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C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021, etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

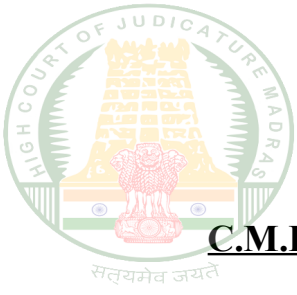
RESERVED ON : 27.02.2024

DATE OF DECISION : 21.03.2024

CORAM

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

C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021
and
C.M.A.No.1914 of 2021, C.M.A.No.2569 of 2022,
C.M.A.Nos.483, 954, 2198 and 3106 of 2023
and
C.M.A.Nos.8, 25, 28, 36, 62, 110, 111, 112, 113, 132,
139, 146 and 295 of 2024
and
C.M.P.No.8709 of 2023 in C.M.A.No.954 of 2023
C.M.P.No.76 of 2024 in C.M.A.No.8 of 2024
C.M.P.No.188 of 2024 in C.M.A.No.25 of 2024
C.M.P.No.302 of 2024 in C.M.A.No.36 of 2024
C.M.P.No.516 of 2024 in C.M.A.No.62 of 2024
C.M.P.No.945 of 2024 in C.M.A.No.110 of 2024
C.M.P.No.958 of 2024 in C.M.A.No.111 of 2024
C.M.P.No.977 of 2024 in C.M.A.No.112 of 2024
C.M.P.No.974 of 2024 in C.M.A.No.113 of 2024
C.M.P.No.1253 of 2024 in C.M.A.No.132 of 2024
C.M.P.No.1469 of 2024 in C.M.A.No.146 of 2024
C.M.P.No.3297 of 2024 in C.M.A.No.295 of 2024
C.M.P.Nos.10367 of 2021, 5592 and 8369 of 2022
in C.M.A.No.1914 of 2021
and
C.M.P.No.19965 of 2022 in C.M.A.No.2569 of 2022
and
C.M.P.No.4129 of 2023 in C.M.A.No.483 of 2023



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C.M.P.No.18729 of 2023 in C.M.A.No.1914 of 2021 :

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S.Menaka

.. Petitioner

Vs.

K.S.K.Nepolian Socraties

.. Respondent

Civil Miscellaneous Petition filed under Section 28 of the Hindu Marriage Act, 1955 seeking to dismiss the appeal on the ground of maintainability of appeal.

For Petitioner

in CMP No.18729 of 2023 : Mr.N.Jothi, Senior Advocate
for Mr.G.Mohana Krishnan

For Appellants

: Mr.A.K.Kumarasamy, Senior Advocate
for Mr.S.Kaithamalai Kumaran
in CMA No.954 of 2023
Mr.T.Murugamanickam, Senior Advocate
for Ms.Zeenath Begum
in CMA No.2198 of 2023
Mr.C.Jagadish for
Mr.R.Marudhachalamurthy
in CMA No.1914 of 2021
Mr.A.R.Suresh in CMA Nos.2569 / 2022
and 483 / 2023
Mr.C.D.Johnson in CMA No.3106 / 2023
Mr.T.Ramachandran in CMA No.8/2024
Ms.S.Kanmani Annamalai
in CMA No.25 of 2024
Mr.M.Marudhachalamurthy
for Mr.K.Govi Ganesan
in CMA No.28 of 2024
Mr.S.Lokesh in CMA No.36 of 2024
Mr.K.Selvakumar in CMA No.62 of 2024



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Mr.V.Pavan Kumar in CMA No.110/2024
Ms.K.Sumathi in C.M.A No.111 of 2024
Mr.S.P.Arthi in CMA No.112 of 2024
Mr.V.Santhakumaresan
in CMA No.113/2024
Mr.S.Mohan in CMA No.132 of 2024
Mr.Sushanth Malligeswaran
in CMA No.139 of 2024
Mr.R.Rajavelavan in CMA No.146 / 2024
Mr.N.Ramesh and Mr.V.Logesh
in CMA No.295 of 2024

For Respondents
in CMAs

: Mr.T.Murugamanickam, Senior Advocate
for Ms.Zeenath Begum
in CMA No.954 of 2023
Mr.N.Jothi, Senior Advocate
for Mr.G.Mohana Krishnan
in CMA No.1914 of 2021
Mr.K.B.Vivekanandhan
in CMA No.483 of 2023
Mr.S.Vijayakumar in CMA No.8 of 2024
Mr.N.Manokaran in CMA No.28/2024
Mr.P.Senthilvel in CMA No.36/2024
Mr.D.Ravindranathan
in CMA No.111 of 2024
Mr.K.Selva Kumar in CMA No.112/2024

For Respondent in
CMP No.18729 of 2023

: Mr.C.Jagadish
for Mr.R.Marudhachalamurthy

Amicus Curiae

: Mr.Sharath Chandran

- - - -



C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021, etc., batch

COMMON JUDGMENT

WEB COM M.SUNDAR, J.

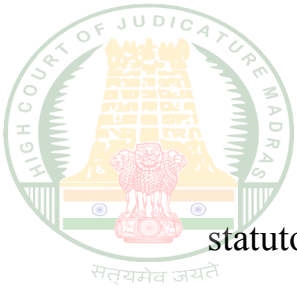
(A)PRELUDE :

The Desideratum of the expression '*not being an interlocutory order*' in Sub section (1) of Section 19 of The Family Courts Act,1984 (66 of 1984) is the nucleus, nay epicenter of the legal drill on hand.

2.A very interesting question arises in captioned matters and the same is as follows:

'Whether statutory appeals under Section 19 of the Family Courts Act are maintainable as against impugned orders owing to the expression '*....not being an interlocutory order....*' in sub-section (1) of Section 19 of the Family Courts Act, 1984?'

Before we proceed further, we deem it appropriate to write that as the hearing progressed, it surfaced / came to light that aforementioned pivotal question is dovetailed with a further question as to whether a



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statutory appeal under section 28 of HM Act will lie as against an order

of interim maintenance / *pendente lite* maintenance made under section

24 of HM Act.

(B)NARRATIVE AND TRAJECTORY THUS FAR :

3.Before we undertake the legal drill qua the aforementioned desideratum, we deem it appropriate to extract and reproduce some of the proceedings / orders made in earlier listings of captioned matters / some of the captioned matters and the same are as follows:

Proceedings dated 02.01.2024:

'C.M.A. Nos.954 & 2198 of 2023

M.SUNDAR,J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

(Order of the Court was made by M.SUNDAR, J.)

Captioned two 'Civil Miscellaneous Appeals' ('CMAs' in plural and 'C.M.A.' in singular for the sake of convenience and clarity) are statutory appeals under Section 19 of 'The Family Courts Act, 1984' (hereinafter 'F.C. Act' for the sake of brevity and convenience).

2. Captioned C.M.As are cross appeals as both appeals are directed against the same order i.e., order dated 09.02.2023 made in I.A.No.02 of 2019 (இடைநிலை மனு எண்.02/2019) in F.C.O.P.No.425 of 2017 on the file of the Family Court, Erode, (Erode District). This '09.02.2023 order in I.A.No.02 of 2019 (இடைநிலை மனு எண்.02/2019) in



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F.C.O.P.No.425 of 2017' shall be referred to as 'impugned order' and Family Court, Erode (Erode District) shall be referred to as 'said Family Court' for the sake of convenience.

3. The parties who are in marital discord are K.Somasundaram (aged 50 in 2017) and S.Chitra (aged 44 in 2017). K.Somasundaram (husband) has filed F.C.O.P.No.425 of 2017 seeking divorce/dissolution of marriage between him and S.Chitra which was solemnized on 22.10.1997. Divorce has been sought on the grounds of cruelty and desertion i.e., Section 13(1) (i-a) and 13(1)(i-b) of 'Hindu Marriage Act, 1955 (Act 25 of 1955)' (hereinafter 'H.M. Act' for the sake of brevity).

4. Pending F.C.O.P, wife/S.Chitra took out aforementioned I.A.No.02/2019 seeking interim maintenance of Rs.40,000/- per month besides Rs.1,00,000/- towards litigation cost and this application has been filed under Section 24 of H.M. Act. This I.A.No.02 of 2019 was disposed of vide impugned order made by the said Family Court, ordering Rs.20,000/- per month interim maintenance from the date of filing of F.C.O.P. to the date of conclusion of main F.C.O.P.No.425 of 2017.

5. Aggrieved, both husband and wife have filed captioned appeals.

6. Husband has filed captioned 'C.M.A.No.954 of 2023' (herein after 'I CMA' for the sake of convenience and clarity) assailing the impugned order saying that interim maintenance ought not to have been ordered.

7. Wife has filed aforementioned C.M.A. No.2198



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C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021, etc., batch

of 2023 (herein after 'II CMA' for the sake of convenience and clarity) assailing the impugned order inter alia saying that Rs.40,000/- per month interim maintenance and Rs.1,00,000/- litigation cost prayers ought to have been acceded to.

8. The Hon'ble Predecessor Bench while issuing notice in I CMA (husband's CMA) granted an order of interim stay of impugned order of said Family Court subject to the condition that husband should pay arrears in installments as set out in paragraph 5 thereat and pay interim maintenance of Rs.10,000/- per month (50% of what was ordered vide impugned order). This Court is informed by both sides that this condition has been complied/is being complied with and the interim order is operating. This common submission made by both sides is recorded.

9. To be noted, in I CMA, Mr.A.K.Kumarasamy, learned Senior Counsel instructed by counsel on record for appellant/husband and Mr.T.Murugamanickam, learned Senior Counsel instructed by counsel on record for the respondent/wife are before us. The ranks of parties as well as the counsel and Senior counsel stand swapped in II CMA.

10. In the aforementioned backdrop, the question as to whether statutory appeals under Section 19 of FC Act are maintainable as against impugned order owing to the expression '....not being an interlocutory order....' occurring in sub-section (1) of Section 19 of FC Act arose.

11. Faced with the above situation, learned Senior counsel on both sides requested for an accommodation to circulate case laws and to address this Court on the



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maintainability issue and then argue the matter on merits (subject to the view this Court may take regarding maintainability of the captioned appeals).

12. Request of learned senior counsel on both sides acceded to.

13. List on 12.01.2024.'

Proceedings dated 18.01.2024 :

**'C.M.A. Nos.954 & 2198 of 2023 and
110, 8, 25, 28, 36 and 62 of 2024**

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

(Order of the Court was made by M.SUNDAR, J.)

This common order will govern the captioned matters.

2. Read this in conjunction with and in continuation of earlier proceedings dated 02.01.2024 made in C.M.A. Nos.954 and 2198 of 2023, which reads as follows:

'C.M.A. Nos.954 & 2198 of 2023

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

(Order of the Court was made by M.SUNDAR, J.)

Captioned two 'Civil Miscellaneous Appeals' ('CMAs' in plural and 'C.M.A.' in singular for the sake of convenience and clarity) are statutory appeals under Section 19 of 'The Family Courts Act, 1984' (hereinafter 'F.C. Act' for the sake of brevity



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and convenience).

2. Captioned C.M.As are cross appeals as both appeals are directed against the same order i.e., order dated 09.02.2023 made in I.A.No.02 of 2019 (இடைநினைவு மனு எண்.02/2019) in F.C.O.P.No.425 of 2017 on the file of the Family Court, Erode, (Erode District). This '09.02.2023 order in I.A.No.02 of 2019 (இடைநினைவு மனு எண்.02/2019) in F.C.O.P.No.425 of 2017' shall be referred to as 'impugned order' and Family Court, Erode (Erode District) shall be referred to as 'said Family Court' for the sake of convenience.

3. The parties who are in marital discord are K.Somasundaram (aged 50 in 2017) and S.Chitra (aged 44 in 2017). K.Somasundaram (husband) has filed F.C.O.P.No.425 of 2017 seeking divorce/dissolution of marriage between him and S.Chitra which was solemnized on 22.10.1997. Divorce has been sought on the grounds of cruelty and desertion i.e., Section 13(1) (i-a) and 13(1)(i-b) of 'Hindu Marriage Act, 1955 (Act 25 of 1955)' (hereinafter 'H.M. Act' for the sake of brevity).

4. Pending F.C.O.P, wife/S.Chitra took out aforementioned I.A.No.02/2019 seeking interim maintenance of Rs.40,000/- per month besides Rs.1,00,000/- towards litigation cost and this application has been filed under Section 24 of H.M. Act. This I.A.No.02 of 2019 was disposed of vide impugned order made by the said Family Court,



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ordering Rs.20,000/- per month interim maintenance from the date of filing of F.C.O.P. to the date of conclusion of main F.C.O.P.No.425 of 2017.

5. Aggrieved, both husband and wife have filed captioned appeals.

6. Husband has filed captioned 'C.M.A.No.954 of 2023' (herein after 'I CMA' for the sake of convenience and clarity) assailing the impugned order saying that interim maintenance ought not to have been ordered.

7. Wife has filed aforementioned C.M.A. No.2198 of 2023 (herein after 'II CMA' for the sake of convenience and clarity) assailing the impugned order inter alia saying that Rs.40,000/- per month interim maintenance and Rs.1,00,000/- litigation cost prayers ought to have been acceded to.

8. The Hon'ble Predecessor Bench while issuing notice in I CMA (husband's CMA) granted an order of interim stay of impugned order of said Family Court subject to the condition that husband should pay arrears in installments as set out in paragraph 5 thereat and pay interim maintenance of Rs.10,000/- per month (50% of what was ordered vide impugned order). This Court is informed by both sides that this condition has been complied/is being complied with and the interim order is operating. This common submission made by both sides is recorded.

