



**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 12<sup>th</sup> September, 2023

+ **MAT. APP (F.C.) 199/2019**

.....Appellant

Versus

..... Respondents

**Advocates who appeared in this case:**

For the Appellant: Mr. Vineet Jhanji & Mr. Imran Moulaley, Advocates.

For the Respondent: Ms. Suman Arora, Advocate.

**JUDGMENT**

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**HON'BLE MR JUSTICE VIKAS MAHAJAN**

**SANJEEV SACHDEVA, J.**

1. Appellant impugns judgment dated 11.04.2019 passed by the Principal Judge, Family Court Saket whereby the Divorce Petition filed by the Respondent under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as the HMA) has been allowed.

2. A preliminary objection has been raised by the Respondent that the appeal is barred by limitation. It is contended by learned counsel for the Respondent that as the appeal has been filed under the Family



Courts Act, 1984, the same should have been filed within a period of 30 days as provided under section 19(3) of the said Act.

3. Per contra, the contention of the Appellant is that the appeal has been filed under Section 28 of HMA, wherein the period of limitation prescribed is 90 days.

4. The questions that arises for consideration is as to *what is the period of limitation for filing an appeal against a decree or order passed by a Family Court under the Hindu Marriage Act, 1955?*

5. In the present case arguments were heard only on the preliminary objection and not on merits and as such the factual matrix of the case is being referred only to give context to the submissions made by the parties.

6. Marriage between the parties was solemnized on 19.05.2002 in accordance with Hindu rites and ceremonies at New Delhi and two daughters were born out of the wedlock.

7. Differences and disputes arose between the parties, and sometime in March 2015, Respondent/Husband took an independent accommodation in Gurgaon and filed the subject petition on 10.07.2015, before the Principal Judge, Family Courts Saket, seeking



divorce on the ground of cruelty under section 13(1)(ia) of the HMA.

8. The divorce petition was allowed by the Principal Judge, Family Courts Saket, New Delhi on 11.04.2019 and a decree of divorce has been passed. Present appeal arises out of the said order.

9. Learned Counsel for the appellants submits that the appeal has been filed under Section 28 of the HMA and Section 28(4) of the HMA, prescribes a limitation period of 90 days for filing an appeal against a decree or an order made under the said Act.

10. Learned Counsel further submits that initially the period prescribed for filing an appeal even under section 28 of the HMA was thirty days but said provision was amended by Act 50 of 2003 and the period was enhanced to ninety days. He submits that the amendment was carried out pursuant to the directions of the Supreme Court in *Savitri Pandey versus Prem Chandra Pandey (2002) 2 SCC 73*.

11. Learned Counsel further submits that the non-obstante clause in Section 20 of the Family Courts Act would not apply to the present case because the amendment in the HMA was carried out after the Family Courts Act was enacted. He submits that the non obstante clause used in Section 20 uses the expression “*any other law for the time being in force*” which would imply any other law in force when



the Act was notified<sup>1</sup> and would not apply to any amendment brought in force later.

12. Learned Counsel relies upon the decision of the Supreme Court in *Bank of India versus Ketan Parekh and others* (2008) 8 SCC 148 to contend that the non obstante clause in the later Act would prevail.

13. *Per Contra* learned counsel for the Respondent submits that Section 20 of the Family Courts Act commences with a non obstante clause and as such provisions contained in the said Act would override any inconsistent provision contained in the HMA.

14. She further submits that the expression “*any other law for the time being in force*” is not to be read in context of the time when the respective Acts were enforced but in the context of the time when the inconsistent provisions are to be made applicable.

15. In the above context we may now examine the respective statutory provisions.

16. Section 28 of the HMA reads as under:

“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*

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<sup>1</sup> *The Family Courts Act came into force in Delhi on 19.11.1986, vide notification dated 18.11.1986.*



*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.*  
*(underlining supplied)*

17. Section 28 (1) and (2) of HMA provides that all decrees and orders (other than interim orders) made by the Court in any proceedings shall be appealable to the Court to which appeals ordinarily lie from the decisions of the Court given in the exercise of its original civil jurisdiction.

18. Section 28(4) of HMA provides for a period of ninety days for filing the appeal.

19. Reference may be had to Section 19 of the Family Courts Act, which reads as under:

*“19. Appeal.— (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil*



*Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.*

(2) *No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974): Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).*

(3) *Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.*

(4) *The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.*

(5) *Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.*

(6) *An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.*

*(underlining supplied)*

20. Section 19 of the Family Courts Act provides for an appeal from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. Section 19(6) provides that the appeal shall be heard by a Bench consisting of



two or more judges<sup>2</sup>.

