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

+ **Date of Decision: 20.07.2021**

% **MAT.APP.(F.C.) 142/2020**

SANDEEP AGGARWAL ..... Appellant

Through: Mr. Aditya Rathee, Adv.

versus

PRIYANKA AGARWAL ..... Respondent

Through: Mr. Mohan Lal, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT OF THE COURT

CM APPL. 29691/2020-DELAY (45 DAYS)

1. This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing matrimonial appeal under Section 28 of the Hindu Marriage Act, 1955 (HMA) r/w Section 19(1) of the Family Courts Act, 1984 (FCA).

2. We have already allowed this application today, and detailed reasons were to follow. The reasons for allowing the application are as under:

BRIEF FACTS:

1) The present appeal has been filed under Section 28 of the Hindu Marriage Act, 1955 r/w Section 19 of the Family Courts Act, 1984 by the Appellant (husband) against the Respondent (wife) impugning the judgment and decree dated 24.12.2019.

2) The Petitioner/Appellant had filed the petition under Section 12 of the Hindu Marriage Act, 1955 seeking annulment of his marriage with the Respondent on the ground that the Respondent wife was suffering from Schizophrenia. The learned Family Court, after examining the case, found no merit in the petition. The Family Court was of the view that the Petitioner has failed to prove on record that the Respondent was suffering from Schizophrenia, or any other ailment prior to the marriage and, hence, dismissed the petition.

3) Vide the order dated 24.12.2019, the Family Court also directed decree sheet to be prepared following the judgment, and accordingly, a decree sheet was prepared on 24.12.2019 itself.

4) Along with the appeal, the Petitioner filed the present application under Section 5 of the Limitation Act seeking condonation of delay of 45 days in filing the appeal.

5) This Court was of the view that the application filed was cryptic, and vide order dated 20.11.2020 directed the Appellant/ husband to file a better affidavit in support of the application to explain the

delay. The said affidavit has been filed by the Appellant on 03.12.2020. As per the affidavit, it is stated by the Appellant that -

- On 24.12.2019, the judgment of Trial Court was pronounced.
- On 10.01.2020, the Appellant applied for certified copies after winter vacations.
- On 16.01.2020, certified copies were received.
- On 15.03.2020, Covid-19 guidelines were issued for nationwide lockdown.
- On 20.09.2020, the Appellant consulted his current counsel.
- On 30.09.2020, the instant appeal was filed.
- On 20.11.2020, the appeal was listed for the first time before this Court.

6) The Respondent has filed a detailed reply opposing the condonation of delay by the Appellant. The gist of the submission of the Respondent are as under:

(i) Section 5 of the Limitation Act will not apply to matrimonial cases in view of Section 29(3) of the Limitation Act.

(ii) Section 151 of CPC, 1908 will not apply for condonation of delay.

(iii) The Family Courts Act, 1984 is aimed to secure speedy

settlement of matrimonial issues, and in case the application for condonation of delay is allowed, the same would be contrary to the legislative intent of the Family Courts Act.

(iv) It is Section 19(3) of the Family Courts Act that would apply, and it prescribes the period of limitation applicable in the present case, as the impugned judgment dated 24.11.2019 is appealable under Section 19 of the said Act. Section 20 of the Family Courts Act provides that Family Courts Act will have an overriding effect and, hence, Hindu Marriage Act will not be applicable.

(v) Lastly, the Respondent has relied on the judgment of Allahabad High Court in *Smt. Suman vs. Braj Kishore*[1], which further relies on *Kiran Bala Srivastava (Smt.) vs. Jai Prakash Srivastava*[2] to make a distinction between scope of the Sections 19(1) of the Family Courts Act 1984 and 28(4) of the Hindu Marriage Act 1955. The operative portion of the *Kiran Bala* Judgment as quoted in *Smt. Suman* (Supra) reads as under:

> *"21. What noticeable in sub-section (1) of Section 19 of the Act of 1984, is that deviating from Section 96 of the Code of 1908 or from sub-section (1) of Section 28 of the Act of 1955, it provides for appeals against "judgment". The Code of Civil Procedure, 1908, does not provide for appeal against judgments.*

[1] First Appeal No. 13 of 2012 | 12-01-2012.
[2] (2006 Alld. C. J. 1936) or MANU/UP/2771/2004.

It provides for appeals against decrees and orders. Likewise, Section 28 of the Act of 1955 also does not provide for appeals against judgments. It provides for appeals only against decrees [see: sub-section (l)] and against certain orders [see: sub-section (2)]. The question arises as to why the legislature made a departure by providing appeal against judgments also, under sub-section (1) of Section 19 of the Act of 1984. Not that the legislature was not aware of the established practice or did not know the meaning of the word judgment, as given by the Apex Court in Khimji's case (supra)."

