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C.M.A.No.517 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

C.M.A.No.517 of 2024

and

C.M.P.No.5127 of 2024

in

C.M.A.No.517 of 2024

M.P.Srikumaran
S/o.Pushparaj

... Appellant

Vs.

R.Mrudhula
W/o.M.P.Srikumaran

.. Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the order dated 30.11.2023 made in I.A.No.4 of 2023 in H.M.O.P.No.1376 of 2022 by the learned III Additional Family Court Judge, by allowing this Civil Miscellaneous Appeal.

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For Appellant : Mr.R.Munuswamy

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J U D G M E N T

[Judgment of the Court was made by M.SUNDAR, J.,]

Mr.R.Munuswamy, learned counsel on record for appellant is before us on the 'Videoconferencing' ['VC'] platform. To be noted, this is a Hybrid Hearing which is a regular / daily / routine feature in this Court.

2. Though we have not issued notice in the captioned matter, names of Mr.K.Balasubramaniam and his co-counsel are shown as counsel for sole respondent in the cause list. This is rather intriguing. In any event, there is no representation.

3. This order has to be read in conjunction with and in continuation of earlier proceedings made in the listings on 05.03.2024 and 20.03.2024 which read as follows:

Proceedings dated 05.03.2024 :

***'C.M.A. No. 517 of 2024
and
C.M.P. No.5127 of 2024 in C.M.A. No.517 of 2024***

***M.SUNDAR,J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,***

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(Order of the Court was made by M.SUNDAR, J.)
Captioned main 'Civil Miscellaneous Appeal' (hereinafter 'CMA' for the sake of brevity) is directed against an order dated 30.11.2023 made in I.A.No.04 of 2023 in H.M.O.P. No.1376 of 2022 on the file of III Additional Principal Family Court at Chennai. This '30.11.2023 order' shall be referred to as 'impugned order' for the sake of convenience.

2. Mr.P.Munuswamy, learned counsel on record for appellant/husband is before us.

3. The impugned order pertains to pendente lite maintenance made under Section 24 of 'Hindu Marriage Act, 1955 (Act 25 of 1955)' (hereinafter 'HM Act' for the sake of brevity and convenience). Maintainability of Civil Miscellaneous Appeals against such orders is being tested and therefore this matter will have to await the outcome of the maintainability test.

4. List after a fortnight in the Admission Board i.e., Motion List under the same cause list caption 'FOR ADMISSION'.

5. List on 20.03.2024.'

Proceedings dated 20.03.2024 :

'C.M.A.No.517 of 2024

and

C.M.P.No.5127 of 2024

in

C.M.A.No.517 of 2024

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,



C.M.A.No.517 of 2024

[Order of this Court was made by M.SUNDAR,J]

Read this in conjunction with and in continuation of earlier

proceedings made in the previous listing on 05.03.2024.

2. Re-notified.

3. List in the Admission Board i.e., Motion List day-after-tomorrow. List on 22.03.2024.'

4. Aforementioned proceedings made in the previous listings are telltale qua subject matter and the trajectory the matter has taken thus far.

5. The maintainability of CMAs against orders under Section 24 of 'the Hindu Marriage Act, 1955 (25 of 1955)' [hereinafter 'HM Act' for the sake of convenience and clarity] Act i.e., orders such as impugned order were decided by this Court vide C.M.P.No.18729 of 2023 in C.M.A.No.1914 of 2021 etc., batch [***S.Menaka Vs. K.S.K.Nepolian Socraties***, Neutral Citation : **2024:MHC:1405**]. This Court has held that appeals against orders such as impugned order are not maintainable. However, the rights of the appellant to file a revision under Article 227 of the Constitution of India stand preserved vide ***S.Menaka's*** case. This Court, without dilating further, deems it appropriate to say that the captioned CMA and CMP thereat will now stand governed by ***S.Menaka's*** case.



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6. Captioned CMA and CMP are disposed of as not maintainable / closed. We make it clear that we have not expressed any view or opinion on the merits of the matter. All rights and contentions are left open for being canvassed in a revision under Article 227 of the Constitution of India, if preferred.

7. Mr.P.Munuswamy, learned counsel on record for appellant, who is before us on VC submits that in tune with ***S.Menaka's*** principle, he now wants to prefer a revision under Article 227 of the Constitution of India and for this purpose, learned counsel requests for a direction to the Registry to return the certified copies qua impugned order. This request is acceded to.

8. Registry is directed to return the certified copies qua impugned order (certified copies such as fair order, decreetal order etc., qua impugned order) forthwith to the counsel on record for appellant under due acknowledgment.



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9. Captioned CMA and CMP thereat are disposed of as not maintainable / closed albeit with preservation of rights in the aforesaid manner and directive to the Registry as mentioned above. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

22.03.2024

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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P.S. I: *Upload forthwith*

P.S.II : *All concerned including the Registry, High Court, Madras, to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.*

To

1. The III Additional Principal Judge,
III Additional Principal Family Court
Chennai.
2. The Section Officer
V.R. Section
High Court, Madras.
3. The Section Officer
E.R. Section
High Court, Madras.

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