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C.M.P.No.2587 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.P.No.2587 of 2024
in
C.M.A.No.1865 of 2022

Kaviarasan

..Petitioner

Vs.

K.Hemapriya @ Praveena

..Respondent

Prayer in C.M.P.No.2587 of 2023: The Civil Miscellaneous Petition is filed under Order 41 rule 11 of Civil Procedure Code to restore the Civil Miscellaneous Appeal and set aside the order of dismissal for default made in C.M.A.No.1865 of 2022 dated 23.11.2023.

Prayer in C.M.A.No.1865 of 2022: The Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, as against the decretal order and order passed in I.A.No.3/2021 in FCOP No.205 of 2019 dated



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10.03.2022 on the file of Family Court, Vellore.

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For Petitioner /Appellant : Mr.K.Venkatesan

For Respondent/Respondent : Mr.M.Rajasekar

ORDER

(The order of the Court was made by J.Nisha Banu,J.)

The above Civil Miscellaneous Petition has been filed to restore the civil miscellaneous appeal in C.M.A.No.1865 of 2022 which was dismissed for default on 23.11.2023.

2. The Civil Miscellaneous Appeal has been filed by the appellant/ husband as against the decreetal order and order passed in I.A.No.3/2021 in FCOP No.205 of 2019 dated 10.03.2022 on the file of Family Court, Vellore.

3. As per Section 19 of the Family Courts Act, an appeal against the interlocutory application will not lie and an appeal will lie only as against the judgment or order of the Family Court. Further, in the case of ***G.V.N.S.Siva Prasad vs. V.Jyostna Devi*** made in ***C.M.A.No.1018 of 2022 dated 27.03.2024***, the Division Bench of this Court, after referring to the judgment of ***S.Menaka v. K.S.K. Nepolian Socraties and other cases (Batch)*** reported in ***2024:MHC:1405*** (Neutral Citation of Madras



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High Court) and **2024 Live Law (Mad) 126** held that as against the interlocutory applications/ interim maintenance, only Civil Revision Petition under 227 of the Constitution of India, would lie and not Civil Miscellaneous Appeal.

4. Learned counsel for the petitioner/appellant seeks permission of this Court to withdraw this civil miscellaneous petition with liberty to file a C.R.P. He has also made an endorsement to that effect in the case bundle.

5. In the light of the aforesaid judgment and in view of the endorsement made by the learned counsel for the petitioner/appellant, this Civil Miscellaneous Petition is dismissed as withdrawn with liberty to the petitioner/appellant to file a Civil Revision Petition. On filing of the CRP, for the purpose of limitation, the period spent in prosecuting the CMA shall be excluded.

6. If the learned counsel for the petitioner/appellant requests for return of certified copy of the impugned order, the same shall be returned to him forthwith under due acknowledgement.

(J.N.B,J.) (R.K.M., J.)

Index : Yes / No

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Internet : Yes

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**J. NISHA BANU, J.
and
R.KALAIMATHI, J.**

vsi

**C.M.P.No.2587 of 2024
in
C.M.A.No.1865 of 2022**

17.10.2024