



C.M.A. No.557 of 2024

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

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

Captioned 'Civil Miscellaneous Appeal' (hereinafter 'CMA' for the sake of brevity) is a statutory appeal which has been filed under Section 28 of 'The Hindu Marriage Act, 1955 (Act 25 of 1955)' (hereinafter 'HM Act' for the sake of brevity and convenience) read with Section 19 of 'The Family Courts Act, 1984 (Act 66 of 1984)' (hereinafter 'FC Act' for the sake of brevity, convenience and clarity).

2. Captioned CMA arises out of matrimonial proceedings and husband is the appellant.

3. Appellant/husband filed a petition for divorce on the ground of cruelty inter-alia under Section 13(1)(i-a) of HM Act and after full contest, the same was dismissed by the 'Family Court Judge, Salem' (hereinafter 'said Trial Court' for the sake of convenience and clarity) in and by a 'judgment and decree dated 14.12.2023'



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(hereinafter 'impugned decree' for the sake of convenience and clarity). To be noted, the aforementioned divorce petition filed by the husband in the said Trial Court is H.M.O.P. No.168 of 202 (CNR No.TNSA030002012020).

4. Captioned statutory appeal has been filed assailing the impugned decree.

5. Mr.Prabhakaran Panneerselvam, learned counsel for appellant/husband assailing the impugned decree contended that said Trial Court has lost sight of *Nirmal Singh's* case being ratio of Hon'ble Supreme Court in ***Nirmal Singh Panesar Vs. Paramjit Kaur Panesar*** reported in ***2023 SCC OnLine SC 1297*** (a decision dated 10.10.2023). Elaborating on this, learned counsel submitted that the ground of irretrievable breakdown of marriage can still be pressed into service even if one of the parties resists an application for divorce.

6. To be noted, aforementioned point is one of the points on which impugned decree has been assailed and other points will be considered as the matter progresses but for now, in the Admission Board after perusing the case file and after hearing learned counsel



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for appellant/husband, we are of the view that prima facie case for
issue of notice has been made out.

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7. Issue notice to respondent returnable by 25.04.2024.

Private notice permitted.

8. List on 25.04.2024.

(M.S.J.) (K.G.T.J.)
12.03.2024

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