7) The other submissions of the Respondent relate to the merits of the matter, with which we are not concerned while disposing of this application.

8) We have heard the learned counsels for the parties and given our thoughtful consideration. The undisputed dates in the affidavit of the Appellant are as under:

- On 24.12.2019, the judgment of Trial Court was pronounced.
- On 10.01.2020, the Appellant applied for certified copies after winter vacations.
- On 16.01.2020, certified copies were received.
- On 15.03.2020, Covid-19 guidelines were issued for nationwide lockdown.
- On 20.09.2020, the Appellant consulted his current counsel.

- On 30.09.2020, the instant appeal was filed.

- On 20.11.2020, the appeal was listed for the first time before this Court.

9) The expressions 'decree' and 'judgment' have neither been defined under the Family Courts Act, 1984, nor the Hindu Marriage Act. Section 2(2) of the CPC defines "decree" as under:

> *"(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 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."*

10) Section 2(9) of the CPC defines "judgment" as under:

> *"(9) "judgment" means the statement given by the Judge of the grounds of a decree or order;"*

11) Section 33 of the CPC states that -

> *"The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow."*

12) The impugned order dated 24.12.2019 is a judgment and is

followed by a decree of the same date. The Appellant in prayer 'b' has sought setting aside/quashing of the impugned judgment/order **and decree** dated 24.12.2019 passed by Shri Pitamber Dutt, Ld. Judge, Family Court, Dwarka, Delhi. Hence, we may notice, at the outset that the judgment of Allahabad High Court in *Suman (Supra)* is not applicable to the facts of the present case, as it fails to take into account a scenario where judgment is followed by a decree. It is inapplicable, as the appellant has assailed not just the judgment but also the Decree premised thereon. In civil cases, a decree is mandatorily drawn after passing of judgment as per Section 33 of the Civil Procedure Code. Under the Hindu Marriage Act as well, most judgments are followed by a decree sheet, which determines the rights and status of the parties involved. This, by itself, is sufficient to reject the submission of learned counsel for the respondent that the limitation qua the present appeal is governed by Section 19(3) of the Family Courts Act, and not by Section 28(4) of the Hindu Marriage Act.

13) We, however, proceed to consider the submission of learned counsel in further detail.

14) Section 19(1) and 19(3) of the Family Court Act is 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.*

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

Section 28(4) of the Hindu Marriage Act reads as under –

"*28. Appeals from Decrees and Orders*

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

15) Section 28(4) of HMA was specifically amended vide Amendment Act 50 of 2003 on 23.12.2003, wherein, in sub-section (4), "period of thirty days" was substituted by "period of ninety days".

16) The said amendment was as a consequence of the judgment of the Supreme Court in *Savitri Pandey vs. Prem Chandra Pandey*[3], wherein the Supreme Court held 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***

[3] (2002) 2 SCC 73.

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."* (emphasis supplied)

17) A three judge bench of the Bombay High Court in *Shivram Dodanna Shetty v. Sharmila Shivram Shetty*[4] was faced with the same question that is before us now - "*Whether an appeal under sub-section (1) of section 19 of the Family Courts Act, 1984 will be governed by the period of limitation under subsection (3) of section 19 or whether the period of limitation provided under sub-section (4) of section 28 of the Hindu Marriage Act, 1955 will apply to such Appeal?*". The Court found that there is no conflict between the two provision. The following observations of Bombay High Court are relevant, here which read as under:

"24. *While interpreting the provisions of the said two enactments, it needs to be considered that we are a country of vast population, millions of people face financial hardship for litigating a matter, people have to spend*

[4] 2016 SCC OnLine Bom 9844 or (2017) 1 Mah LJ 281.

considerable amount of time, money and energy. The geographical conditions further make easy access to justice difficult and taking into consideration all these circumstances, coupled with the peculiar situation faced by the parties while litigating matrimonial, family related issues, the Apex Court made certain observations in the case of Savitri Pandey which suggestion was accepted by the Parliament and accordingly the law was amended.

25. *We are convinced of the interpretation put up by the learned Senior Counsel that if the two statutes are construed and understood in its proper sense, then there is no conflict between the two laws and, therefore, no question arises of invoking non-obstante provision in section 20 of the Act of 1984. The enactment of the Act of 1984 or non-obstante provision in section 20 is not intended to impliedly repeal provisions made in the Act of 1955. The Act of 1984 provides for a special forum relating to matrimonial disputes and with that view, special procedure was devised for expeditious adjudication of the cases. It is in that context the non-obstante provision of section 20 is required to be construed.*

26. *A non-obstante clause must be given effect to the extent Parliament intended and not beyond the same. It may be used as a legislative device to modify the scope of provision or law mentioned in the said clause. The non-obstante clause would throw some light as to the scope and ambit of the enacting part in case of its ambiguity. But if the enacting part is clear, its scope cannot be cut down or enlarge by resorting to non-obstante clause.*