9. To be noted, in I CMA,



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Mr.A.K.Kumarasamy, learned Senior Counsel instructed by counsel on record for appellant/husband and Mr.T.Murugamanickam, learned Senior Counsel instructed by counsel on record for the respondent/wife are before us. The ranks of parties as well as the counsel and Senior counsel stand swapped in II CMA.

10. In the aforementioned backdrop, the question as to whether statutory appeals under Section 19 of FC Act are maintainable as against impugned order owing to the expression '....not being an interlocutory order....' occurring in sub-section (1) of Section 19 of FC Act arose.

11. Faced with the above situation, learned Senior counsel on both sides requested for an accommodation to circulate case laws and to address this Court on the maintainability issue and then argue the matter on merits (subject to the view this Court may take regarding maintainability of the captioned appeals).

12. Request of learned senior counsel on both sides acceded to.

13. List on 12.01.2024.'

3. Adverting to paragraph 10 of the aforementioned 02.01.2024 order, Mr.A.K.Kumaraswamy, learned senior counsel instructed by Mr.R.P.Ruban Chakravarthy, learned counsel on record for appellant in C.M.A. No.954 of 2023



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made submissions. Learned senior counsel adverted to *P.T.Lakshman Kumar's* case being **P.T. Lakshman Kumar Vs. Bhavani** penned by a Hon'ble Single Judge reported in **2013 (3) CTC 166** and an order dated 22.12.2022 made by another Hon'ble Co-ordinate Division Bench vide C.M.A.No.1539 of 2023 (Dr.Rajiv Verghese case) reported in **2023 (1) Law Weekly 278** in which *P.T.Lakshman Kumar* ratio was affirmatively adverted to.

4. Mr.T.Murugamanickam, learned senior counsel instructed by Ms.Zeenath Begum, learned counsel for caveator in C.M.A. No.954 of 2023 requested for a short accommodation stating that compilation of case laws is being prepared by the counsel on record.

5. List all captioned matters tomorrow under one common caption 'MAINTAINABILITY ISSUE' in the Admission Board i.e., Motion List. List on 19.01.2024. '

Proceedings dated 23.01.2024 :

'C.M.A. Nos.954 & 2198 of 2023 and

110, 8, 25, 28, 36, 62, 112, 113, 132, 139 and 146 of 2024

M.SUNDAR,J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

(Order of the Court was made by M.SUNDAR, J.)

Read this in conjunction with and in continuation of proceedings made in 11 of the aforementioned 13 CMAs on 19.01.2024, which reads as follows:

'Read this in conjunction with and in continuation of proceedings made in 8 of the



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aforementioned 11 CMAs yesterday [18.01.2024],
which reads as follows:

'This common order will govern the
captioned matters.

2. Read this in conjunction with and in
continuation of earlier proceedings dated 02.01.2024
made in C.M.A. Nos.954 and 2198 of 2023, which
reads as follows:

'C.M.A. Nos.954 & 2198 of 2023

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

(Order of the Court was made by M.SUNDAR, J.)

Captioned two 'Civil Miscellaneous
Appeals' ('CMAs' in plural and 'C.M.A.' in
singular for the sake of convenience and
clarity) are statutory appeals under Section 19
of 'The Family Courts Act, 1984' (hereinafter
'F.C. Act' for the sake of brevity and
convenience).

2. Captioned C.M.As are cross
appeals as both appeals are directed against the
same order i.e., order dated 09.02.2023 made
in I.A.No.02 of 2019 (இடைநிலை மனு
எண்.02/2019) in F.C.O.P.No.425 of 2017 on the
file of the Family Court, Erode, (Erode
District). This '09.02.2023 order in I.A.No.02
of 2019 (இடைநிலை மனு எண்.02/2019) in
F.C.O.P.No.425 of 2017' shall be referred to as



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'impugned order' and Family Court, Erode (Erode District) shall be referred to as 'said Family Court' for the sake of convenience.

3. The parties who are in marital discord are K.Somasundaram (aged 50 in 2017) and S.Chitra (aged 44 in 2017). K.Somasundaram (husband) has filed F.C.O.P.No.425 of 2017 seeking divorce/dissolution of marriage between him and S.Chitra which was solemnized on 22.10.1997. Divorce has been sought on the grounds of cruelty and desertion i.e., Section 13(1) (i-a) and 13(1)(i-b) of 'Hindu Marriage Act, 1955 (Act 25 of 1955)' (hereinafter 'H.M. Act' for the sake of brevity).

4. Pending F.C.O.P, wife/S.Chitra took out aforementioned I.A.No.02/2019 seeking interim maintenance of Rs.40,000/- per month besides Rs.1,00,000/- towards litigation cost and this application has been filed under Section 24 of H.M. Act. This I.A.No.02 of 2019 was disposed of vide impugned order made by the said Family Court, ordering Rs.20,000/- per month interim maintenance from the date of filing of F.C.O.P. to the date of conclusion of main F.C.O.P.No.425 of 2017.

5. Aggrieved, both husband and wife have filed captioned appeals.



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6. Husband has filed captioned 'C.M.A.No.954 of 2023' (herein after 'I CMA' for the sake of convenience and clarity) assailing the impugned order saying that interim maintenance ought not to have been ordered.

7. Wife has filed aforementioned C.M.A. No.2198 of 2023 (herein after 'II CMA' for the sake of convenience and clarity) assailing the impugned order inter alia saying that Rs.40,000/- per month interim maintenance and Rs.1,00,000/- litigation cost prayers ought to have been acceded to.

8. The Hon'ble Predecessor Bench while issuing notice in I CMA (husband's CMA) granted an order of interim stay of impugned order of said Family Court subject to the condition that husband should pay arrears in installments as set out in paragraph 5 thereat and pay interim maintenance of Rs.10,000/- per month (50% of what was ordered vide impugned order). This Court is informed by both sides that this condition has been complied/is being complied with and the interim order is operating. This common submission made by both sides is recorded.

9. To be noted, in I CMA, Mr.A.K.Kumarasamy, learned Senior Counsel



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instructed by counsel on record for appellant/husband and Mr.T.Murugamanickam, learned Senior Counsel instructed by counsel on record for the respondent/wife are before us. The ranks of parties as well as the counsel and Senior counsel stand swapped in II CMA.

10. In the aforementioned backdrop, the question as to whether statutory appeals under Section 19 of FC Act are maintainable as against impugned order owing to the expression '....not being an interlocutory order....' occurring in sub-section (1) of Section 19 of FC Act arose.

11. Faced with the above situation, learned Senior counsel on both sides requested for an accommodation to circulate case laws and to address this Court on the maintainability issue and then argue the matter on merits (subject to the view this Court may take regarding maintainability of the captioned appeals).

12. Request of learned senior counsel on both sides acceded to.

13. List on 12.01.2024.'

3. Adverting to paragraph 10 of the aforementioned 02.01.2024 order, Mr.A.K.Kumaraswamy, learned senior counsel



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instructed by Mr.R.P.Ruban Chakravarthy, learned counsel on record for appellant in C.M.A. No.954 of 2023 made submissions. Learned senior counsel adverted to *P.T.Lakshman Kumar's* case being *P.T. Lakshman Kumar Vs. Bhavani* penned by a Hon'ble Single Judge reported in **2013 (3) CTC 166** and an order dated 22.12.2022 made by another Hon'ble Co-ordinate Division Bench vide C.M.A.No.1539 of 2023 (*Dr.Rajiv Verghese* case) reported in **2023 (1) Law Weekly 278** in which P.T.Lakshman Kumar ratio was affirmatively adverted to.

4. Mr.T.Murugamanickam, learned senior counsel instructed by Ms.Zeenath Begum, learned counsel for caveator in C.M.A. No.954 of 2023 requested for a short accommodation stating that compilation of case laws is being prepared by the counsel on record.

5. List all captioned matters tomorrow under one common caption 'MAINTAINABILITY ISSUE' in the Admission Board i.e., Motion List. List on 19.01.2024.'

Re-notified. List all 11 captioned CMAs under the same caption i.e., 'MAINTAINABILITY ISSUE' on 23.01.2024 in the Admission Board i.e., Motion List.'

2. The short forms, abbreviations and short references used in the earlier proceedings will continue to be used in the



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instant proceedings also for the sake of convenience and clarity.

3. On 18.01.2024, Senior Advocate Mr.A.K.Kumarasamy made submissions. To be noted, captioned matters have been listed under the cause list caption 'MAINTAINABILITY ISSUE'. Mr.Kumarasamy, learned Senior counsel drew our attention to an order made by a Hon'ble single Judge in *P.T.Lakshman Kumar Vs. Bhavani* reported in **2013 (3) CTC 166** and our attention was drawn to paragraphs 18 and 19 thereat which read as follows:

'18. Keeping the above legal position in mind, this court has to interpret an order as to whether the same is a judgement in terms of Section 2(9) of CPC for the purposes of Section 19(1) of The Family Courts Act. While doing so, the court may take the principles stated in Shah Babulal Khimji's case [cited supra] for guidance. As we have seen in the judgement, the striking difference between a judgement and an order is whether there is conclusive determination of a right of a party.

19. In view of the above legal position, now the question is, whether an order under Section 24 of The Hindu Marriage Act involves any adjudication and conclusive determination of any of the rights of the parties. Undoubtedly, it is the right of the spouse, to get monthly allowance for his/her support till the disposal of the main case and also to get litigation expenses from the other. This right is adjudicated upon and conclusively determined in an order under Section 24 of



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the Hindu Marriage Act. This decision is final and the same will have no bearing in the main case. This is conclusive and so, it is a judgement for the purposes of Section 19(1) of The Family Courts Act and thus, it is appealable.'

4. Senior counsel thereafter submitted that another Coordinate Hon'ble Division Bench in *Dr.Rajiv Verghese* case [*Dr.Rajiv Verghese Vs. Rosy Chakkramakkil Francis*] reported in *2023-1-LW-278* had referred to *P.T. Lakshman Kumar's* case and had also adverted to with approval the principle vide Paragraphs 18 and 19 of *P.T. Lakshman Kumar's* case, which shall be referred to as '*P.T. Lakshman Kumar's* principle' for convenience.

5. Today, Mr.T.Murugamanickam, learned Senior Advocate instructed by Ms.Zeenath Begum, commenced submissions. Broadly the submissions and issues that propped up in the course of hearing are as follows:

i) Learned Senior counsel drew our attention to Section 10 of FC Act, more particularly sub-section (1) thereat and submitted that CPC would apply for Family Court proceedings. In this regard, our attention was drawn to Sections 2(2), 2(9) and 2(14) of CPC which defines 'Decree', 'Order' and 'Judgment' respectively;

ii) This Court drew the attention of learned Senior counsel to Sections 21, 22 and 23 of FC Act which confer Rule making power on High Court [HC], Central Government and State Government



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respectively. All three Rule making powers have been invoked. Under Section 21, Madras High Court [MHC] has made Rules captioned Family Courts (Procedure) Rules, 1996 and vide ROC No.550-A/97/F1. This shall be referred to as 'MHC FC Rules' for convenience. Under Section 22 of FC Act the Central Government has made Rules namely 'Family Courts (other Qualifications for appointment of Judges) Rules, 1984' dated 31.05.1988 {hereinafter 'Central Govt. FC Rules' for the sake of brevity}. As regards Section 23, State Government has made Rules captioned 'The Family Courts (Tamil Nadu) Rules, 1987' and the publication is vide G.O.Ms.No.1871, Home, dated 03.08.1987 {hereinafter 'State Govt. FC Rules' for the sake of brevity}.

(iii) MHC FC Rules consists of 54 Rules and three Forms, the Central Govt. FC Rules consists of 3 Rules and the State Govt. FC Rules consists of 10 Rules and one Schedule besides one amendment.

(iv) Rules 42 and 43 of MHC FC Rules were adverted to and the same read as follows:

'42. Copy of Judgment/Order to be given free of cost.'

'43. Interim applications._ All interim applications to a copy of every Judgment /Order against which an appeal lies under Section 19 of the Act shall be given free of cost to the parties.

The Court shall be separately numbered as



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Interim Application No..... in Petition No.....'

(v) Rule 43 of MHC FC Rules indisputably deals with the issue of free copies when interim applications for certified copies are made pending main proceedings. Be that as it may, it is equally inescapable that this Rule 43 recognises four categories qua judgments/orders and they are (a) judgments that are appealable under Section 19 of FC Act, (b) judgments that are not appealable under Section 19 of FC Act, (c) orders that are appealable under Section 19 of FC Act and (d) orders that are not appealable under Section 19 of FC Act.

(vi) Learned Senior counsel drew our attention to ***S.Kuppusamy Rao case [S.Kuupusamy Rao Vs. The King Governor -General of India]*** reported in ***180 Federal Court Reports (1947)*** for the principle that the real test for determining the question as to whether a particular order is an interim order or not is whether it finally disposes of rights of the parties.

(vii)***Central Bank of India case [Central Bank of India Ltd., Vs. Gokal Chand]*** reported in ***(1967) 1 SCR 310 : AIR 1967 SC 799*** was also pressed into service and attention was drawn to paragraph 3 thereat wherein Hon'ble Supreme Court had expounded qua Section 38(1) of the Delhi Rent Control Act, 1958 and gone into the expression 'every order of the Controller made under this Act'.



