

Court No. - 39

Case :- FIRST APPEAL DEFECTIVE No. - 377 of 2023

Appellant :- Deepak

Respondent :- Smt. Reena

Counsel for Appellant :- Asad Ahmad

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Shri Asad Ahmad, learned counsel for the appellant and perused the record.

2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984 (hereinafter referred to as 'the Act') against the order dated 24.05.2022 passed by learned Additional Principal Judge, Family Court, Shahjahanpur, in Case No. 451 of 2018 (Smt. Reena Vs. Deepak) passed under Chapter IX, Section 125 of the Code Of Criminal Procedure, 1973 (in short 'Cr.P.C.'). By that order, the monthly maintenance amount Rs. 2500/- has been awarded to the respondent from the date of her application.

3. Besides the delay of 468 days reported by the stamp reporter, doubt exists as to the maintainability of the appeal.

4. Learned counsel for the appellant would submit that the appellant had first instituted the Criminal Revision No. 748 of 2023 (Deepak Vs. State of U.P. and another) before this Court against the order impugned in the present appeal proceedings. However, that proceeding was terminated by the following order dated 17.08.2023 :

"Sri Asad Ahmad, learned counsel for the revisionist and learned A.G.A. for the State are present.

Learned counsel for the revisionist states that he does not want to press the present revision and therefore it may be dismissed as not pressed with liberty to approach appropriate Court / forum.

The present revision is accordingly dismissed as not pressed with the aforesaid liberty.

Office is directed to return the certified copies of the documents annexed with this revision to learned counsel for the revisionist after retaining photo copies of the same."

5. Next, relying on the language of Section 19 (1) of the Act, it has been vehemently urged that the present appeal is maintainable as every order passed by the Family Court has been made appealable under Section 19(1) of the Act.

6. Having heard learned counsel for the appellant and having perused the record, we are not inclined to accept the submission advanced by learned counsel for the appellant. For ready reference, the provision of Section 19 of the Act are quoted below :

"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."

7. Undisputedly, the order impugned in the present appeal is one passed by the Family Court under Section 125 Cr.P.C. and not under Section 24 of the Hindu Marriage Act, 1955.

8. While, it is true that every judgment or order passed by a Family Court is appealable to the High Court both on facts and law, except interlocutory orders and though it may be expected that order providing for maintenance is of the nature that may be appealable, at the same time, the right of appeal granted under Section 19(1) of the Act is hedged. It has been made subject to the provision of Section 19(2) of the Act. By using the words "Save as provided in sub-section (2)", the parliament has left no doubt to be entertained as to the supremacy of sub-section (2) of Section 19 with respect to right of appeal created under Section 19(1) of the Act. Section 19(2) of the Act clearly denies right of appeal against any order that may be passed by a Family Court under Chapter IX of the Cr.P.C. Undisputedly Section 125 Cr.P.C. is an integral part of Chapter IX of the Cr.P.C.

9. Therefore, by virtue of the clear language of Section 19 of the Act, there can arise no dispute that any order passed by the Family Court with reference to Section 125 Cr.P.C. would not be

appealable to this Court.

10. As to the remedies that may have been available to the appellant, it is left open to him to seek appropriate remedies in accordance with law.

11. Appeal lacks merits and is accordingly **dismissed**. No order as to costs.

Order Date :- 20.11.2023

SA

(Shiv Shanker Prasad, J.)

(S.D. Singh, J.)