27. *In our view, considering the scheme of the Act of 1984 and the object and purpose for its enactment, largely the Act is procedural in nature. The Act of 1984 provides for special forum to decide matrimonial related disputes and prescribes for special rules and procedure. In this context, the non-obstante provision in section 20 is required to be construed.*

28. *We are of the view that considering the scheme of both the enactments and the purpose behind amending the provisions of section 28(4) of the Act of 1955, it would not be appropriate to apply different period of limitation, one in case of orders passed by the Family Courts and in another by the regular Civil Courts. Such an approach would frustrate very purpose of legislation.*

29. For the reasons stated above, we hold that for an appeal filed under sub-section (1) of section 19 of the Family Courts Act, 1984, period of limitation prescribed under sub-section (4) of section 28 of the Hindu Marriage Act, 1955 shall apply." (emphasis supplied)

18) We may also rely on the judgment of Orissa High Court in *Swarnalata Nayak vs. Manoj Kumar Nahak and Ors.*[5] which holds as under -

"4….Thus for filing an appeal under Section 19 of "the 1984 Act" pertaining to the proceeding under "the 1955 Act", the period of limitation would be 90 days. For arriving at such a conclusion mainly the following things have been taken into account.

1. It is well established in law that procedural law is always subservient to the substantive law. While provisions of "the 1955 Act" are substantive in nature, the provisions under "the 1984 Act" are mainly procedural. Therefore, the period of limitation, as provided under the substantive law for filling the appeal would prevail over the limitation period prescribed in the procedural law.

[5] MANU/OR/0687/2017.

2. While Sub-section 3 of Section 19 of "the 1984 Act" deals with a general provision; Sub-section 4 of the Section 28 of "the 1955 Act" providing 90 days period of limitation as incorporated by way of an amendment on 22.12.2003 substituting earlier period of 30 days of limitation is a special provision in the background of the observations of the Supreme Court in Savitri Pandey v. Prem Chandra Pandey reported in MANU/SC/0010/2002 : AIR 2002 SC 591.

3. The purpose of amending Sub-section 4 of Section 28 of "the 1955 Act" was to overcome the inconvenience and hardship faced by the litigant public as pointed out by the Supreme Court in Savitri Pandey's case (supra). Keeping in mind the purpose of amendment of Sub-section 4 of Section 28 of "the 1955 Act" w.e.f. on 23.12.2003, the period of limitation as provided therein must be given prominence and predominance." (emphasis supplied)

19) We are in complete agreement with the views of the Orissa High Court and the Bombay High Court. In both the cases, while the reasoning may be different, it has been held that the period of limitation for preferring an appeal against judgment and decree, under 19(1) of the Family Court Act, would be 90 days as per Section 28(4) of the Hindu Marriage Act. To take a contrary view, would be to ignore the rationale of the judgment of the Supreme Court in ***Savitri Pandey*** (Supra). Moreover, whereas the Hindu Marriage Act (in Section 28) provides for an appeal against, inter alia, a "decree", Section 19(1) of the Family Court does not make a mention of an appeal from a decree. Thus, in respect of an appeal from a decree, only Section 28 of the Hindu Marriage Act

could be invoked.

20) We have no hesitation in coming to the conclusion that provisions of Hindu Marriage Act, 1955 are substantive in nature, and the period of limitation as provided under substantive law would prevail over the procedural law enacted in the Family Courts Act.

21) We hold that Section 19(1) of the Family Courts Act has to be read as subservient to Section 28(4). It is settled principle of interpretation that where two interpretations are possible, the substantive law takes precedence over the procedural law.

22) Turning to the facts of the case in hand, the appeal was filed by the Appellant within the statutory period of 90 days, after excluding the period consumed in obtaining the certified copy of the impugned judgment and decree. The period of 90 days had not expired on 15.03.2020, when the order of the Supreme Court putting period of limitation in abeyance came to be passed.

23) The petitioner met the limitation period till 15.03.2020. For the period thereafter, the Petitioner has been able to show sufficient cause. COVID-19 is a sufficient cause and the same was also recognized by the Supreme Court, when it put the period of limitation in abeyance. It is further to be borne in mind that condonation of delay must be construed liberally when there is sufficient cause.

24) In *Ram Nath Sao vs. Gobardhan Sao*[6], the following was observed with regards to condonation of delay-

> **"*12.*** *Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way*."

[6] (2002) 3 SCC 195.

25) We, therefore, allow the application filed by the Appellant and hold the appeal to have been preferred within the period of limitation.

26) We may further add that nothing observed by us shall be construed as an observation on merits of the case.

27) List the appeal on 05.10.2021.

VIPIN SANGHI, J. **JASMEET SINGH, J.**

JULY 20, 2021/'ms'