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(viii) The oft-quoted judgment of Hon'ble Supreme Court in *Madhu Limaye* case [*Madhu Limaye Vs. The State of Maharashtra*] reported in (1977) 4 SCC 551 was pressed into service but before taking us through relevant portion, learned Senior counsel drew our attention to *Amar Nath* case [*Amar Nath and others Vs. State of Haryana and Another*] reported in (1977) 4 SCC 137. To be noted, *Amar Nath* case was rendered by a two member Bench of the Hon'ble Supreme Court on 29.07.1977 and *Madhu Limaye* case was rendered by a three member Bench on 31.10.1977.

6. For continuation of submissions by learned Senior counsel and other counsel in these matters, list captioned matters under the cause list caption 'MAINTAINABILITY ISSUE (PART HEARD)' in the Admission Board i.e., Motion List on 13.02.2024.'

Proceedings dated 13.02.2024 :

'CMA.Nos.954 & 2198 of 2023

and

CMA.Nos.110, 8, 25, 28, 36, 62, 112, 113, 132, 139, 146 & 295
of 2024

M.SUNDAR, J

and

K.GOVINDARAJAN THILAKAVADI, J

(Order of the Court was made by M.SUNDAR, J)

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 23.01.2024.

2. Today Mr.T.Murugamanickam, learned senior



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C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021, etc., batch

counsel continued his submissions. After a recap by saying that paragraph 10 of our 02.01.2024 proceedings is the crux and gravamen of the issue, learned senior counsel made further submissions and a broad thumbnail sketch of the same is as follows:

(i) Section 10 of FC Act says that Family Court is a Civil Court;

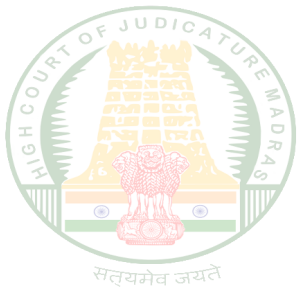
(ii) Section 2(e) of FC Act says that those terms, which have not been defined in FC Act would take the same definition as in CPC;

(iii) Section 94 (e) of CPC talks about interlocutory orders;

(iv) In *Rajnish Vs. Neha and another* reported in (2021) 2 SCC 324 and 2023 SCC OnLine SC 1451 (*Aditi Alias Mithi Vs. Jitesh Sharma*), Hon'ble Supreme Court has laid down the procedure for hearing out *pendente lite* maintenance applications under Section 24 of HM Act;

(v) Adverting to his compilation of case laws, *Vareed Jacob Vs. Sosamma Geevarghese and Others* reported in (2004) 6 SCC 378 (Paragraph 52 thereat), which talks about incidental and supplementary proceedings, was referred to;

(vi) Section 397 of Cr.P.C was adverted to and it was submitted that interlocutory order qua section 397 Cr.P.C as explained in *Amar Nath* case [*Amar Nath and others Vs. State of Haryana and Another* reported in (1977) 4 SCC 137] (Paragraph 6) has been followed in



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Madhu Limaye case [***Madhu Limaye Vs. The State of Maharashtra*** reported in (1977) 4 SCC 551] {also Paragraph 6}. Paragraph 12 of ***Madhu Limaye*** case was also adverted to in this regard.

3. This Court wanted to know from the counsel present in the Court (Physical Court as well as Counsel before us on Video Conferencing platform) as to whether any counsel intends to make submissions that an appeal under Section 19 of FC Act is not maintainable as against an order of pendente lite maintenance under Section 24 of HM Act. There was none. In such circumstances, as it is desirable to look at the other side of the coin also, this Court deems it appropriate to appoint an *Amicus* to assist the Court.

4. Learned Senior Counsel Mr.T.Murugamanickam very fairly suggested the name of Mr.Sharath Chandran, Advocate. We therefore appoint Mr.Sharath Chandran, Advocate, having office at 'Gokulam', No.3, Gopala Menon Street, Vepery, Chennai-7 (Mobile:98844 45442) as ***Amicus Curiae*** to assist the Court in the issue on hand with particular reference to the other side of the coin. Though obvious *Amicus* will not take sides and would only assist the Court qua legal drill on hand.

5. List on Friday under the same cause list caption i.e., 'MAINTAINABILITY ISSUE (PART HEARD)' in the Admission Board i.e., Motion List. List on 16.02.2024.'

Proceedings dated 16.02.2024 :

'C.M.A. Nos.954, 2198 and 3106 of 2023 and 8, 25, 28, 36, 62, 110, 111, 112, 113, 132, 139, 146 and 295 of 2024 and 1914 of 2021



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C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021, etc., batch

and

C.M.P. No.8709 of 2023 in C.M.A. No.954 of 2023

C.M.P. No.76 of 2024 in C.M.A. No.8 of 2024

C.M.P. No.188 of 2024 in C.M.A. No.25 of 2024

C.M.P. No.302 of 2024 in C.M.A. No.36 of 2024

C.M.P. No.516 of 2024 in C.M.A. No.62 of 2024

C.M.P. No.945 of 2024 in C.M.A. No.110 of 2024

C.M.P. No.958 of 2024 in C.M.A. No.111 of 2024

C.M.P. No.977 of 2024 in C.M.A. No.112 of 2024

C.M.P. No.974 of 2024 in C.M.A. No.113 of 2024

C.M.P. No.1253 of 2024 in C.M.A. No.132 of 2024

C.M.P. No.1469 of 2024 in C.M.A. No.146 of 2024

C.M.P. No.3297 of 2024 in C.M.A. No.295 of 2024

C.M.P.Nos.10367 of 2021, 5592 and 8369 of 2022 and 18729
of 2023 in C.M.A. No.1914 of 2021

M.SUNDAR,J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

(Order of the Court was made by M.SUNDAR, J.)

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 13.02.2024 which in turn has to be read in conjunction with and in continuation of proceedings made prior to the same.

2. Be that as it may, though in the previous listing, it was submitted that no party is taking the position that a statutory appeal under Section 19 of FC Act is not maintainable against a *pendente lite* maintenance order under Section 24 of HM Act, today in C.M.A. No.1914 of 2021, Mr.N.Jothi, learned senior counsel appearing on behalf of Mr.G.Mohana Krishnan, counsel on record for appellant pointed out that C.M.P.No.18729 of 2023 with a prayer to dismiss the statutory appeal on the ground that it is not maintainable has been taken out. Therefore, it now comes to light that parties to the proceedings are also taking bipolar opposite positions. Therefore, we heard learned senior counsel



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C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021, etc., batch

Mr.N.Jothi today after hearing Mr.C.Jagadish, who supplemented the submissions of Mr.T.Murugamanickam, learned senior counsel, who completed his submissions.

3. Mr.Sharath Chandran, learned *Amicus Curiae* circulated a compilation of case laws and note and also made submissions assisting this Court in the legal drill on hand i.e., legal drill as to whether an appeal under Section 19 of FC Act is maintainable as against a *pendente lite* maintenance order under Section 24 of HM Act by a Family Court.

4. Mr.R.Rajavelavan, learned counsel for appellant in C.M.A. No.146 of 2024, at the fag end of the proceedings, submitted that he missed the matter when the batch was taken up, expressed regret for the same and made a request to make some submissions in support of the 'maintainable' camp.

5. It was brought to our notice that one of the earliest cases touching upon this issue was rendered on 29.04.1992 more than three decades ago vide *N.Balasubramanian's* case by Hon'ble Division Bench of this Court in *N.Balasubramanian Vs. V.Chitra* reported in **1992 (2) L.W. 34**. The question as to whether *N.Balasubramanian's* case deals with maintainability qua Section 19 of FC Act issue also arose.

6. In the light of *Dr.Rajiv Verghese* case (***Dr.Rajiv Verghese Vs. Rosy Chakkramakkil Francis***) reported in **2023 (1) Law Weekly 278**, the question whether a reference would be necessary if a view sustaining 'not maintainable' argument is taken arises.

7. Learned senior counsel on both sides and learned *Amicus Curiae* submitted in one voice that it is desirable to make



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C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021, etc., batch

submissions on this aspect of the matter also in one go and requested for a short hearing listing in the forenoon on Tuesday.

8. List this captioned batch under the same cause list caption i.e., 'MAINTAINABILITY ISSUE (PART HEARD)' on 20.02.2024.'

Proceedings dated 22.02.2024 :

'C.M.A. Nos.954, 2198 and 3106 of 2023 and
8, 25, 28, 36, 62, 110, 111, 112, 113, 132, 139, 146
and 295 of 2024 and 1914 of 2021

and

C.M.P. No.8709 of 2023 in C.M.A. No.954 of 2023

C.M.P. No.76 of 2024 in C.M.A. No.8 of 2024

C.M.P. No.188 of 2024 in C.M.A. No.25 of 2024

C.M.P. No.302 of 2024 in C.M.A. No.36 of 2024

C.M.P. No.516 of 2024 in C.M.A. No.62 of 2024

C.M.P. No.945 of 2024 in C.M.A. No.110 of 2024

C.M.P. No.958 of 2024 in C.M.A. No.111 of 2024

C.M.P. No.977 of 2024 in C.M.A. No.112 of 2024

C.M.P. No.974 of 2024 in C.M.A. No.113 of 2024

C.M.P. No.1253 of 2024 in C.M.A. No.132 of 2024

C.M.P. No.1469 of 2024 in C.M.A. No.146 of 2024

C.M.P. No.3297 of 2024 in C.M.A. No.295 of 2024

C.M.P.Nos.10367 of 2021, 5592 and 8369 of 2022 and 18729
of 2023

in

C.M.A. No.1914 of 2021

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

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

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 21.02.2024.

2. Today, Mr.C.Jagadish, learned counsel made short submissions in favour of 'maintainable camp' inter alia saying



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C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021, etc., batch

that Section 24 is a standalone proceedings, drew our attention to Section 7 of FC Act which talks about jurisdiction of Family Court and also touched upon Order XXXIX Rules 1 and 7 of CPC.

3. Thereafter, Mr.N.Jothi, learned Senior Advocate, who is leading and appearing on behalf of Mr.G.Mohana Krishnan, learned counsel on record for sole respondent in C.M.A.No.1914 of 2021 and petitioner in C.M.P.No.18729 of 2023 thereat made submissions. Owing to other hearings in other Courts for him in the afternoon session, learned Senior Advocate requested the matter to be listed tomorrow for continuation. To be noted, C.M.P.No.18729 of 2023 has been filed with a prayer which reads as follows:

'To dismiss the above appeal on the ground of maintainability of the appeal.'

4. Mr.R.Marudhachalamurthy, learned counsel for respondent in C.M.P.No.18729 of 2023, who is being represented by Mr.C.Jagadish, who made submissions on maintainability very fairly submitted that as regards C.M.P.No.18729 of 2023 as the same turns on pure and pristine questions of law, he is not filing counter affidavit in this CMP alone. This submission is recorded. However, learned counsel submits that the arguments made at the Bar i.e., oral submissions may please be considered which we shall do.

5. Considering the nature of the aforementioned prayer, C.M.P.No.18729 of 2023 shall now be the lead matter and decision in the same will decide the fate of the maintainability of other matters on Board as the legal drill on



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C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021, etc., batch

hand is one in search of an answer to the question as to whether CMA under Section 19 of FC Act is maintainable as against an order of *pendente lite* maintenance under Section 24 of HM Act.

6. Tag the captioned matters along with C.M.A.Nos.483 of 2023 and 2569 of 2022 as it is submitted at the Bar that both CMAs arise out of interim maintenance / *pendente lite* maintenance orders under Section 24 of HM Act.

7. List tomorrow (23.02.2024) under the same cause list caption i.e., 'MAINTAINABILITY ISSUE (PART HEARD)' in the Admission Board i.e., Motion List. '

Proceedings dated 23.02.2024 :

'C.M.A. Nos.954, 2198 and 3106 of 2023 and 8, 25, 28, 36, 62, 110, 111, 112, 113, 132, 139, 146 and 295 of 2024 and 1914 of 2021
and
C.M.P. No.8709 of 2023 in C.M.A. No.954 of 2023
C.M.P. No.76 of 2024 in C.M.A. No.8 of 2024
C.M.P. No.188 of 2024 in C.M.A. No.25 of 2024
C.M.P. No.302 of 2024 in C.M.A. No.36 of 2024
C.M.P. No.516 of 2024 in C.M.A. No.62 of 2024
C.M.P. No.945 of 2024 in C.M.A. No.110 of 2024
C.M.P. No.958 of 2024 in C.M.A. No.111 of 2024
C.M.P. No.977 of 2024 in C.M.A. No.112 of 2024
C.M.P. No.974 of 2024 in C.M.A. No.113 of 2024
C.M.P. No.1253 of 2024 in C.M.A. No.132 of 2024
C.M.P. No.1469 of 2024 in C.M.A. No.146 of 2024
C.M.P. No.3297 of 2024 in C.M.A. No.295 of 2024
C.M.P.Nos.10367 of 2021, 5592 and 8369 of 2022 and 18729 of 2023
in C.M.A. No.1914 of 2021 and
C.M.A.No.2569 of 2022 and C.M.P.No.19965 of 2022 in
C.M.A.No.2569 of 2022
&C.M.A.Nos.483 of 2023



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&C.M.P.No.4129 of 2023 in C.M.A.Nos.483 of 2023

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M.SUNDAR,J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

(Order of the Court was made by M.SUNDAR.J.,)

Read this in conjunction with and in continuation of proceedings made yesterday (22.02.2024).

