



C.M.A.No.1021 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.1021 of 2022

and

C.M.P.No.7523 of 2022

in

C.M.A.No.1021 of 2022

G.V.N.S.Siva Prasad
S/o.Tamma Rao

... Appellant

Vs.

V.Jyostna Devi
W/o.G.V.N.Siva Prasad

.. Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the fair and decreetal order dated 24.08.2021 made in O.P.No.2842 of 2019 on the file of the III Additional Family Court at Chennai.

For Appellant : Ms.S.Priyadarshini

For Respondent : Mr.R.Karthik

Page Nos.1/6



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C.M.A.No.1021 of 2022

J U D G M E N T

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

Captioned 'Civil Miscellaneous Appeal' [hereinafter 'CMA' for the sake of convenience and clarity] and captioned 'Civil Miscellaneous Petition' [hereinafter 'CMP' for the sake of convenience and clarity] arise out of matrimonial proceedings and parties in marital discord are G.V.N.S.Siva Prasad (husband) and V.Jyostna Devi (wife).

2. Aforementioned husband filed a divorce petition *inter alia* under Section 13(1)(i-a) of the 'the Hindu Marriage Act, 1955 (25 of 1955)' [hereinafter 'HM Act' for the sake of convenience and clarity] vide O.P.No.2842 of 2019 on the file of III Additional Principal Family Court at Chennai. 'O.P.No.2842 of 2019' shall be referred to as 'said OP' and 'III Additional Principal Family Court at Chennai' shall hereinafter be referred to as 'said FC' both for the sake of convenience and clarity.

3. Aforementioned said OP was dismissed for default and for non-



C.M.A.No.1021 of 2022

payment of arrears vide 'judgment and decree dated 24.08.2021' [hereinafter 'impugned decree' for the sake of convenience and clarity] made by said FC.

Assailing the impugned decree, captioned CMA has been filed by the husband and obviously, wife is lone respondent.

4. Ms.S.Priyadharshini, learned counsel on record for appellant - husband and Mr.R.Karthik, learned counsel on record for respondent - wife in the captioned CMA are before us.

5. Learned counsel for respondent - wife very fairly submitted, on instructions, that he has no objection to the impugned decree being set aside but made a request that said OP (O.P.No.2842 of 2019) may please be directed to be tried along with O.P.No.2835 of 2019 filed by the wife for restitution of conjugal rights petition under Section 9 of HM Act, saying so, learned counsel has made an endorsement in the case file and learned counsel on record for appellant has consented for such a course / such an order, a scanned reproduction of the endorsement is as follows:



C.M.A.No.1021 of 2022



6. In the light of the narrative thus far, captioned CMA is disposed of by making the following consent order:

(i) Impugned decree being judgment and decree dated 24.08.2021 in O.P.No.2842 of 2019 on the file of III Additional Principal Family Court at Chennai is set aside;

(ii) III Additional Principal Judge, III Additional Principal Family Court, Chennai is requested to tag O.P.No.2842 of 2019 (divorce petition filed by the husband) together with O.P.No.2835 of 2019 (restitution of conjugal rights petition under Section 9 of HM Act filed by wife) and decide both by way of joint trial;

(iii) As 24.08.2021 decree in O.P.No.2842 of 2019 which has now been set aside is also on the ground of non-



C.M.A.No.1021 of 2022

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payment of maintenance amount, we make it clear that we have not expressed any view or opinion qua merits on the *pendente lite* maintenance under Section 24 of HM Act or permanent alimony under Section 25 of HM Act and both these questions are left open to be decided by III Additional Principal Judge, III Additional Principal Family Court, Chennai, if canvassed in an appropriate manner;

(iv) Captioned CMP is disposed of as closed having become unnecessary.

Captioned CMA and CMP thereat are disposed of in the aforesaid manner with the aforesaid directives. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

27.03.2024

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

P.S. I: Upload forthwith

P.S.II : *All concerned including the III Additional Principal Judge, III Additional Principal Family Court at Chennai, 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.*

Page Nos.5/6



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C.M.A.No.1021 of 2022

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

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To

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

C.M.A.No.1021 of 2022

27.03.2024
(1/2)

Page Nos.6/6