

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.474 of 2021

Ranju Devi

... .. Appellant/s

Versus

Chitranjan Singh

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Jitendra Prasad Singh, Advocate
Ms.Priya Sinha, Advocate
For the Respondent/s : Mr.Anil Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

3 03-05-2023 The office has raised objection that the present Miscellaneous Appeal No. 474 of 2021 is not supported by interlocutory application for condonation of delay, since the aforementioned file was presented beyond 30 days whereas Section 19(3) of the Family Courts Act, 1984 (for short ‘Act, 1984’) prescribes appeal is to be file within 30 days. No doubt Section 19(3) of Act, 1984 stipulates 30 days to file appeal. At the same time, it is necessary to take note of Section 28(4) of the Hindu Marriage Act, 1955 (for short ‘Act, 1955’). These provisions reads as under:-

“Section 19 (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.

Section 28(4):Every appeal under this section shall be preferred within a ³[period of ninety days] from the date of the decree or order.”

[Underline Supplied]

2. Apex Court in the case of ***Savitri Pandey vs. Prem Chandra Pandey*** reported in **(2002) 2 SCC 73** taken note of the Section 19(3) of the Act, 1984 and observed at Para-19 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 and Justice for such action as it may deem fit to take in this behalf.”

3. Union of India proceeded to amend Section 28(4) Act, 1955 on 23.12.2003.

4. Identical matter was subject matter before the Hon'ble Jharkhand High Court in First Appeal No. 49 of 2019 in the case of *Dr. Pankaj Kumar vs. Prema* decided on 16.12.2020, wherein elaborately dealt with earlier judgments of the various High Courts like Allahabad High Court and Bombay High Court (Full Bench). The opinion of the Bombay High Court on this issue contained in Para 14 to 28 is extracted hereunder:-

“14. Consequent to the observations and suggestions given by the Apex Court, quoted above, the Parliament amended the provisions of section 28(4) of the Act of 1955. Therefore, the purpose and object behind amending the said Act in the year 2003 is required to be considered. While amending the provisions, the Parliament was aware of the existence of the Act of 1984. It is presumed that the Parliament was conscious of the existence of another statute relating to the subject, prescribing forum and procedure and period of limitation. Therefore, a harmonious interpretation which would advance the object



and purpose of the legislation will have to be adopted.

15. 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.

16. Even if both the Acts are considered on certain subjects and situations to be special and general, even then, 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 which was made on the suggestion of the Apex Court in the case of Savitri Pandey.

21. Considering the scheme of the enactments of the Act of 1955 and the Act of 1984, more precisely the provisions of limitation and non-obstante provision provided in the Act of 1984, we do not find a clear inconsistency between the two enactments. It is principle of law that for giving a overriding effect to a non-obstante provision, there should be clear inconsistency between the two enactments.

22. The principle of law of interpretation further lays down that in a given case both the enactments could be special statutes dealing with different situations and there could be non- obstante provision in both the special statutes. In such a situation, the conflict between two enactments need to be resolved, considering the purpose and object



of the Act.

23. It is settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed, then the later must be adopted. On such interpretation, the objects of both the enactments would be fulfilled and there would be no conflict.

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 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.”

5. In the light of aforementioned judicial pronouncements, office objection relating to non-compliance of limitation petition is hereby over ruled. Registry is hereby directed to take note of the present order read with *Savitri Pandey vs. Prem Chandra Pandey* and decision of the Jharkhand High Court in the case of *Dr. Pankaj Kumar vs. Prema* cited (supra) and give instructions to scrutiny branch of the concerned Section to not to insist on limitation petition if



Miscellaneous Appeal is filed within 90 days instead of 30 days in such cases.

6. Registry is hereby directed to compute the period of limitation in such appeal, as per law declared by Hon'ble Jharkhand High Court in First Appeal No. 49 of 2019 in the case of *Dr. Pankaj Kumar vs. Prema* decided on 16.12.2020 read with Full Bench decision of the Hon'ble Bombay High Court cited (supra).

7. Copy of the order be transmitted to the Bihar State Legal Services Authority, Patna High Court Legal Services Committee, Bihar Judicial Academy and District Legal Services Authority for information through its website and other modes for the benefit of larger section of the society in the State of Bihar.

8. Relist this Miscellaneous Appeal No. 474 of 2021 on 17.05.2023.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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