2. Today, Senior Advocate Mr.N.Jothi, on behalf of Mr.G.Mohana Krishnan, learned counsel for sole respondent in C.M.A.No.1914 of 2021 and petitioner in C.M.P.No.18729 of 2023 and Mr.T.Murugamanickam, learned Senior Advocate appearing on behalf of Ms.Zeenath Begum, counsel on record for the appellant in C.M.A.No.2198 of 2023, concluded their submissions. Ms.Kaaviya, learned counsel on record for the appellant in C.M.A.Nos.2569 of 2022 and C.M.A.No.483 of 2023 requested for a short accommodation.

3. List under the same cause list caption i.e., 'MAINTAINABILITY ISSUE (PART HEARD)' on Tuesday and it is made clear that the listing of this batch on Tuesday shall be a peremptory listing.

List on 27.02.2024.'

Proceedings dated 27.02.2024 :

'C.M.A. Nos.954, 2198 and 3106 of 2023

and

8, 25, 28, 36, 62, 110, 111, 112, 113, 132, 139, 146
and 295 of 2024 and 1914 of 2021

and

C.M.P. No.8709 of 2023 in C.M.A. No.954 of 2023

C.M.P. No.76 of 2024 in C.M.A. No.8 of 2024

C.M.P. No.188 of 2024 in C.M.A. No.25 of 2024



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C.M.P. No.302 of 2024 in C.M.A. No.36 of 2024
C.M.P. No.516 of 2024 in C.M.A. No.62 of 2024
C.M.P. No.945 of 2024 in C.M.A. No.110 of 2024
C.M.P. No.958 of 2024 in C.M.A. No.111 of 2024
C.M.P. No.977 of 2024 in C.M.A. No.112 of 2024
C.M.P. No.974 of 2024 in C.M.A. No.113 of 2024
C.M.P. No.1253 of 2024 in C.M.A. No.132 of 2024
C.M.P. No.1469 of 2024 in C.M.A. No.146 of 2024
C.M.P. No.3297 of 2024 in C.M.A. No.295 of 2024
C.M.P.Nos.10367 of 2021, 5592 and 8369 of 2022 and 18729 of
2023

in C.M.A. No.1914 of 2021 and
C.M.A.No.2569 of 2022 and C.M.P.No.19965 of 2022 in
C.M.A.No.2569 of 2022
&C.M.A.Nos.483 of 2023
&C.M.P.No.4129 of 2023 in C.M.A.Nos.483 of 2023

M.SUNDAR,J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

(Order of the Court was made by M.SUNDAR, J.)

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 23.02.2024.

2. Today, Mr.A.R.Suresh, learned counsel for appellant in C.M.A.No.2569 of 2022 and C.M.A. No.483 of 2023 submitted that he adopts the argument of Mr.N.Jothi, learned senior counsel. Thereafter, learned counsel very fairly submitted that though he is for the appellants C.M.A. Nos.2569 of 2022 and 483 of 2023 were originally presented in the Registry as Civil Revision Petitions owing to the Registry insisting that the same has to be filed as CMAs and listed before the Division Bench, return of the CRP papers were taken and represented as CMAs. Learned counsel also submits that the impugned orders are in interlocutory applications and therefore CRPs were filed. The submission is recorded.



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2. Be that as it may, Mr.N.Jothi, learned senior counsel though had concluded his submissions, submitted that he would like to supplement his earlier submissions on two points. One was pertaining to the description of terms 'procedure' and '*per incuriam*' in Advanced Law Lexicon P.Ramanatha Aiyar 2010 Edition and the other is the following judgments inter-alia on sub silentio:

Sl. No.	Case Law	Paragraph Nos.
1	Yeshbai and another Vs. Ganat Irappa Jangam and another reported in AIR 1975 Bombay 20	37
2	Punjab Land Devl. & Reclamation Corpn. Ltd., Vs. Presiding Officer, Labour Court reported in (1990) 3 SCC 682	40
3	State of U.P. Vs. Synthetics and Chemicals Ltd., reported in (1991) 4 SCC 139	41
4	Fuerst Day Lawson Ltd., Vs. Jindal Exports Ltd., reported in (2001) 6 SCC 356	
5	V.Kishan Rao Vs. Nikhil Super Speciality Hosptial and Another reported in (2010) 5 SCC 513	54 and 55
6	State of M.P. Vs. Narmada Bachao Andolan reported in (2011) 7 SCC 639	65 and 67

3. With this captioned issue and captioned matters on maintainability will stand over for consideration and verdict.

4. Orders reserved.'

4.It is made clear that the aforementioned proceedings / orders made in the earlier listings by this Court shall now be read as an integral



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part and parcel of this order. The reason is, aforementioned proceedings /

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orders inter-alia capture the core issue, thumbnail sketch of what

unfurled in the hearings as well as the trajectory the hearings have taken

before us. Aforementioned proceedings made in earlier listings being

read as integral part and parcel of this order also means that the short

forms, abbreviations and short references used in aforementioned earlier

proceedings / orders shall continue to be used in the instant proceedings /

orders also and this is for the sake of ease of reference. In the

aforementioned proceedings / orders, the following shall be read as

Corrigendum / Errata. In the proceedings / order dated 23.01.2024, while

extracting paragraph 18 of *P.T.Lakshman Kumar* case as reported in

2013 (3) CTC 166, it reads as '18.....While doing so, the Court may take the

principles stated in *Shah Babulal Khimji v. Jayaben D. Kania*, 1981 (4) SCC 8

(cited supra) for guidance. As we have seen in the judgment, the striking

difference between a judgment and an order is whether there is “conclusive

determination of a right” of a party.' but it has been typed as '18.....While

doing so, the court may take the principles stated in Shah Babulal

Khimji's case [cited supra] for guidance. As we have seen in the

judgement, the striking difference between a judgement and an order is

whether there is conclusive determination of a right of a party.'



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Therefore, this extracted portion of paragraph 18 shall now be read as

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'While doing so, the Court may take the principles stated in *Shah Babulal Khimji v. Jayaben D. Kania*, 1981 (4) SCC 8 (cited supra) for guidance. As we have seen in the judgment, the striking difference between a judgment and an order is whether there is "conclusive determination of a right" of a party.'

5.In the light of the earlier proceedings, it is made clear that the lead case to be decided by this common order is C.M.P.No.18729 of 2023 in C.M.A.No.1914 of 2021 and the answer to the same will decide the outcome qua maintainability of captioned Civil Miscellaneous Appeals and obviously the connected Civil Miscellaneous Petitions thereat.

6.After careful consideration of the submissions made by learned senior counsel and counsel who argued that captioned matters are maintainable under Section 19 of FC Act and Section 28 of HM Act, i.e., Mr.A.K.Kumarasamy, Mr.T.Murugamanickam leading / appearing on behalf of Ms.Zeenath Begum, Mr.C.Jagadish, Mr.R.Rajavelavan as well as submissions of learned senior counsel and counsel who argued that captioned matters are not maintainable, i.e., Mr.N.Jothi, learned Senior Advocate appearing on behalf of Mr.G.Mohana Krishnan, Mr.A.R.Suresh besides the assistance provided by Mr.Sharath Chandran,



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learned Advocate who was appointed as *amicus curiae* by this court and

after perusing the illumining and elucidative case laws that were placed

before us, we come to the considered conclusion that the common answer

to the aforementioned pivotal question and the question dovetailed to it is

in the negative, i.e., that appeals under section 19 of FC Act as well as

Section 28 of HM Act will not lie as against an order made under Section

24 of HM Act regarding payment of expenses of proceedings and

monthly support during the proceedings or in other words, *pendente lite*

maintenance and expenses of proceedings, as sub section (1) of section

19 of FC Act makes it clear that for an appeal to come within its

perimeter, (for an appeal to lie under section 19 of FC Act) the order

against which the appeal is made should not be a interlocutory order and

it is deemed appropriate to superadd that such a *pendente lite*

maintenance order is an interlocutory order. As regards Section 28 of

HM Act, appeal lies against decree (Section 2(2) of 'the Code of Civil

Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of

convenience]) and not against an order (Section 2(14) of CPC) except

orders under Sections 25 and 26 of HM Act and that also if such orders

are not interim orders. We shall be setting out our reasons for this

considered conclusion infra. When we set out our reasons, we shall be



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doing it point-wise by setting out the point, discussions on the same and

dispositive reasoning qua conclusion i.e., the main conclusion /

conclusion qua that point and an adumbration of the same is as follows:

(C)DISCUSSION AND DISPOSITIVE REASONING :

(I)Precedents, stare decisis and ratio decidendi :

6.1.Hon'ble Single Judge of this Court in *P.T.Lakshman Kumar* case being *P.T.Lakshman Kumar Vs. Bhavani* reported in **2013**

(3) CTC 166 held that an appeal under Section 19 of FC Act is maintainable qua an order of *pendente lite* maintenance under section 24

of HM Act. To be noted, Hon'ble Single Judge had earlier in *Loganayaki* case being *Loganayaki Vs. V.Sivakumar* reported in **2013 (3) CTC 158**

had held that Section 28 of HM Act which is the substantive appeal provision does not provide for an appeal as against the order made under

Section 24 of HM Act. If it was *P.T.Lakshman Kumar* order of Hon'ble Single Judge alone, issues of precedents, stare decisis and ratio decidendi

do not arise, as we are now returning a unanimous verdict as a Division Bench but it has become necessary to go into the aspects of precedents,

stare decisis and ratio decidendi, as another Hon'ble coordinate Bench of co-equal strength (**Hon'ble Ms.Justice V.M.Velumani and Hon'ble**

Mr.Justice Sunder Mohan) in *Rajiv Verghese* case being *Dr.Rajiv*



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Verghese Vs. Rosy Chakkramakkil Francis reported in **2023-1-**

WEB COPY L.W.278 has referred to *P.T.Lakshman Kumar* case while addressing itself to the question of an appeal under Section 55 of 'The Divorce Act, 1869 (4 of 1869)' {hereinafter 'Divorce Act' for the sake of brevity and convenience} against a order of interim maintenance made under Section 36 of Divorce Act. Therefore, we need to first make it clear that *Rajiv Verghese* case rendered by Hon'ble coordinate Bench of co-equal strength is not an impediment in this Bench answering the aforementioned questions. In other words, we need to make it clear as to why we are deciding the issue without seeking recourse to reference to a Larger Bench. The question of reference to a Larger Bench would arise only when a coordinate Bench of coequal strength does not agree with enunciation of a principle by another Bench as held by Hon'ble Supreme Court in *Jaisri Sahu Vs. Rajdewan Dubey and others* reported in *AIR 1962 SC 83* and *State of Punjab and another Vs. Devans Modern Breweries Ltd. And another* reported in *(2004) 11 SCC 26*.

6.2.The facts in *Jaisri Sahu* case is that a widow executed a Zerpeshgi deed in favour of two persons (who were also reversioners) to discharge the debts due by the deceased husband, for a sum of Rs.1100/-. After some time, she sold a portion of the property which was subject

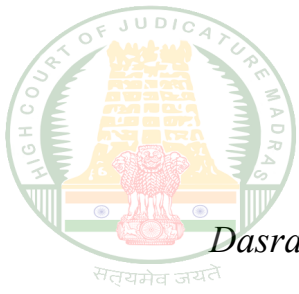


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matter of Zerpeshgi deed to the appellant for a consideration of Rs.1600/-

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After the sale deed, the appellant tried to redeem the Zerpeshgi but the same was refused by reversioners. Both appellant and reversioners filed title suits which were contested and the suit filed by appellant was allowed by District Munsif. The appeals filed by reversioners were dismissed by Subordinate Court. Then, Reversioners preferred appeals before Patna High Court and the second appeals were allowed. Following the decision in *Dasrath Singh v. Damri Singh* [AIR 1927 Pat 219] that a widow by selling properties subject to usufructuary mortgage cannot jeopardise the right of the reversioners to redeem, it was held that the sale would not be binding on them but a different view was taken in *Lala Ram Asre Singh v. Ambica Lal* [AIR 1929 Pat 216] that a widow was not debarred from selling properties subject to mortgage where there was necessity for it merely by reason of the fact that they were subject to usufructuary mortgage which contained no personal covenant to pay. But the learned Judge hearing Second Appeals declined to follow this decision and by stating the reasons held that the sale deed in favour of the appellant was not binding on the reversioners. Thereafter the appellant applied before the High Court under Article 133 for leave to appeal to this court. As there being a conflict between the decisions in



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Dasrath Singh case and *Lala Ram Asre Singh case* and the point was one

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of sufficient importance for grant of leave to appeal, which ought to be settled by Hon'ble Supreme court, certificates were granted under Article 133(1)(c) and the appeals were before Hon'ble Supreme Court. It is in this context, Hon'ble Supreme Court held that the better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other.

6.3.In *Devans Modern Breweries* case, the issue is as to how far and to what extent, if any, the fundamental and other rights of a citizen could be made available in the matter of trade in potable liquor. There were inconsistencies and contradictions in some of the decisions taken earlier while dealing with this issue. It is in this context, Hon'ble Supreme Court observed that judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench. No such situation arises in the case on hand as the questions we are now addressing ourselves to can be answered without disagreeing with the



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other coordinate Bench (in this order) and by leaving open some other questions that arise therefrom to be decided in another appropriate matter. There are very many reasons for the same and we set out the same as sub paragraphs infra:

(a) In *Rajiv Verghese* case, the observation made by Hon'ble Division Bench regarding Section 19 of FC Act and maintainability of the appeal does not form part of the ratio. The reason is, *Rajiv Verghese* case arose under Divorce Act and the appeal was directed against an order of interim maintenance / *pendente lite* maintenance made under Section 36 of Divorce Act. The substantial provision for appeal under Divorce Act is Section 55 of Divorce Act, which reads as follows:

'55.Enforcement of, and appeal from, orders and decrees.--All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the laws, rules and orders for the time being in force.
No appeals as to costs.--[Provided] that there shall be no appeal on the subject of costs only.'