21. Section 19(3) prescribes a period of thirty days for filing an appeal.

22. Reference may be had to Section 20 of the Family Courts Act, which reads as under:

**“20. Act to have overriding effect.—***The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”*

23. Section 20 of the Family Courts Act lays down that the provisions of the Family Courts Act would override any inconsistent provision contained in any other law for the time being in force.

24. Clearly there is an inconsistency between Section 28 of HMA which prescribes a period of 90 days for filing an appeal and Section 19 of the Family Courts Act which prescribes a period of 30 days for filing an appeal. The question is which one will prevail?

25. A caveat may be placed at this juncture. In some states Family Courts have not been established by the State Governments in some areas. In respect of those areas there would be no inconsistency and the period prescribed under Section 28 of HMA for filing an appeal

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<sup>2</sup> *Section 19 (6) of Family Courts Act has been omitted in its application to Union Territory of Jammu Kashmir and Ladakh. But that is not relevant for the present purpose.*



i.e. 90 days would apply.

26. Reference may be had to the judgment of the Supreme Court in *Savitri Pandey (supra)* which led to the amendment in the limitation period prescribed by the HMA. Para 19 of the said judgment reads as under:

*“19. At this stage we would like to observe that the period of limitation prescribed for filing the appeal under Section 28(4) is apparently inadequate which facilitates the frustration of the marriages by the unscrupulous litigant spouses. In a vast country like ours, the powers under the Act are generally exercisable by the District Court and the first appeal has to be filed in the High Court. The distance, the geographical conditions, the financial position of the parties and the time required for filing a regular appeal, if kept in mind, would certainly show that the period of 30 days prescribed for filing the appeal is insufficient and inadequate. In the absence of appeal, the other party can solemnise the marriage and attempt to frustrate the appeal right of the other side as appears to have been done in the instant case. We are of the opinion that a minimum period of 90 days may be prescribed for filing the appeal against any judgment and decree under the Act and any marriage solemnised during the aforesaid period be deemed to be void. Appropriate legislation is required to be made in this regard. We direct the Registry that the copy of this judgment may be forwarded to the Ministry of Law & Justice for such action as it may deem fit to take in this behalf.”*

27. Pursuant to the said Judgment in *Savitri Pandey (supra)*, an amendment was brought about in the HMA and the Special Marriage Act, 1954 and the period for filing an appeal from an order or decree of the court was enlarged to ninety days. However, it may be noticed that no corresponding amendment has been made to the Family Courts



Act and the period prescribed by Section 19 of the Family Courts Act continues to be thirty days.

28. Section 19 of the HMA provides that every petition under the HMA shall be presented to the District Court. District Court has been defined by Section 3 (b) of the HMA to mean a city civil court, where there is a city civil court and for other areas the principal civil court of original jurisdiction.

29. Section 28 of HMA provides for an appeal against an order or decree passed by the Court and the appeal lies to the Court to which appeals ordinarily lie from the decision of the Court given in exercise of its original civil jurisdiction. Thus reference to Court in Section 28 of the Act implies the District Court specified in Section 19 of HMA.

30. However, Section 7 read with Section 20 of the Family Courts Act overrides the provisions of Section 19 of the HMA and as such, in areas wherever a family court has been set up by the State Government, the petition has to be filed before the Family Court and not the District Court. Though it may be noticed that the Family Court Judges also hold the same rank as that of District Judges but they are designated as Family Court Judges.

31. Section 19 of the Family Courts Act provides for an appeal



from every order and judgment of the Family Court to the High Court. Section 19(6) of the Family Courts Act lays down that the appeal shall be heard by a bench of two or more judges (with an exception for the Union Territories of Jammu & Kashmir and Ladakh).

32. Clearly Section 28 of the HMA and Section 19 of the Family Courts Act operate in different spheres and apply to orders passed by different forums i.e. District Court and the Family Court respectively.

33. Thus the period of limitation for filing an appeal from an appealable order and decree of the District Court would be ninety days under section 28 of HMA and the period of limitation for filing an appeal from an appealable order and judgment of the Family Court, wherever it has been set up, would be thirty days under section 19 of the Family Courts Act.

34. At this juncture we may with respect also note that a coordinate Bench of this Court has taken a view that the period of limitation for filing an appeal against the appealable orders and judgment of the Family Court would be ninety days.

35. Reference may be had to the judgment of the Coordinate Bench dated 20.07.2021 in MAT.APP (F.C.) 142 of 2020 titled *Sandeep Aggarwal vs. Priyanka Aggarwal*, wherein the bench followed the



decision of a three judge bench of the High Court of Judicature at Bombay in *Shivram Dodanna Shetty vs. Sharmila Shivram Shetty* 2016 SCC OnLine Bom 9844 and held that the Section 19 of the Family Courts Act would be subservient to Section 28 of the HMA and thus the limitation period for filing an appeal against an order or judgment of the Family Court would be 90 days.

