



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 2040/2023

Kaushlya Soni W/o Shri Ravikant Soni & D/o Shri Jagdish Prasad Soni, Age 32 years, R/o Near Laxmikant Mandir, Rajaldesar, District Churu

----Appellant

Versus

Ravikant Soni S/o Shri Shankar Lal Soni, Age 31 years, R/o B-1, Gayatri Kunj Society, behind Ranip Bus Stand, Ahmedabad (Gujarat).

----Respondent

Connected With

D.B. Civil Misc. Appeal Nos. 3476/2018, 202/2019, 2083/2019, 2746/2019, 1527/2020, 404/2022, 803/2022, 912/2022, 1227/2022, 1869/2022, 603/2023, 1107/2023, 1198/2023, 1210/2023, 1263/2023, 1277/2023, 1319/2023, 1567/2023, 1599/2023, 1690/2023, 1733/2023, 1817/2023, 1963/2023, 2010/2023, 480/2024, 875/2024, 1029/2024, 1045/2024, 1438/2024, 1538/2024, 2285/2024, 2331/2024, 2348/2024, 2387/2024, 2489/2024, 2525/2024, 2835/2024, 3308/2024, 3342/2024, 3357/2024, 3360/2024, 124/2025, 406/2025, 709/2025, 1238/2025, 1309/2025, 1364/2025, 1436/2025, 1449/2025, 2168/2025, 2275/2025, 2287/2025, 3166/2025, 3303/2025, 3333/2025, 3384/2025, 3385/2025, 3411/2025, 3413/2025, 3423/2025, 3445/2025, 3450/2025, 3463/2025, 3676/2025, 3681/2025, 3722/2025, 301/2026, 303/2026, 341/2026, 373/2026, 579/2026, 644/2026, 672/2026 & 1329/2026

For Petitioner(s) : Mr. Muktesh Maheshwari
Ms. Akshita Depura
Ms. Mansi Pipal
Mr. C.P. Soni
Mr. Arpit Mehta
Mr. Mrinal Khatri
Mr. Priyansh Bohra
Mr. Kapil Purohit
Mr. Pradeep Bhakar
Mr. Dhruv Chandra
Mr. Sheetal Kumbhat
Mr. Himanshu Bumb
Mr. Manoj Kumar Pareek
Mr. Kunal Singh Rathore
Mr. Bala Ram Choudhary
Mr. Dilip Kumar Joshi
Mr. Kshitij Vyas
Mr. Abhijeet Joshi
Mr. Mahip Raj Singh Malawat
Mr. Danish Sherani, Mr. Bhawani Singh and Mr. Gajendra Singh



Mr. P.D. Bohra
Mr. D.S. Gaur

For Respondent(s) : Mr. S.S Rathore, AAG with
Mr. Pravin Kumar Choudhary
Dr. Jaya Dadhich
Mr. Keshar Singh Chouhan
Ms. Ayushi Rathore
Mr. Jitendra Choudhary with
Mr. Nishant Gaur
Mr. Vikram Sharma
Mr. Niranjana Singh Shekhawat
Mr. D.S Gaur



HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL

Judgment

Reportable

Judgment Reserved on :-23/03/2026

Pronounced on :- 06/04/2026

By the Court (Per: Arun Monga, J):-

1. These bunch of appeals have been filed assailing various orders passed by the learned Family Court under Section 24 of the Hindu Marriage Act, 1955. A common objection raised by the respondents in all these matters is that an appeal under Section 19 of the Family Courts Act, 1984 is not maintainable against an order passed under Section 24 of the Act of 1955, as such an order is interlocutory in nature. By this common order, we propose to deal with the said objection.

2. In ***Kavita Vyas v. Deepak Dave***¹, the question referred to a Full Bench of this Court was: "*Whether an order passed under Section 24 of the Hindu Marriage Act, 1955 by the Presiding Officer of a Family Court is an appealable order or not?*"

1. DB Civil Reference No. 01/2017, decided on 10.01.2018.



3. The Full Bench noted that, till then i.e. 10.01.2018, a Division Bench judgment of this Court dated 19.11.2010 in **Ajay Malik v. Smt. Shashi**² held the field, wherein it had been held that such an appeal was not maintainable.

4. After referring to the relevant statutory provisions and the case law on the subject, the Full Bench, vide order dated 10.01.2018, held and declared that the Division Bench decision of this Court in **Ajay Malik v. Smt. Shashi (supra)** did not lay down the correct law. The reference was accordingly answered by holding that an appeal shall lie under Section 19(1) of the Family Courts Act, 1984 against an order passed by a Family Court under Section 24 of the Hindu Marriage Act, 1955.

5. Subsequently, in **Amit Vyas v. Pramila @ Ranjana**³, a Division Bench of this Court observed, *inter alia*, that there was considerable force in the submission that as per Hon'ble Supreme Court it was held in **Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Others**⁴, that an order under Section 24 of the Hindu Marriage Act is interlocutory, since it does not finally determine any of the rights of the parties.