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(b) To be noted, in *Rajiv Verghese* case, Hon'ble Division Bench has not said that Section 36 of Divorce Act and Section 24 of HM Act are same. On the contrary, Hon'ble Division Bench has made it clear that though the two sections are 'similar' (not same), any reference to HM Act is of no use for deciding the question before it. This is vide paragraph 6 and relevant portion reads as follows:

'6.....Firstly, it has to be noted that the order passed by the learned VII Additional Principal Judge, Family Court, Chennai, is not under the Hindu Marriage Act. Therefore, referring to the provisions of Hindu Marriage Act may not be of any use while deciding the question raised by the respondent. The order passed by the Family Court is under Section 36 of the Divorce Act, 1869.....'

(c) Further to be noted, Hon'ble Division Bench has made it clear that Section 36 of Divorce Act and Section 24 of HM Act though similar cannot be compared as appeal provisions, i.e., Section 55 of Divorce Act and Section 28 of HM Act are different. Relevant portion of the order of Division Bench in this regard is as follows:



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'6.....It is true that the said provision is similar to Section 24 of the Hindu Marriage Act. However, the appellate provision in the Hindu Marriage Act and the Divorce Act are different. There is no provision similar to Section 28(2) of the Hindu Marriage Act in the Divorce Act....'

(d)Hon'ble Division Bench vide paragraph 7 has also made it clear that there was only one question before the Bench or in other words, it was made clear that Hon'ble Bench addressed itself to only one question and that one question is whether a appeal against interim maintenance order made under Section 36 of Divorce Act is maintainable. Relevant portion in paragraph 7 reads as follows:

'7.Therefore, the only question is to be decided as to whether an order passed under Section 36 of the Divorce Act, 1869 which provides for pendente lite alimony to the wife, is appealable or not....'

(e)To be noted, there will be further discussion (as to why *Rajiv Verghese* case is not an impediment and as to why a reference need not be sought) infra with regard to



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applying Wambaugh inversion test to *Rajiv Verghese* case.

(f) A careful perusal of Divorce Act makes it clear that it excludes only one category of appeal and that is, appeal on the subject of costs only. In other words, Divorce Act in terms of substantial law itself provides for a appeal against an order of interim maintenance / *pendente lite* maintenance made under section 36 of Divorce Act. The points however are whether a appeal under Section 55 should be heard by two or more judges of a High Court as there is no equivalent of sub section (6) of section 19 of FC Act in Section 55 of Divorce Act and as to whether an order under section 36 of Divorce Act is also an interlocutory order within the meaning of section 19(1) of FC Act but as these questions are outside the remit of the case on hand and therefore, we are leaving it open making it clear that we keep open the option of addressing ourselves to and answering these questions in another legal drill in another matter either by taking the reference route or in any other manner.

(g) In complete contra distinction to section 55 of Divorce Act, the substantial appeal provision in HM Act, i.e.,



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section 28 reads as follows:

'28.Appeals from decrees and orders.--(1)All decrees made by the Court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the Court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in the exercise of its original civil jurisdiction.

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

(3)There shall be no appeal under this section on the subject of costs only.

(4)Every appeal under this section shall be preferred within a [period of ninety days] from the date of the decree or order.'

(h)A careful perusal of section 28 of HM Act makes it clear that it excludes appeals against costs and talks expressly with specificity about orders under sections 25 and 26 but does not talk about section 24, i.e., *pendente lite* maintenance and expenses. This has to be highlighted by noticing that section 25 of HM Act (which finds mention in Section 28) talks about permanent alimony. In other words,



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under Divorce Act, the substantial provision of appeal, i.e., section 55 does not exclude section 36 of Divorce Act and mention any other provisions (much less section 37 of Divorce Act which talks about permanent alimony), whereas under the HM Act, the substantial provision of appeal, i.e., section 28 of HM Act is clearly silent about orders under section 24 (while mentioning about orders under sections 25 and 26 with a rider that they should not be interim orders) which provides for *pendent lite* maintenance. Therefore, this complete difference in legal landscape / scenario itself makes it clear that *Rajiv Verghese* case is a different kettle of fish altogether and it is not only clearly distinguishable on facts, the legal question that was before the Hon'ble Division Bench itself was also completely different.

(i)As regards *Rajiv Verghese* case, we respectfully applied the declaration of law made in the celebrated *Padma Sundara Rao* case being *Padma Sundara Rao Vs. State of Tamil Nadu* reported in (2002) 3 SCC 533 which was rendered by Hon'ble Constitution Bench and is therefore, not just a ratio but a declaration of law. In *Padma Sundara Rao*,



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a Constitution Bench of Hon'ble Supreme Court declared the law as regards how precedents should be deployed by Courts and Hon'ble Supreme Court had declared that ideally Courts should refer to the facts while referring to case laws, as a change in few facts or some times even a word can make a world of difference while applying the ratio and this has been elucidated in paragraph 9 thereat, which reads as follows:

'9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

To be noted, the factual matrix in Padma Sundara Rao case is a notification issued under section 6 of the Land Acquisition Act, 1894 was questioned before the Madras High Court and the High Court relying on *N.Narasimhaiah* case reported in



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(1996) 3 SCC 88 held that the same was validly issued. The matter went to Hon'ble Supreme Court to decide the issue as to whether after quashing of notification under section 6, a fresh period of one year is available to the State Government to issue another notification under section 6. It is in this context, while deciding the issue, a Constitution Bench of Hon'ble Supreme Court declared the aforesaid ratio.

(j) Though *Rajiv Verghese* case and the case on hand are clearly distinguishable on facts besides the question of law before that Hon'ble Division Bench being completely different, we also applied the Wambaugh inversion test. Before proceeding further, we need to set out what the Wambaugh inversion test in very simple terms is, in a judgment, to test whether a particular observation or a particular part of a judgment forms part of the ratio or not, that particular portion or observation should be removed and thereafter, the judgment should be read to find out whether the conclusion changes. Those portions / observations in a judgment which even if removed do not in any manner impact the conclusion, do not form part of the ratio.



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(k) This inversion test / Wambaugh test was

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elucidatively explained by Hon'ble Supreme Court in *State of Gujarat Vs. Utility Users' Welfare Association and others* reported in (2018) 6 SCC 21. On facts, this is a case where the Electricity Act which provided for Central and State Regulatory Commissions said that Chairperson of such Commissions may be a Judge of a High Court for State Commission and a Judge of Supreme Court or Chief Justice of a High Court for Central Commission and there were divergent views taken by Hon'ble Division Benches of different High Courts as to whether this 'may' should be read as 'shall' and it is imperative that such Chairman / Chairpersons should be a Judge and judicial mind of persons presiding over these Commissions is imperative. The relevant paragraphs in *Utility Users' Welfare Association* are paragraphs 113 and 114 which read as follows:

'113. In order to determine this aspect, one of the well-established tests is "the Inversion Test" propounded inter alia by Eugene Wambaugh, a Professor at The Harvard Law School, who published a classic text book called *The Study of Cases* [Eugene Wambaugh,



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The Study of Cases (Boston : Little, Brown & Co., 1892).] in the year 1892. This textbook propounded inter alia what is known as the “Wambaugh Test” or “the Inversion Test” as the means of judicial interpretation. “the Inversion Test” is used to identify the *ratio decidendi* in any judgment. The central idea, in the words of Professor Wambaugh, is as under:

“In order to make the test, let him first frame carefully the supposed proposition of law. Let him then insert in the proposition a word reversing its meaning. Let him then inquire whether, if the court had conceived this new proposition to be good, and had it in mind, the decision could have been the same. If the answer be affirmative, then, however excellent the original proposition may be, the case is not a precedent for that proposition, but if the answer be negative the case is a precedent for the original proposition and possibly for other propositions also. [Eugene Wambaugh, *The Study of Cases* (Boston : Little, Brown & Co., 1892) at p. 17.] ”

114. In order to test whether a particular proposition of law is to be treated as the *ratio decidendi* of the case, the proposition is to be inversed i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot



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be regarded as the *ratio decidendi* of the case. This test has been followed to imply that the *ratio decidendi* is what is absolutely necessary for the decision of the case. “In order that an opinion may have the weight of a precedent”, according to John Chipman Grey [Another distinguished jurist who served as a Professor of Law at Harvard Law School.] , “it must be an opinion, the formation of which, is necessary for the decision of a particular case”. '

(1)In the case on hand, the relevant paragraph in *Rajiv Verghese* to which Wambaugh test has to be applied is contained in paragraph 9 and the same reads as follows:

'9.The Hon'ble Apex Court had quoted the meaning given in Halsbury's laws of England to the expression interlocutory order. In para 1607 of Halsbury's law in England (III Edition Vol.22) the order which is final has been defined as follows: “In general a judgment or order which determines the principal matter in question is termed 'final'.” The nature of the proceedings under section 24 (1) of the Hindu Marriage Act or 36 of the Indian Divorce Act is such that it is unrelated to the litigation pending before the parties. The only link is that the said order is valid only for the limited period of pendency of the Suit. All that it provides for is maintenance to be provided to the wife pending litigation between the parties. Therefore, the question to be



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determined in the said proceedings is whether the wife is entitled to maintenance and if so the quantum of maintenance pending the suit/proceeding. This question is finally determined in that application and therefore, it is a final order by applying the definition given in the Halsbury's laws of England. The principal matter that is determined in the proceedings under Section 24 (1) of the Hindu Marriage Act or 36 of the Indian Divorce Act is whether the wife is entitled to maintenance pending any litigation between the parties. The order passed in the said petition is final as it determines the principal matter in question (i.e.) Whether the wife is entitled to maintenance pending any suit/proceedings before the parties. An interlocutory order is an order which does not deal with the final rights of the parties or decides the principal matter in question. An order under Section 36 of the Indian Divorce Act or under Section 24 (1) of the Hindu Marriage Act may be valid for a limited period i.e. till the suit/proceedings are finally concluded between the parties. Distinction has to be made between the interim/interlocutory order and a final order which is valid for a particular period. Applying the definition in Halsbury's laws of England, we have no hesitation to conclude that an order passed under Section 24 (1) of the Hindu Marriage Act or under Section 36 of the Indian Divorce Act, 1869 will fall under the definition of 'final' order. Therefore, we are not in agreement with the decision of the learned Single Judge of the Bombay High



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Court and therefore, we hold that an order passed under Section 36 of the Divorce Act or Section 24 of the Hindu Marriage Act is an appealable order under Section 19 of the Family Courts Act.'

(m)Even if aforementioned relevant paragraph in *Rajiv Verghese* is removed, it does not impact much less change the conclusion and the reasons are :

(i)*Rajiv Verghese* case makes it clear that referring to the provisions of Hindu Marriage Act is of no use in deciding the question raised by the respondent, i.e., question before Hon'ble Division Bench in *Rajiv Verghese* case, as the order in *Rajiv Verghese* case was an order passed by the Family Court under Section 36 of the Divorce Act [relevant portion in para 6 in *Rajiv Verghese* case is extracted supra]. In *Rajiv Verghese* case, Hon'ble Division Bench has made it clear that Section 24 of HM Act is not same as Divorce Act, because Hon'ble Division Bench has said that even if



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Section 24 is construed to be 'similar' (not same) to section 36 of Divorce Act, section 36 of Divorce Act and section 24 of HM Act have to be dealt with separately as the appeal provisions under HM Act and Divorce Act are different.

(ii) Hon'ble Division Bench in *Rajiv Verghese* case (as already alluded to supra) has made it clear that there was only one question before it and that question is whether an order passed under Section 36 of Divorce Act which provides for pendente lite alimony to wife is appealable or not [relevant portion in para 7 in *Rajiv Verghese* case is extracted supra].

(iii) Therefore, applying Wambaugh inversion test, para 9 of *Rajiv Verghese* case can be removed with ease. If Wambaugh inversion test is applied, not only the conclusion does not change but it adds clarity and specificity to the conclusion as it directly answers the question which Hon'ble Division Bench has addressed itself to. To be



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noted, this Wambaugh test has been elucidated by Hon'ble Supreme Court in *Utility Users' Welfare Association* case reported in (2018) 6 SCC 21 (there is allusion supra elsewhere in this order) and it has also been applied to a decision of Hon'ble Supreme Court in *Sri Jeyaram Educational Trust* earlier by a Larger Bench of this Court *S.Annapoorni* case reported in 2022 SCC OnLine Mad 4367 and therefore, this Wambaugh inversion test, can be applied to a coordinate Bench of co-equal strength Hon'ble Division Bench.