36. The three judge bench of the High Court of Bombay held that there was no clear inconsistency between the two enactments and where both the special statutes contained a non obstante clause then the conflict needs to be resolved considering the purpose and object of the Act.

37. We are in respectful disagreement with the above referred decisions. Though, in principle we concur with the view expressed by the Supreme Court in *Savitri Pandey (supra)* directing the Ministry of Law and Justice to amend the law that the period of 30 days prescribed for filing an appeal is insufficient and inadequate. However, it was for the Parliament to amend the statutes.

38. Amendment was carried out in the HMA and the Special Marriage Act, 1954 by the Marriage Laws (Amendment) Act, 2003 (Act No. 50 of 2003) and the period was enhanced from thirty days to



ninety days. However, no corresponding amendment has been made to the Family Courts Act.

39. Normally as a rule, if a coordinate bench of a court disagrees with the decision of another coordinate bench, it has to refer the case to a larger bench for an authoritative pronouncement. However, in the instant case we are not making a reference to a larger bench because our attention has been drawn to a decision of the Supreme Court dated 23.07.2021 in *Special Leave Petition (C) No.10751 of 2021* titled *Arunoday Singh vs. Lee Anne Elton*, wherein the Supreme Court was considering the period of limitation for filing an appeal in respect of a decree of divorce passed under the Special Marriage Act, 1954.

40. The Supreme Court in *Arunoday Singh (supra)* has held as under:

*“16. However, as observed above, Section 19(3) of the Family Courts Act requires every appeal from a judgment or order of the Family Court to be filed within 30 days. The provisions of the Family Court Act have effect notwithstanding anything inconsistent contained in any other law for the time being in force.*

*17. Section 19(3) of the Family Courts Act provides a shorter period of limitation than Section 39(4) of the Special Marriage Act, 1954 or Article 116 of the Schedule to the Limitation Act, 1963. There is an inconsistency between the period of limitation for filing an appeal prescribed by the Family courts Act and the Special Marriage Act, as also the Limitation Act.*



18. *By reason of the non-obstante provision of Section 20 of the Family Courts Act giving overriding effect to the Family Courts Act, the period of limitation for filing an appeal from a judgment and order of a Family Court constituted under the Family Courts Act would be 30 days and not 90 days. The High Court thus found that the Appeal was delayed, even though the Appeal was filed well within 90 days.”*

41. The Supreme Court in *Arunoday Singh (supra)* has thus held that an appeal under section 19 of the Family Courts Act has to be filed within thirty days even though it provides for a shorter period of limitation than the Special Marriage Act and the non-obstante provision of Section 20 of the Family Courts Act gives overriding effect to the Family Courts Act and thus the period of limitation for filing an appeal from a judgment and order of a Family Court constituted under the Family Courts Act would be 30 days and not 90 days. The Supreme Court in *Arunoday Singh (supra)* further held that Section 5 of the Limitation Act would apply.

42. Reliance placed by learned counsel for the Appellant on the judgment of the Supreme Court in *Bank of India versus Ketan Parekh (supra)* to contend that the non obstante clause in the later Act would prevail is misplaced in view of the law as laid down in *Arunoday Singh (supra)* and also in view of the judgment of the Supreme Court in *Municipal Corporation of Delhi versus Prem Chand Gupta (2000) 10 SCC 115*, wherein the Supreme Court has held that the



phraseology “*rules for the time being in force*” means rules in force from time to time and not rules in force at a fixed point of time. Its scope and ambit cannot be frozen only to the point of time when the regulations were promulgated.

43. In view of the above, the preliminary objection is disposed of holding that the period of limitation for filing an appeal against a judgment or order of the Family Court is thirty days. However, for sufficient cause to be shown, the delay in filing can be condoned under Section 5 of the Limitation Act, 1963.

44. In the instant case, as per the office report, the appeal has been filed with a delay of 49 days after the expiry of thirty days prescribed by Section 19 of the Family Courts Act.

45. In view of the divergent view of the coordinate bench in *Sandeep Aggarwal (supra)* and the later pronouncement of the Supreme Court in *Arunoday Singh (supra)*, an opportunity is granted to the Appellant to file an appropriate application seeking condonation of delay. Let the same be filed, if so advised, within 15 days from today.

46. List the appeal before the Roster Bench for directions on 16.10.2023.



47. Order *Dasti* under signatures of the Court Master.

**SANJEEV SACHDEVA, J**

**VIKAS MAHAJAN, J**

**SEPTEMBER 12, 2023**

*HJ*