence of the respondent/husband is liable to be struck off, and the appeal filed by the appellant/wife can be allowed, without hearing the respondent. In the light of the above, we are not inclined to allow the respondent/husband to prosecute the appeal without paying the arrears the maintenance. Therefore, the judgment and decree dated 30.08.2019 made in H.M.O.P.No.457 of 2015 on the file of the Principal Family Court, Coimbatore, is hereby set aside and the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

(J.N.B, J.) (R.S.V., J.)
23.01.2025



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To

The Principal Judge,
Principal Family Court, Coimbatore.



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and
R. SAKTHIVEL, J.

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