(n) Though clearly distinguishable on facts and application of Wambaugh inversion test seals the precedents, stare decisis and ratio decidendi questions by leading us to the firm conclusion that *Rajiv Verghese* is no precedent and it neither impedes nor serves as impetus to legal drill on hand, we deem it appropriate to go a little further into this aspect of the matter for the sake of clarity and specificity. In this regard, we deem it appropriate to say that the earliest



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case law on the issue on hand was rendered by a Hon'ble Division Bench of this Court [**Venkataswami and Abdul Hadi, JJ.**, as their Lordships then were] in *N.Balasubramanian Vs. V.Chitra* reported in *1992-2-L.W. 34*. In *N.Balasubramanian* case, a coordinate Hon'ble Division Bench of coequal strength has categorically held that an order of interim maintenance pendente lite under Section 24 of HM Act is certainly an interlocutory order and therefore, an appeal under Section 19(1) of FC Act will not lie against the said order. This *N.Balasubramanian* case has not been adverted to and has not been either referred to or mentioned in *Rajiv Verghese* case. Therefore, *Rajiv Verghese* case ceases to be a precedent as regards the question on hand. The law of precedents is well settled that when there are judgments of two coordinate Bench of coequal strength and when the latter judgment does not refer to the former, the former will prevail. However, we went one more step ahead and we applied Wambaugh inversion test to *N.Balasubramanian* case also, as it was contended by Mr.T.Murugamanickam, learned senior counsel that the



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observation in *N.Balasubramanian* case is obiter dicta. The relevant portion in *N.Balasubramanian* case is contained in paragraph 3 which reads as follows:

'3.This proceeding is sought to be filed under S.19(1) of the Family Courts Act. No doubt S.19 of the Family Courts Act has undergone change by virtue of the Family Courts (Amendment) Act 1991 (Central Act No.59 of 1991) and the said amendment has come into force on 28.12.1991. But the said amendment does not in any way alter the abovesaid sub-S.(1) of S.19 of the said Act. The said sub-S.(1) while providing that an appeal shall lie from every judgment or order of a Family Court to this court says that such an appeal shall not lie if the order in question is an interlocutory order. The abovesaid order passed in I.A.No.732 of 1991 directing the petitioner husband to pay Rs.500/- per month to the respondent-wife as interim maintenance *pendente lite* under the abovesaid S.24 of the Hindu Marriage Act is certainly and interlocutory order and so an appeal under S.19(1) will not lie against the said order....'

(o)If the aforementioned portion in *N.Balasubramanian* is removed, the conclusion contained in latter part of paragraph (3) will certainly change as the conclusion reads as follows:



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'3. In fact the old S.19(4) which is same as the present S.19(5) after the above said amendment, provides that, except as aforesaid no appeal or revision shall lie to any Court from any judgment, order or decree of Family Court. So even S.115 C.P.C. will not apply. Hence a revision will not lie against the order in I.A. No.732 of 1991 (though before coming into force of the Family Courts Act, a revision may lie after the amendment of S.28 of the Hindu Marriage Act of 1976).'

(p)In *N.Balasubramanian* case, Hon'ble Division Bench was answering the question as to whether a revision under Section 115 of CPC would be maintainable and that is on a maintainability note of the Registry. In other words, as the Registry cannot decide a maintainability issue and as the Registry raised a doubt as to whether a revision would be maintainable against pendente lite maintenance order under Section 24 of HM Act, Hon'ble Division Bench went into the question and answered the maintainability issue. Hon'ble Division Bench clearly proceeded on the basis that an appeal under Section 19 of FC Act is not available as against an order made under Section 24 of HM Act, i.e., *pendente lite*



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maintenance order as such an order is an interlocutory order.

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6.4. One another facet is, the question as to whether the FC Act is procedural law and therefore, Section 19 of FC Act is only a matter of procedure / forum, whereas substantive provisions for appeal are either Section 55 of Divorce Act or Section 28 of HM Act was not gone into. This question has passed sub silentio in *Rajiv Verghese's* case, though Hon'ble Supreme Court in *Arunoday Singh Vs. Lee Anne Elton* reported in **2021 SCC OnLine SC 3285** has held that Section 19 of FC Act is not substantive law relating to marriage and divorce but an Act for constitution of Family Courts to deal with disputes relating to marriage and family affairs.

6.5. To be noted, procedural law and substantive law are distinguishable. In this regard, it is useful to refer to Salmond on Jurisprudence, 12th Edition and the relevant passage is contained in Chapter 15, which reads as follows:

'What, then, is the true nature of the distinction?

The law of procedure may be defined as that branch of the law which governs the process of



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litigation. It is the law of actions—*jus quod ad actiones pertinet*—using the term action in a wide sense to include all legal proceedings, civil or criminal. All the residue is substantive law, and relates, not to the process of litigation, but to its purposes and subject-matter. Substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with the means and instruments by which those ends are to be attained. The latter regulates the conduct and relations of courts and litigants in respect of the litigation itself; the former determines their conduct and relations in respect of the matters litigated.'

6.6.Further, it has been elucidatively articulated by Hon'ble Supreme Court in *Thirumalai Chemicals Ltd. v. Union of India* reported in (2011) 6 SCC 739 as to what is substantive law and procedural law in paragraphs 23 to 25 and the same read as follows:

'Substantive and procedural law

23. Substantive law refers to a body of rules that creates, defines and regulates rights and liabilities. Right conferred on a party to prefer an appeal against an order is a substantive right conferred by a statute which remains



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unaffected by subsequent changes in law, unless modified expressly or by necessary implication. Procedural law establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them. Right of appeal being a substantive right always acts prospectively. It is trite law that every statute is prospective unless it is expressly or by necessary implication made to have retrospective operation.

24. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right, and an aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective meaning thereby that it will apply even to acts or transactions under the repealed Act.

25. Law on the subject has also been elaborately dealt with by this Court in various decisions and reference may be made to a few of those decisions. This Court in *Garikapati Veeraya v. N. Subbiah Choudhry* [AIR 1957 SC 540], *New India Insurance Co. Ltd. v. Shanti Misra* [(1975) 2 SCC 840], *Hitendra Vishnu Thakur v. State of Maharashtra* [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087], *Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar* [(1999) 8 SCC 16] and *Shyam Sunder v. Ram Kumar* [(2001) 8 SCC 24], has elaborately discussed the scope and ambit of an amending legislation and its retrospectivity and held that every litigant has a vested right in substantive law but no



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such right exists in procedural law. This Court has held that the law relating to forum and limitation is procedural in nature whereas law relating to right of appeal even though remedial is substantive in nature.'

6.7.Before we go into the core question, we make it clear that on precedents, stare decisis and ratio decidendi, the points that have been dealt with supra have been set out on a demurer to one another.

II.Core question as regards maintainability qua section 19 of FC Act and Section 28 of HM Act :

6.8.Now we go into the two core questions before us. As regards the questions before us, the terms 'judgment', 'decree' and 'order' have been defined in section 2(9), 2(2) and 2(14) of CPC (respectively) and the same reads as follows:

'2.Definitions

In this Act, unless there is anything repugnant in the subject or context,--

(9)"Judgment" means the statement given by the Judge on the grounds of a decree or order;

(2)"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in



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controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include--

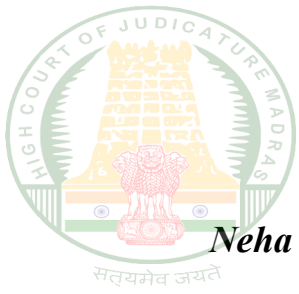
(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree;'

6.9. Section 2(e) of FC Act makes it clear that those of the terms which have not been defined in the FC Act and defined in CPC shall have the meanings respectively assigned to them in 'that Code' i.e., CPC.

6.10. A prayer for interim maintenance is decided on the basis of Affidavits of Disclosure of Assets and Liabilities and not on the basis of a fulfilled trial, where both the parties are put in the box (witness box) and trial is conducted. Hon'ble Supreme Court has held that a party who claims interim maintenance / *pendente lite* maintenance from the spouse has to submit the application along with Affidavit of Disclosure of Assets and Liabilities and in this regard a set of guidelines were issued by Hon'ble Supreme Court qua the aforesaid affidavit in ***Rajnish Vs.***



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Neha reported in (2021) 2 SCC 324 and *Aditi alias Mithi Vs. Jitesh*

Sharma reported in 2023 SCC OnLine SC 1451. Interim maintenance

plea is decided on the basis of Affidavits of Disclosure of Assets and Liabilities. Relevant paragraphs in *Rajnesh* case are paragraphs 63, 65 and 72 which read as follows:

'63. At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guesswork or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income. It has therefore become necessary to lay down a procedure to streamline the proceedings, since a dependent wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the



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court concerned, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage. '

72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

72.1. (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and



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contumacious in delaying the proceedings [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915] . On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any



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relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections (“EWS”), or are living below the poverty line (“BPL”), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

72.11. (k) A professional Marriage Counsellor must be made available in every Family Court.'

6.11. In *Aditi alias Mithi Vs. Jitesh Sharma* reported in 2023

SCC OnLine SC 1451, Hon'ble Supreme Court has reiterated that the aforesaid guidelines framed in *Rajnesh* case should be followed.

Therefore, it is clear that the proceedings to be followed in granting



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interim maintenance and considering the interim maintenance petition is

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6.12. When it was pointed out that CPC does not define 'interlocutory order' and that only the terms 'order', 'decree' and 'judgment' have been defined vide Sections 2(14), 2(2) and 2(9) of CPC respectively, Mr.T.Murugamanickam, learned senior advocate drew our attention to Section 94(e) of CPC to say that CPC recognises making interlocutory orders but that really does not further the case of appellants as Section 94(e) only talks about supplemental proceedings and the powers of the Court to make interlocutory orders as may appear to the court to be just and convenient in a given case. In other words, Section 94(e) does not really throw light on what is 'interlocutory order'.

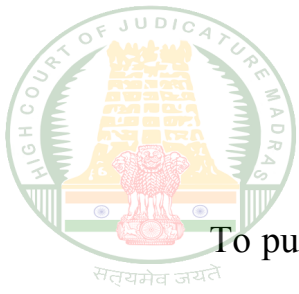
6.13. Learned Senior counsel Mr.T.Murugamanickam has relied on *Madhu Limaye Vs. The State of Maharashtra* reported in (1977) 4 SCC 551 and *V.C.Shukla Vs. State (Delhi Administration)* reported in 1980 Supp SCC 249] to explain what is interlocutory order. The facts in *Madhu Limaye* is that the appellant was alleged to have made certain defamatory statements qua then Law Minister of Government of



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Maharashtra and after sanction was accorded, a complaint was filed against appellant. The appellant, thereafter, filed an application before court concerned to dismiss the complaint stating that the court had no jurisdiction to entertain the complaint. The same was negated by the Sessions Court and the High Court and thereafter, an appeal was filed before Hon'ble Supreme Court. In *V.C.Shukla* case, the Constitutional validity of the Special Courts Act, 1979 was raised and the challenge was negated. These cases arose under criminal jurisprudence and turn on Section 397 of Cr.P.C and therefore, they do not advance the case of appellants who are advancing the proposition that *pendente lite* maintenance order / interim maintenance order under Section 24 of HM Act is not an interlocutory order. In other words, if *Padma Sundara Rao* principle is applied, *Madhu Limaye* and *V.C.Shukla* are clearly distinguishable on facts. In any event, be it Section 28 of HM Act or Section 19 of FC Act, they are statutory appeals and the test is whether the legal perimeter of these provisions permit an appeal and for this purpose, the legal characteristic of an order under Section 24 of HM Act and the procedure for making the same are the determinants and general principle qua interim orders in criminal law or principle such as concluding the rights of parties are not the determinants or parameters.



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To put it differently, we are ploughing right into 'order' under Section 24

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of HM Act and testing whether they fit into legal perimeter of section 28

of HM Act and / or section 19 of FC Act and therefore, *Madhu Limaye*

and *V.C.Shukla* do not come to the aid of the protagonists of

maintainable camp in the legal drill on hand.

6.14.An appeal would lie to District Court even if some orders are made under Section 24 of HM Act by a Sub Court, whereas if the same order is made by a designated Judge under the FC Act (sections 2(e) and 3), then an appeal would lie not just to High Court but a Bench of two or more Judges and to a Division Bench in the case on hand. This is a clear dichotomy. There is no pecuniary limit and even Rs.1 Crore interim maintenance can be ordered. Elaborating on this, we deem it appropriate to say that the dichotomy is so stark and so striking that an order of interim maintenance / *pendente lite* maintenance under section 24 of HM Act if made by a court other than a Family Court (it would be by a Senior Civil Judge) and appeal will lie to a District Judge. It is also to be noted that there is no pecuniary limit in this regard, whereas the same order if made by a Family Court judge who is in District Judge cadre, the appeal (if held to be maintainable) has to be heard by the High Court and that too by a Bench of two or more judges of the High Court.



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6.15.To test whether a particular order is an interlocutory order

or main order, we should see the character of the order and not the forum which made it. In other words, the test is the remedy. The caption in Section 24 of HM Act says 'Maintenance *pendente lite* and expenses of proceedings'. We make it clear that we are not going by the caption alone as a caption or a margin note cannot control the language of a section. It has been held so by Hon'ble Supreme Court in ***Union of India v. National Federation of the Blind*** reported in ***(2013) 10 SCC 772***. Relevant paragraph in ***National Federation of the Blind*** is paragraph 46 and the same reads as follows:

'46. The heading of a section or marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent. However, when the section is clear and unambiguous, there is no need to traverse beyond those words, hence, the headings or marginal notes cannot control the meaning of the body of the section. Therefore, the contention of Respondent 1 herein that the heading of Section 33 of the Act is “Reservation of posts” will not play a crucial role, when the section is clear and unambiguous.'



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6.16.The language of Section 24 of HM Act which sets out the

relief makes it clear that it is an interlocutory order. Further, the rights of the parties are not decided finally with regard to the issue of interim maintenance and it is only an order during the proceeding when the main issue is pending before the Family Court and the order qua interim maintenance can be modified/varied in subsequent petitions filed with regard to the same considering the change in circumstances later. Therefore, an order passed under Section 24 of HM Act is clearly and certainly an interlocutory order, not appealable under Section 19 of FC Act as held by another Hon'ble coordinate Division Bench of coequal strength in *N.Balasubramanian* case reported in 1992-2-L.W.34 (to be noted, there is allusion to this case law elsewhere supra in this order and the relevant portions in *N.Balasubramanian* have also been extracted and set out supra. It is also to be noted that Wambaugh Inversion test has also been applied to *N.Balasubramanian's* case).

