



CMA NOS.2906 OF 2023 AND 138 OF 2024

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R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

(Order of the Court was made by R.SUBRAMANIAN, J.)

These two appeals have been filed against orders granting interim maintenance as well as interim visitation rights. In view of the judgment of a Division Bench of this Court in *S.Menaka Vs. K.S.K.Nepolian Socraties* [2024:MHC:1405] appeal against an order granting interim maintenance is not maintainable. The same analogy would apply to an appeal against an order granting interim visitation rights.

2.Section 26 of the Hindu Marriage Act, 1955, which deals with custody of children provides that, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to custody, maintenance and education of minor children.

3.Section 28 of the Hindu Marriage Act, 1955, provides for appeals from decrees and orders. Sub-section 2 of Section 28 of the Act reads as follows:

“28.Appeals from decrees and orders.- (1)

(2)Orders made by the Court in any proceeding under this



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*Act under section 25 or section 26 shall, subject to the provisions of sub-section (3), **be appealable if they are not interim orders**, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction.”*

4.A reading of Sub-section 2 of Section 28 would show that an appeal against an interim order made under Section 28 is not maintainable. As the language of the section would demonstrate if a provision is made in the final order regarding custody or maintenance of the children, then the correctness of it can be challenged by way of an appeal. If an order is passed pending an Original Petition providing for custody or visitation rights, then the same has to be questioned by way of a revision under Article 227 of the Constitution of India and an appeal will not lie.

5.Though the Division Bench has held that these appeals should be dismissed with liberty to the parties to approach this Court under Article 227, since the appellant is appearing as party-in-person, we do not want to drive him to go through the ordeal of re-filing these matters by way of revision. We therefore, direct the Registry to convert these appeals into Civil Revision Petitions at the earliest and post the Civil Revision Petitions before



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the Hon'ble Judge dealing with the Civil Revision Petitions, **preferably on 24.04.2024.**

6.We are fixing a date since the appellant would plead that he and his aged mother who had suffered a heart-attack has been prevented from seeing the children for quite sometime now and pleads for an opportunity to see the children. Since we have held that the appeals are not maintainable, we will not be justified in passing an order on visitation today itself. In view of the above background facts, we direct the Registry to number the Civil Revision Petitions and post them on the above particular date before the Hon'ble Judge dealing with the Civil Revision Petitions.

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

18.04.2024

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