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C.M.A.No.1942 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MRS. JUSTICE **K. GOVINDARAJAN**
THILAKAVADI

C.M.A. No.1942 of 2022
and
C.M.P. No.14444 of 2022 in C.M.A. No.1942 of 2022

Thiru.C.Mahendiran

.. Appellant

VS

Tmt.M.R.Vijayalakshmi

.. Respondent

Appeal filed under Section 19 of The Family Courts Act, 1984 to set aside the decretal order and order passed in I.A.No.3 of 2021 in F.C.O.P.No.141 of 2020 dated 14.07.2022 on the file of Family Court, Vellore.

For Appellant : Ms.R.T.Sundari

For Respondent : No appearance

JUDGMENT

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

Captioned 'Civil Miscellaneous Appeal' [hereinafter 'CMA' for the sake of brevity] has been filed assailing an 'order of *pendente lite*



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maintenance/interim maintenance order' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity] made under Section 24 of 'The Hindu Marriage Act, 1955 [25 of 1955]' {hereinafter 'HM Act' for the sake of brevity}.

2. This Court vide a detailed common judgment/order dated 21.03.2024 in *S.Menaka v. K.S.K.Nepolian Socraties and other cases* {Batch} reported in **2024:MHC:1405** {*Neutral Citation of Madras High Court*} and **2024 Live Law (Mad) 126** inter alia held that appeals against *pendente lite* maintenance/interim maintenance orders under Section 24 of HM Act are not maintainable but a revision under Article 227 of the Constitution of India would lie and preserved the rights of the appellants for preferring revision while giving closure to such CMAs.

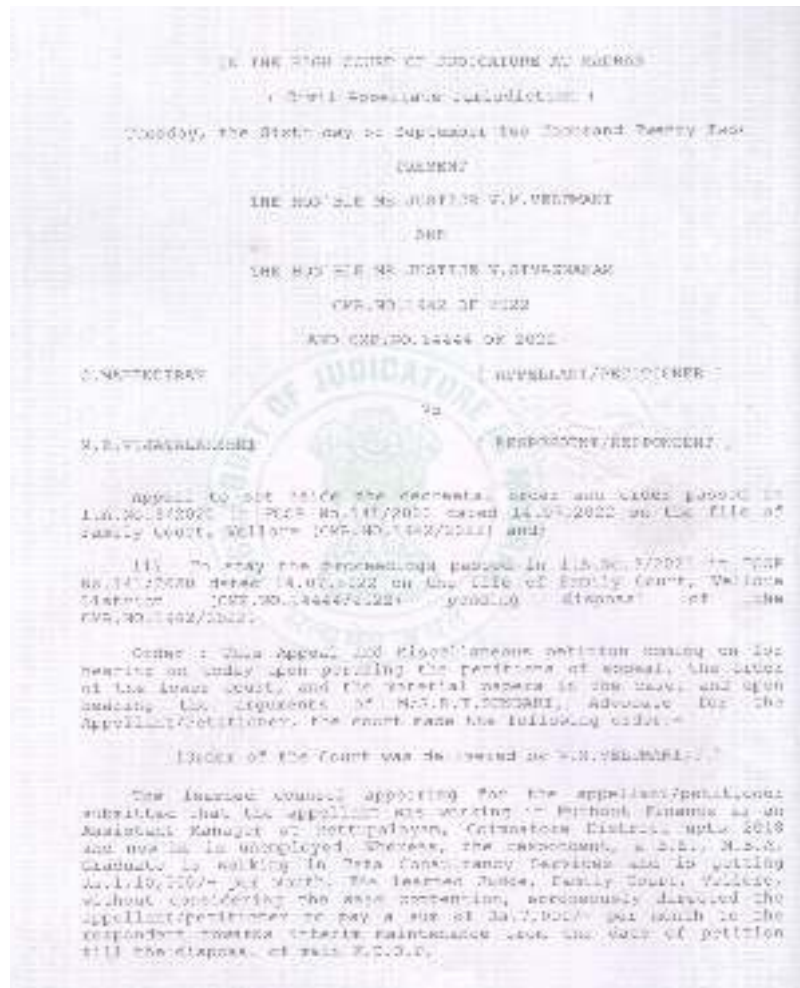
3. In the aforementioned scenario, without dilating further on maintainability, suffice to say that captioned CMA will also be governed by *S.Menaka v. K.S.K.Nepolian Socraties and other cases* {Batch} reported in **2024:MHC:1405** and **2024 Live Law (Mad) 126** i.e., there would be closure and preservation of rights as in *S.Menaka v. K.S.K.Nepolian Socraties and other cases* {Batch} reported in **2024:MHC:1405** and **2024 Live Law (Mad) 126**.