6.17.The ratio in *Rajiv Verghese* case and the ratio in the case on hand do not run into each other. In other words, we make it clear that we are neither neutralizing or overturning the ratio decidendi in *Rajiv Verghese*. For the sake of specificity, we make it clear that ratio decidendi in *Rajiv Verghese* is that an appeal under Section 55 of



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Divorce Act against an order of pendente lite maintenance under section

36 of Divorce Act is maintainable. This ratio is not disturbed in this

order. This principle and the further question as to whether it has to be

heard by a Bench of two or more Judges or by a Single Judge are left

open to be tested in another appropriate matter as, a) the same has not

been dealt with in *Rajiv Verghese* case and b) it is outside the perimeter

of legal drill on hand. As regards the ratio in the case on hand, it is to the

effect that appeals which is to be heard by a Bench consisting of two or

more Judges of the High Court under Section 19 of FC Act and under

Section 28 of the HM Act against an order of *pendente lite* maintenance

made under Section 24 of HM Act are not maintainable but it is revisable

/ subjected to judicial review before a Hon'ble Single Judge under Article

227 of the Constitution of India. This means that the order on hand and

the ratio decidendi in *Rajiv Verghese* case will have harmonious co-

existence for the present. For the sake of further specificity, we however

make it clear and declare that the order of Hon'ble Single Judge in

P.T.Lakshman Kumar is no more good law as we have held that a

pendente lite maintenance order under section 24 of HM Act is an

interlocutory order as held by another coordinate Division Bench vide

ratio in *N.Balasubramanian*.



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6.18.The legal character of an order cannot change based on

the court / forum which makes it. We are saying that *P.T.Lakshman Kumar* [2013 (3) CTC 160] is no more good law inter-alia as it has addressed itself to the question as to whether an order made under Section 24 of HM Act is *stricto sensu* an 'order' as defined in Section 2(14) of CPC or is it a 'judgment' as defined under Section 2(9) of CPC [paragraph 10 of *P.T.Lakshman Kumar* case] and has come to the conclusion that an order made under Section 24 of HM Act by a Family Court is a 'judgment' for the purpose of Section 19(1) of FC Act [para 19 of *P.T.Lakshman Kumar* case]. This conclusion has been arrived at by relying heavily on *Shah Babulal Khimji* case and more particularly paragraph 113 thereat. As alluded to elsewhere in this order, *Shah Babulal Khimji* interprets Clause 15 of Letters Patent of High Courts of Bombay, Madras and Calcutta (Fort William in Bengal) and it makes a clear distinction between 'judgment' as occurring in Letters Patent and 'judgment' as occurring in CPC. There is also a reference to *Madhu Limaye* but in the light of allusion elsewhere in this order, *Madhu Limaye* is an authority for the proposition that the order in that case though not final in one sense is not a interlocutory order so as to attract a Bar on sub section (2) of section 397 of Cr.P.C besides being clearly



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distinguishable and different on facts. Some kinds of order may fall in between the two. A verdict that a particular order is not final in one sense but not a interlocutory order attracting bar of Sub section (2) of Section 397 of Cr.P.C cannot be imported into drill on hand to say that an order under Section 24 of HM Act is a interlocutory order.

6.19.As regards Section 28 of HM Act, when HM Act kicked in on 18.05.1955, it read as follows:

'28.All decrees and orders made by the court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the court made in the exercise of the original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force.

Provided that there shall be no appeal on the subject of costs only.'

6.20.Thereafter, the then Hon'ble Law Commission headed by Hon'ble Mr.Justice Gajendragadkar in March of 1974 came up with its 59th Report on Hindu Marriage Act, 1955 and Special Marriage Act, 1954. In this regard, paragraphs 8.39, 8.40 and 8.41 of the report are of great relevance and therefore, we deem it appropriate to extract and reproduce the same:



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'8.39. Our proposal is that with respect of interim orders under this Act, there should be no appeal. Interim orders are only for a period of time and could, if necessary, be reviewed by the Court. Such appeals usually lead to delay. In other words, appeals should lie only in respect of decrees and orders of a permanent nature.

Therefore, the appeal should (so far as *orders* are concerned) be restricted to:—

(i) orders under section 25.

(ii) orders under section 26 which are permanent and not interim.

8.40. In order to expedite the disposal of the litigation, we also recommend that the period of limitation for appeals under the Act should be 30 days.

8.41. Section 28 should, in so far as it relates to appeal, be revised as under, in the light of the above discussion:—

"28(1). All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act under section 25 or section 26 shall, subject to the provisions of sub-section (3) be appealable if they



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are not *interim* orders, and such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be instituted within a period of thirty days from the date of the decree or order".

Section 28A should be inserted as follows to deal with the enforcement of decrees and orders:—

"28A. All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced."!

6.21.Pursuant to aforementioned report, there was a rejig of HM Act and section 28 of HM Act was amended with effect from 27.05.1976. To be noted, this is vide Marriage Laws (Amendment) Act, 1976 (68/1976) which kicked in on 27.05.1976 and the amended Section 28 now reads as follows :

'28.Appeals from decrees and orders.--(1) All decrees made by the Court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the



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Court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the Court given in the exercise of its original civil jurisdiction.

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

(3)There shall be no appeal under this section on the subject of costs only.

(4)Every appeal under this section shall be preferred within a [period of ninety days] from the date of the decree or order.'

6.22. Therefore, it is very clear that amendment to section 28 was made to ensure that appeals lie only in respect of decrees and orders of permanent nature as appeals against interim orders which are only for a period of time would lead to delay. In this view of the matter, it is very clear that 'all decrees' made by the Court certainly excludes an 'order' under Section 24 of HM Act. In this regard, it has to be borne in mind that 'decree' occurring in section 28 takes the meaning of 'decree' as defined in section 2(2) of CPC which has been extracted and reproduced supra. Likewise, 'order' is defined in Section 2(14) of CPC and the same



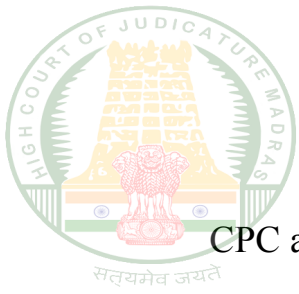
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has also been extracted and reproduced supra. A careful perusal of

WEB COPY definitions of 'decree' and 'order' in sections 2(2) and 2(14) of CPC make

it clear that the two are mutually exclusive as definition of 'order' makes it clear that it is a decision of civil court which is not a decree. In this context, 'judgment' is defined under section 2(9) of CPC and that is a statement by the Judge qua grounds of a decree or order. As section 28 of HM Act unambiguously uses the term 'decree', 'order' stands excluded, there is no dispute before us that a verdict under Section 24 of HM Act is an 'order' and we have already concluded that an 'order' under Section 24 of HM Act is an interlocutory order. In any event, on a demurrer, even if it is an 'order', it will not be appealable under section 28, as section 28 of HM Act talks only about decree besides 'order' under section 25 and 'order' under section 26 and that is also with a rider that it should not be an interim order.

6.23. In the light of the Law Commission Report, which was accepted and codified by way of new Section 28 of HM Act and kicked in on and from 27.05.1976, it would tantamount to neutralizing the very objective behind the amendment to section 28 if we were to say that orders under section 24 of HM Act which are clearly only for a period of time. In this view of the matter also, as decree and order as defined in



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CPC are mutually exclusive and 'judgment' is common to both or in other

words, judgment being dispositive reasoning for both, the question if at

all could have been whether section 24 outcome is a decree or order and

it could not have been whether it is a order or judgment.In this view also,

we find that *P.T.Lakshman Kumar* case is no more good law.

6.24. There is one more reason for saying that *P.T.Lakshman Kumar* is no more good law as it does not consider the earlier order in *J.Anitha Vs. J.Prakash* reported in 2009 (5) CTC 449, wherein another Hon'ble Single Judge has held that res judicata will not apply to an order under Section 24 of HM Act as quantum can be revised at any point of time. In this regard, we deem it appropriate to buttress this dispositive reasoning of ours by relying on *Arunoday Singh Vs. Lee Anne Elton* reported in 2021 SCC OnLine SC 3285, where Hon'ble Supreme Court while dealing with the question as to whether delay in filing a appeal from a decree of divorce granted by the Family Court under Special Marriage Act, 1954 can be condoned under Section 5 of the Limitation Act, 1963, held that appeal under Section 19 of FC Act is not substantive law.

6.25. We are not shutting the doors for the appellants. We make it clear that a petition under Article 227 of the Constitution of India will



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be maintainable as the orders made by Family Courts under Section 24 of

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the HM Act cannot be left to be final without further judicial review by

High Court. To be noted, we are informed that prior to FC Act and
aforementioned amendment to Section 28 of HM Act, only such
revisions were being filed.

6.26.Mr.T.Murugamanickam, learned senior counsel also
referred to Section 10 of FC Act and submitted that CPC would apply to
Family Court proceedings. This really does not aid his campaign that the
appeal against *pendente lite* maintenance orders are maintainable as
section 10 talks about 'proceedings before Family Court'.

6.27.Learned Senior Counsel Mr.T.Murugamanickam and
Mr.C.Jagadish, learned counsel have relied on a decision of Hon'ble
Division Bench of Delhi High Court made in *Manish Aggarwal Vs.
Seema Aggarwal* reported in *ILR (2013) I Delhi 210* to say that in respect
of orders passed under Sections 24 to 27 of HM Act, appeals would lie
under under Section 19(1) of FC Act to a Division Bench in view of the
provisions of sub section (6) of section 19 of FC Act, such orders being
in the nature intermediate orders. As regards *Manish Aggarwal* case, it is
an order made by a Division Bench of another Hon'ble High Court and
therefore, it is not a coordinate Division Bench. However, a careful



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perusal of *Manish Aggarwal* case makes it clear that it was a case where

the appellant had filed an appeal assailing an order made by the Family Court concerned in exercise of its jurisdiction to grant interim maintenance under second proviso to section 125(1) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' (hereinafter 'Cr.P.C.' for the sake of brevity). Section 125 Cr.P.C is slotted under Chapter IX of Cr.P.C and that is a separate genre altogether.

6.28.It is also relevant to say that Mr.T.Murugamanickam, learned senior counsel submitted that order setting a litigant *ex parte* or order directing costs to be paid pending suit are examples of interlocutory orders. We find that *pendente lite* order under section 24 of HM Act is akin to an order directing costs to be paid pending suit as it talks about cost of litigation besides support for the litigation. Therefore, in this view of the matter, we have no hesitation in saying that order under Section 24 is *pendente lite* order.

6.29.The argument that an order made by Family Court being interim maintenance / *pendente lite* order under Section 24 of HM Act may qualify as intermediary order and therefore, not an interlocutory order within the meaning of section 19(1) of FC Act clearly pales into insignificance in the light of *Shah Babulal Khimji* elucidation *supra*. In



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any event, further discussion on this lines do not really come to the aid of

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the legal drill on hand as we are concerned with the expression 'interlocutory order' occurring in Section 19(1) of FC Act and the question as to whether section 24 of HM Act pendente lite maintenance order is not an interlocutory order. In Clause 15 of Letters Patent, the term 'order', 'decree' have not been defined and the question as to what are all kinds of judgments which can be taken within the sweep of 'judgment' occurring in clause 15 is an elucidation under *Shah Babulal Khimji*.

6.30.As regards FC Act, it provides for subordinate legislation to be made by three entities, namely, High Court, Central Government and State Government vide sections 21(1), 22 and 23 of FC Act respectively. In this regard, Tamil Nadu Family Courts (Procedure) Rules, 1996 was shown to us. Relevant rules are Rules 42 and 43 and the same reads as follows:

'42.Copy of Judgment/Order to be given free of cost.

43.Interim application.--All interim applications to a copy of every Judgment/Order against which an appeal lies under section 19 of the Act shall be given free of cost to the parties.

The Court shall be separately numbered as Interim Application No..... in Petition No.....'

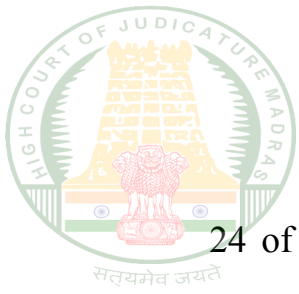


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The above rule deals with the provision of free copies. A careful perusal of the rule brings to light that this rule also recognises that certain orders passed by the Family Court will fall under the category of interlocutory order as it talks about orders against which an appeal under section 19 does not lie and therefore, this also does not help the appellants in their campaign in favour of maintainability.

6.31.Further, a careful perusal of Rules 42 and 43 of the abovesaid rules makes it clear that copies of all judgments and orders are to be given free of costs but as regards interim applications for such copies, Rule 43 recognises three categories of pronouncements, namely, (a) judgment, (b) order and (c) judgment or order which is not appealable under Section 19 of FC Act. This by itself would demonstrate that subordinate legislation making entity, namely Madras High Court in exercise of its powers under Section 21 of FC Act, while making procedural Rules, has recognised a genre category of judgments / orders which are not appealable under section 19 of FC Act. This buttress the line of dispositive reasoning which we are adopting.

