HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

D. B. Civil Miscellaneous Appeal No. 4589/2019

Kuldeep Yadav S/o Late Shri Umrao Singh Yadav

----Appellant Versus Anita Yadav W/o Kuldeep Yadav D/o Raj Singh Yadav

----Respondent

For Appellant(s) : Mr. Ganesh Khanna on behalf of Mr.
Shiven Gupta.

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ HON'BLE MR. JUSTICE NARENDRA SINGH DHADDHA

Order

REPORTABLE

06/11/2019

The Office in this appeal has pointed out a defect that

in view of Section 19(3) of the Family Court Act, 1984, period of

limitation for filing appeal against the judgment of the Family

Court is 30 days and the present appeal is barred by limitation

having been filed with delay of 57 days.

Learned counsel for the appellant has cited order dated

26.07.2017 passed by this Court in Smt. Anita Chaudhary Vs.Rajesh Chaudhary

wherein also the Registry of this Court, taking note of Section 19(3) of the Family Court Act, 1984 (for short 'the Act of 1984') which prescribes period of 30 days for filing of the appeal, pointed out delay in filing of that appeal but considering provisions of Section 28(4) of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') which postulates period of 90 days for filing of the appeal against any decree or order passed under the provisions of Act of 1955, this Court directed that the appeal be considered as competent having been filed within the prescribed period of limitation.

The Supreme Court in ***Savitri Pandey Vs. Prem Chandra Pandey, (2002) 2 SCC 73*** has noticed this anomaly and observed that 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 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. 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. The Supreme Court further observed that appropriate legislation is required to be made in this regard. The Registry of the Supreme Court was directed to forward a copy of that judgment to the Ministry of Law and Justice for such action as it may deem fit to take in this behalf.

This issue was referred to Full Bench of the Bombay High Court in ***Shivram Dodanna Shetty Vs. Sharmila Shivram Shetty, 2017 (1) Mh.L.J. 281.*** The Full Bench observed that the Parliament amended the provisions of Section 28(4) of the Act of 1955, by

Amendment Act 50 of 2003 substituting period of

limitation of thirty days to ninety days, for preferring appeal under Section 28. While amending the provisions, the Parliament was aware of the existence of the Act of 1984. Therefore, a harmonious interpretation, which would advance the object and purpose of the legislation, will have to be adopted. As the Act of 1955 was amended by the Parliament in the year 2003, in that sense, the period of limitation of ninety days was prescribed by a later law, which would override the provisions relating to period of limitation prescribed in the earlier enactment i.e. Act of 1984. The substantive provision of law was amended at a later stage and the same shall prevail being later in point of time. Even if both the Acts are considered on certain subjects and situations to be special and general, then also, as a matter of sound interpretation and keeping in view the purpose for providing a larger period of limitation, it must be construed that the appeals arising out of the judgment and orders passed by the Family Court shall be governed by a larger period of limitation prescribed under Section

28(4) of the Act of 1955. Any contrary interpretation would frustrate the very object of the enactment. The Allahabad High Court in ***Smt. Gunjan Vs. Praveen, First Appeal Defective No. 374 of 2016*** also concurred with the view taken by the Full Bench of the Bombay High Court in ***Shivram Dodanna Shetty (supra)***.

In view of above, we are inclined to follow the view taken by the Bombay High Court, which in any case, was also the view taken by this Court in Smt. Anita Chaudhary (supra). Since this appeal has been filed within 90 days which is prescribed period of limitation under Section 28(4) of the Act of 1955, the same is held to be within limitation

Registrar (Judicial) of this Court is required to issue necessary direction to the Office to henceforth treat all such appeals, which are filed against the judgment and decree passed by the Family Court within period of limitation, if such appeals are filed within 90 days.

Admit.

Issue notice to respondent.

Call for the record.

Application No. 1/2019 stands disposed of.

(NARENDRA SINGH DHADDHA),J (MOHAMMAD RAFIQ),J