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4.Ms.R.T.Sundari, learned counsel for husband / appellant draws our attention to an interim order dated 06.09.2022 made in aforementioned CMP by another Hon'ble Co-ordinate Bench and a reproduction of this order is as follows:





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2. Considering the above submissions made by the learned counsel appearing for the appellant/petitioner, there shall be an order of Interim Stay on condition that the appellant/petitioner shall deposit a sum of Rs.50,000/- [Fifty Thousand only] towards arrears of interim maintenance within a period of eight weeks from the date of receipt of a copy of this order, to the credit of F.C.O.P.No.141 of 2020 on the file of the Family Court, Vellore.

3. Notice. Private notice is also permitted. Post the matter after eight weeks.

-sd/-
06/09/2022

/ TRUE COPY /

K. Narayana 13/09/2022
Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE JUDGE,
FAMILY COURT, VELLORE.

C.C. to M/S.R.T.SUNDARI, Advocate SR.NO.7376/2022

Order
in
CMA.NO.1942 OF 2022
AND CMP.NO.14444 OF 2022

Date :06/09/2022

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
PM(12/09/2022)

5. To be noted, the sole respondent/wife in the captioned CMA has been duly served, her name is shown in the cause list but there is no representation either in the 'VC' ['Videoconferencing'] platform or in the physical Court. To be noted, this is a hybrid hearing, which is a regular/routine/daily feature in this Court.

6. Be that as it may, aforementioned learned counsel on record for



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the appellant/husband submits that aforementioned 06.09.2022 interim order made by another Hon'ble Division Bench has been duly complied and Rs.50,000/- has been deposited to the credit of F.C.O.P.No.141 of 2020 on the file of Family Court, Vellore. If this is factually correct, though obvious we make it clear that it is open to the parties to seek payment out or refund by way of a suitable petition in the Family Court, Vellore and if such a petition is filed, Family Court, Vellore shall deal with same on its own merits and in accordance with law untrammelled by this order i.e., *de hors* this order.

7. Learned counsel Ms.R.T.Sundari submits that a petition for divorce by mutual consent has been filed under Section 13-B of HM Act in F.C.O.P.No.310 of 2023 on the file of same Family Court, Vellore. We make it clear that F.C.O.P.No.310 of 2023 shall also proceed on its own merits and in accordance with law untrammelled / *de hors* this order. As regards prayer for payment out/refund of aforementioned deposit of Rs.50,000/- pursuant to the aforesaid interim order, the same shall be dealt with on its own merits and in accordance with law if such a prayer is made in any of the pending HMOPs including H.M.O.P.No.310 of 2023 for divorce by mutual consent.

8. Ergo, the sequitur is captioned CMA is disposed of as not



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maintainable/closed albeit with preservation of rights in the
aforementioned manner i.e., as in *Menaka Principle*.

9. As a further sequitur/consequence, captioned CMP is also
disposed of as closed.

10. Though obvious, it is made clear that in this order, this Court
has not expressed any view or opinion on merits qua captioned CMA.

11. If learned counsel on record for appellant in the captioned
CMA requests for return of certified copy qua impugned order, the same
shall be returned forthwith to learned counsel on record for the appellant
under due acknowledgment.

12. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
27.03.2024

Index : Yes / No

Neutral Citation : Yes / No

gpa

P.S. I: *Upload forthwith*

P.S.II : *All concerned including the Registry of Madras High Court 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.*



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

gpa

To

The Family Court, Vellore

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27.03.2024