



CMP.No.3106 of 2023

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R.SUBRAMANIAN, J.

and

R.SAKTHIVEL, J.

Challenge in this Appeal is to the order passed under Section 36 of the Divorce Act granting interim maintenance at the rate of Rs.25,000/- per month and legal expenses of Rs.30,000/- made under Section 36 of the Divorce Act, 1869. Section 55 of the Act provides for Appeals against orders and decrees passed in exercise of the powers conferred under the provisions of the Divorce Act 1869 and it reads as follows:

“55. Enforcement of, and appeal from, orders and decrees. – All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and by may be appealed from, under the laws, rules and orders for the time being in force.”



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2. A reading of the above provision would show Appeals under Section 55 are substantially under the provisions of the Code of Civil Procedure. An order granting interim maintenance being an interlocutory order is not appealable. A Division Bench of this Court in ***S.Menaka vs. K.S.K.Nepolian Socraties***, made in CMP No.18729 of 2023 dated 21.03.2024, has held that only a revision would lie. Though this Appeal was part of the batch of matters that was heard by the Division Bench which pronounced the judgment in ***S.Menaka vs. K.S.K.Nepolian Socraties***, made in CMP No.18729 of 2023 dated 21.03.2024, this Appeal was de-tagged, since it is against an order passed under Section 36 of the Divorce Act.

3. Having examined the provisions of the Divorce Act, we find that the principle laid down by the Division Bench would equally apply to the case on hand also. Therefore, the Appeal is not maintainable, however, since the Appeal has been numbered and has been pending for more than six months now, we direct the Registry to convert the Appeal into a Civil Revision Petition under Article 227 of the Constitution of India, subject to



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payment of the deficit court fee that may be payable by the appellant and place it before the Court dealing with Revisions under Article 227 of the Constitution of India as per roaster.

jv

[R.S.M., J.] [R.S.V., J.]
26.04.2024



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R.SUBRAMANIAN, J.
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jv

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26.04.2024