6.32.Mr.R.Rajavelavan, learned counsel for appellant in C.M.A.No.146 of 2024 adverting to his compilation submitted that an order of interim maintenance / *pendente lite* maintenance under section

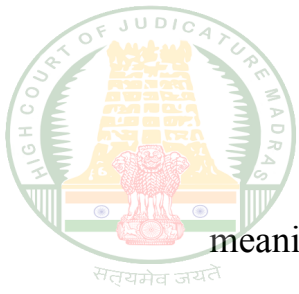


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24 of Hindu Marriage Act has all trappings of a judgment as inter-alia

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moneys paid pursuant to the order are not repayable, they are not adjusted against section 25 of HM Act and there is no merger with the final judgment. In this regard, this court deems it appropriate to advert to *Shah Babulal Khimji* case rendered by a three member Bench of Hon'ble Supreme Court reported in (1981) 4 SCC 8. Paragraph 113 thereat says that a judgment can be of three kinds, namely (a)final judgment, (b)preliminary judgment and (c)intermediary or interlocutory judgment and these three kinds of judgments have been explained to say that final judgment is one by virtue of which, a suit or action brought by the plaintiff are dismissed or decreed in part or in full, a preliminary judgment is one where even though it keeps suit alive, it decides a important aspect of trial which affects the vital right of the defendant and therefore to be construed as a judgment and that intermediary or interlocutory judgments are those which vitally affects the valuable right of defendant. We have carefully and respectfully perused *Shah Babulal Khimji*. On facts itself, *Shah Babulal Khimji* is clearly in a different realm as that is a case where a Division Bench of Bombay High Court by order dated 15.01.1981 dismissed an appeal on the ground that it is not maintainable as the impugned order was not a judgment within the



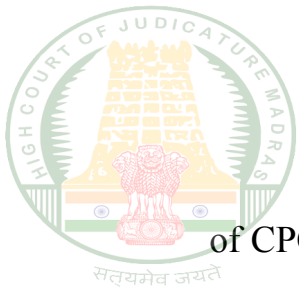
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meaning of Clause 15 of Letters Patent of Bombay High Court. Suffice to

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say that it was a case where a specific performance suit was filed on the original side of Bombay High Court and the plaintiff therein filed applications seeking interim relief for appointment of Receiver and an injunction against defendant qua alienation and Hon'ble Single Judge after hearing the other side dismissed petitions for appointment of Receiver and interim injunction qua alienation, a intra-court appeal to a Division Bench of Bombay High Court against these orders was dismissed by order dated 15.01.1981 holding that impugned order was not a judgment within the meaning of Clause 15 of Letters Patent of Bombay High Court.

6.33. Before proceeding further, it is to be noted that Clause 15 of Letters Patent is couched in common language as regards High Courts of Judicature at Madras, Bombay and Calcutta (Fort William in Bengal). A careful and respectful perusal of *Shah Babulal Khimji* and more particularly paragraph 113 thereat makes it clear that Hon'ble Supreme Court has made a clear distinction between 'judgment' vide Clause 15 of Letters Patent and 'judgment' vide CPC. Hon'ble Supreme Court has categorically held that the concept of a 'judgment' as defined in CPC is rather narrow and limitation engrafted vide sub-section (2) of section 2



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of CPC cannot be imported into the word 'judgment' as used in Clause 15

of Letters Patent and the reasoning of Hon'ble Supreme Court is that

Letters Patent has not used the terms 'order' or 'decree' anywhere (unlike CPC). Hon'ble Supreme Court has furthered its elucidation by saying that the intention of the givers of Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation. It is also to be noticed that the Letters Patent were given in 1860s, which is much prior to CPC which is of the year 1908. As we are of the respectful view that we may not be able to better the language of Hon'ble Supreme Court, we deem it appropriate to extract and reproduce the relevant portion of paragraph 113 of *Shah Babulal Khimji* and the same reads as follows:

'113.Thus, under the Code of Civil Procedure, a judgment consists of the reasons and grounds for a decree passed by a court. As a judgment constitutes the reasons for the decree it follows as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy.The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-section (2) of Section 2 cannot be physically imported into the definition of the word “judgment” as used in clause 15 of the letters patent because the letters patent has advisedly not used the terms “order” or



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“decree” anywhere. The intention, therefore, of the givers of the letters patent was that the word “judgment” should receive a much wider and more liberal interpretation than the word “judgment” used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the letters patent.....!

6.34.It is after aforementioned prelude, in the very paragraph No.113, elucidation qua above three kinds of judgments have been set out. In the case on hand, as already alluded to supra, arguments were predicated on the basis that words and expressions used in the FC Act but not defined in the FC Act would have the same meaning assigned to them in CPC if they are defined in CPC. This is vide section 2(e) of FC Act. Therefore, terms 'judgment', 'order' and 'decree' occurring in Section 19(1) of FC Act and which have not been defined in FC Act have to necessarily be given the meaning as in Section 2(9), 2(14) and 2(2) of CPC respectively. In this regard, the non obstante clause, i.e., notwithstanding anything contained in CPC occurring in Section 19(1) of FC Act is not a sweeping non obstante clause qua FC Act and Section 2(e), therefore, does not get swept away. It is also to be noted that there is

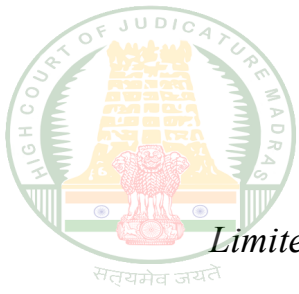


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no dispute in this regard as Mr.T.Murugamanickam, learned senior

WEB COPY counsel specifically adverted to section 2(e) of FC Act and definitions of 'decree', 'judgment' and 'order' vide sections 2(2), 2(9) and 2(14) respectively of CPC.

7.As would be evident from the earlier part of the narrative in this order, multiple case laws rendered by other Hon'ble High Courts have been placed before us and we also noticed that different High Courts have taken different views as regards the question of maintainability of appeal qua *pendente lite* maintenance order under section 24 of HM Act. We have dealt with only those case laws of other High Courts which were persuasively pressed into service before us for the sake of clarity. As regards other case laws made by other High Courts, we have not burdened this order with a discussion on all those case laws as those are not by coordinate Benches. In this regard, it will suffice to say that there is no authoritative pronouncement of Hon'ble Supreme Court on the question as to whether an appeal under Family Courts Act is maintainable as against the order of *pendente lite* maintenance made by Family Court under section 24 of HM Act. In this spirit, case laws such as *Fuerst Day Lawson Limited Vs. Jindal Exports*



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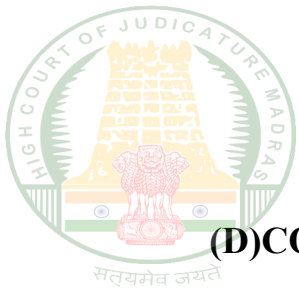
Limited [(2011) 8 SCC 333], which deals with qua clause 15 of Letters

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Patent and other case laws pertaining to sub silentio, etc., have only been set out as being placed before us without burdening this order with our discussion on the same. We are of the view that our discussion on the same would really be of no avail in answering the question which we have addressed ourselves to and on the contrary, it would only make this order needlessly verbose.

8.Before we summarize our conclusions, we place on record our appreciation to Mr.Sharath Chandran, learned *amicus curiae*, who made a profound indepth analysis of all aspects of the matter and rendered valuable assistance to this Court in the legal drill on hand.

9.This court also places on record its appreciation for senior counsel Mr.N.Jothi, Mr.T.Murugamanickam and Mr.A.K.Kumarasamy for their enlightening submissions made with utmost fairness. We also deem it appropriate to place on record our appreciation for Mr.C.Jagadish, Mr.R.Rajavelavan and Mr.A.R.Suresh for ably supplementing the submission made by learned senior counsel.



(D)CONCLUSION :

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10.In the light of the narrative, discussion and dispositive reasoning, we summarize our conclusions and crisply stated, the same are as follows:

(a)Against an order of interim maintenance / *pendente lite* maintenance made under Section 24 of The Hindu Marriage Act, a appeal will not lie either under Section 28 of Hindu Marriage Act or under Section 19 of Family Courts Act;

(b)However, a revision under Article 227 of the Constitution of India will lie to this Court against an order of interim maintenance / *pendente lite* maintenance made under Section 24 of the Hindu Marriage Act irrespective of whether it is made by a regular civil court or a Family Court;

(c)As an order of interim maintenance / *pendente lite* maintenance made under section 24 of the Hindu Marriage Act is only for a period of time, it can be



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reviewed / varied and it is an interlocutory order;

(d)As we are holding that appeal under Section 28 of the Hindu Marriage Act will not lie as against an order of interim maintenance / *pendente lite* maintenance under Section 24 of the Hindu Marriage Act but the same will be amenable for a revision to this Court under Article 227 of the Constitution of India, it will be open to appellants in pending appeals to seek withdrawal of such appeals for filing a revision and on such withdrawal plea being made, all rights for filing revision under Article 227 of the Constitution of India will stand preserved and the period spent in appeal under Section 28 of the Hindu Marriage Act or for that matter under Section 19 of the Family Courts Act will stand excluded if the question of delay is brought up in a revision under Article 227. We are conscious that there is no limitation for constitutional remedy under Article 227 and we are making this position clear as delay can be brought up either in the form of laches or in any other form;



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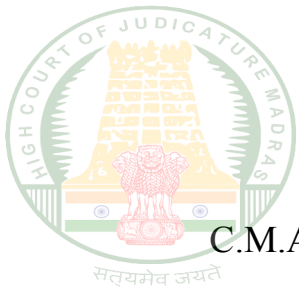
(e)The aforementioned preservation of rights

WEB COPY and liberty to file revision under Article 227 of the Constitution of India will apply to District Courts as well as this Court.

(E) DECISION :

11(a)C.M.A.No.3106 of 2023 and C.M.A.Nos.8 and 295 of 2024 and connected CMPs thereat are detagged as C.M.A.No.3106 of 2023 is directed against a order under Section 36 of the Divorce Act, C.M.A.No.8 of 2024 is directed against a order under Section 27 of HM Act and C.M.A.No.295 of 2024 is directed against a order under Section 26 of HM Act. Registry to list these three C.M.As separately and we are not expressing any opinion on maintainability of these detagged matters (in this order) and the same will be dealt with separately.

11(b)As a sequitur qua discussion and dispositive reasoning supra, C.M.P.No.18729 of 2023 in C.M.A.No.1914 of 2021 is allowed and axiomatically, C.M.A.No.1914 of 2021 is dismissed as not maintainable and consequently, other connected CMPs thereat are dismissed. As a further sequitur, captioned C.M.As, being



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C.M.A.No.2569 of 2022, C.M.A.Nos.483, 954 and 2198 of 2023 and

WEB COPY C.M.A.Nos.25, 28, 36, 62, 110, 111, 112, 113, 132, 139 and 146 of 2024

are dismissed as not maintainable and consequently, connected CMPs thereat are dismissed. However, all the rights and contentions of appellants in captioned C.M.As are preserved for the purpose of filing a revision under Article 227 of the Constitution of India, if so advised and if so desired. In such a revision, though there is no limitation, Article 227 being a Constitutional remedy, if delay props up in one form or the other, the time spent in this court, i.e., from the date of presentation of captioned CMAs to the date of pronouncement of this order, will stand excluded. If appellants in captioned appeals file petitions under Article 227 of the Constitution of India and seek revision of respective impugned orders, Registry shall process, number and list the same. It is made clear that as regards CMPs which have perished with CMAs (as not maintainable), interim prayers can be resuscitated in Article 227 petitions by way of interim prayers thereat and if such a course is adopted, this order will neither impede nor serve as an impetus for such interim prayers. There shall be no order as to costs.

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



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21.03.2024

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Speaking order

Neutral Citation : Yes

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To

- 1.Family Court, Tiruvallur
- 2.Family Court, Chengalpet.
- 3.Additional Principal Family Court, Coimbatore.
- 4.VI Additional Family Court, Chennai.
- 5.V Additional Family Court, Chennai.
- 6.IV Additional Family Court, Chennai.
- 7.Additional Principal Family Court, Coimbatore.
- 8.Family Court, Cuddalore.
- 9.Family Court, Erode.



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

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Common Judgment in
C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021
and C.M.A.No.1914 of 2021, C.M.A.No.2569 of 2022,
C.M.A.Nos.483, 954, 2198 and 3106 of 2023
and
C.M.A.Nos.8, 25, 28, 36, 62, 110, 111, 112, 113, 132,
139, 146 and 295 of 2024 and
C.M.P.No.8709 of 2023 in C.M.A.No.954 of 2023
C.M.P.No.76 of 2024 in C.M.A.No.8 of 2024
C.M.P.No.188 of 2024 in C.M.A.No.25 of 2024
C.M.P.No.302 of 2024 in C.M.A.No.36 of 2024
C.M.P.No.516 of 2024 in C.M.A.No.62 of 2024
C.M.P.No.945 of 2024 in C.M.A.No.110 of 2024
C.M.P.No.958 of 2024 in C.M.A.No.111 of 2024
C.M.P.No.977 of 2024 in C.M.A.No.112 of 2024
C.M.P.No.974 of 2024 in C.M.A.No.113 of 2024
C.M.P.No.1253 of 2024 in C.M.A.No.132 of 2024
C.M.P.No.1469 of 2024 in C.M.A.No.146 of 2024
C.M.P.No.3297 of 2024 in C.M.A.No.295 of 2024
C.M.P.Nos.10367 of 2021, 5592 and 8369 of 2022
in C.M.A.No.1914 of 2021