6. The Division Bench further noted that in **Roger Shashoua and Others v. Mukesh Sharma and Others**⁵, while explaining the principle of ratio decidendi, the Supreme Court had considered and summarized the principles governing the doctrine of *per incuriam*, holding that a decision may be *per incuriam* if a statutory provision, rule or binding precedent was not brought to

2. RLW 2011(2) Raj. 1615.

3. DB Civil Review Petition No. 79/2018 in DB Civil Misc. Appeal No. 3744/2016.

4. (1978) 4 SCC 70.

5. (2017) 14 SCC 722





the notice of the Court; or if its ratio cannot be reconciled with that of a prior judgment of a co-equal or larger Bench; or where a High Court decision is not in consonance with the law laid down by the Supreme Court.

7. Considering that the view in **Kavita Vyas (supra)** had been expressed by a Bench larger than a Division Bench, the learned Division Bench seized of the matter, by order dated 27.05.2022, expressed its inclination to refer the case for consideration by a Larger Bench under Rule 59 of the Rajasthan High Court Rules, 1952. The following question of law was framed for the reference of the Larger Bench:-

“Whether the view taken by the Full Bench of this Court in the case of Kavita Vyas Vs. Deepak Dave, 2018(1) RLW 97 (Raj.) holding that an order passed under Section 24 of the Hindu Marriage Act, 1955 is a judgment and not an interlocutory order and, therefore, appeal against such order is maintainable under Section 19, sub-section (1) of the Family Courts Act, 1984, is per incuriam as the judgment of Hon’ble Supreme Court in the case of Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Others (1978) 4 SCC 70 holding that an order passed under Section 24 of the Hindu Marriage Act, 1955 is an interlocutory order, which does not determine any of the rights of the parties, was not considered by the Full Bench of this Court?”

8. However, a Larger Bench has yet to be constituted in terms of the aforesaid order dated 27.05.2022. Thus, the answer of the Larger Bench to the said question of law is still awaited. The issue as to whether an order passed by a Family Court under Section 24 of the Hindu Marriage Act, 1955 is appealable would stand settled only after, and in the light of, the decision of the Larger Bench. As of now, the issue remains in a state of uncertainty.

9. In this backdrop, these pending appeals have been taken up for adjudication on the issue of maintainability.





10. It is to be noted that these D.B. appeals have been filed in view of the Full Bench judgment dated 10.01.2018 in **Kavita Vyas (supra)**. The appellants, therefore, cannot be faulted for having filed these appeals. However, the said Full Bench judgment itself has now become the subject matter of the reference order dated 27.05.2022 passed by the learned Division Bench in **Amit Vyas v. Pramila @ Ranjana (supra)**.

11. In the aforesaid circumstances, we are of the opinion that once a Division Bench of this Court has expressed doubt as to the correctness of the ratio laid down by the Full Bench and has referred the issue for consideration by a Larger Bench, it would be inappropriate for us to adjudicate these appeals either on the question of maintainability or on merits. The issue of maintainability, being the very subject matter of the pending reference, directly bears upon the jurisdiction of this Court to entertain and decide these appeals. So long as such doubt subsists, a corresponding uncertainty clouds the jurisdiction of this Division Bench itself. In such a situation, judicial discipline and propriety require that we refrain from rendering a determination which may pre-empt or conflict with the decision to be rendered by the Larger Bench. Accordingly, the question relating to jurisdiction and maintainability ought to await its determination thereof by the Larger Bench, upon resolution of the reference and not by us.

12. At the same time, the principle that justice delayed is justice denied cannot be ignored. Expeditious disposal of litigation is a matter of larger public interest, and it would be unjust and unfair





to the parties if their cases are allowed to linger any further. A workable solution for early disposal, therefore, needs to be found.

13. Section 19(4) of the Family Courts Act, 1984 provides that the High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which a Family Court within its jurisdiction has passed an order under Chapter IX of the Code of Criminal Procedure, 1973, for the purpose of satisfying itself as to the correctness, legality or propriety of such order, not being an interlocutory order, and as to the regularity of such proceedings. Sub-section (5) further provides that, except as aforesaid, no appeal or revision shall lie to any Court from any judgment, order or decree of a Family Court. Thus, orders passed by a Family Court under Section 24 of the Hindu Marriage Act stand excluded from the scope of revisional jurisdiction of this Court.

14. Under Article 226 of the Constitution of India, every High Court has the power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of the rights conferred by Part III and for any other purpose.

15. Having regard to the peculiar facts, developments and circumstances noticed above, we are of the considered opinion that, in order to avoid further delay, ensure expeditious disposal of these cases, and serve the larger public interest, these matters





can and ought to be disposed of in exercise of the wide powers of this Court under Article 226 of the Constitution of India, including the power to issue appropriate directions and orders for any purpose.

16. Accordingly, subject to the orders of Hon'ble the Acting Chief Justice, as the Master of the Roster, these cases be, therefore, entrusted to the appropriate Bench(es) for disposal on merits.

17. A copy of this order be also sent to the Registrar (Judicial), to bring to the notice of the Learned Acting Chief Justice the pendency of the reference order dated 27.05.2022, for appropriate steps towards constitution of a Larger Bench.

18. With these observations, the appeals are disposed of by remanding the same to the Registry of this Court to be re-registered as Single Bench petitions and then listed for hearing, as above.

(SUNIL BENIWAL),J

(ARUN MONGA),J

127-201-Devanshi/-