

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL APPLICATION NO. 1095 of 2022****In****F/FIRST APPEAL NO. 18576 of 2022**

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CHAUDHARY CHETNABEN DILIPBHAI**Versus****CHAUDHARY DILIPBHAI LAVJIBHAI**

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Appearance:

KAASH K THAKKAR(7332) for the Applicant(s) No. 1

BHISHMA A. RAWAL(12270) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE A.J.DESAI**and****HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN****Date : 17/01/2023****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE A.J.DESAI)**

1. By way of present application filed under Section 5 of the Limitation Act, present applicant - original respondent - wife has prayed to condone the delay of seven days in filing the captioned first appeal.
2. Rule was issued by the Coordinate bench of this Court on 06.07.2022. In response to the notice issued by this Court, Mr. Bhishma A. Rawal appeared for the respondent but he has not filed affidavit-in-reply in the matter.
3. It is the case of the applicant that since the Registry of this Court has raised objection with regard to delay of seven days in filing the captioned first appeal and therefore, present applicant is compelled to file this application for condonation of delay

though, as per her case, there is no delay in filing the captioned first appeal in view of the provisions of Section 28(4) of the Hindu Marriage Act, which provides the limitation of 90 days in filing the appeal challenging the judgment and order passed by the Court in the matrimonial proceedings.

4. Short facts arise from the record are that present respondent - husband has filed an application under Section 13 of the Hindu Marriage Act, 1955 for a decree of divorce on the ground that present applicant - wife has deserted him for more than 6 years before filing Family Suit No. 48 of 2018 before learned Family Court, Mahesana. The Principal Judge, Family Court, Mahesana, by judgment and order dated 21.04.2022, allowed the suit and passed the decree of divorce in favour of the respondent - husband. It is the case of present applicant that on 22.04.2022, learned advocate for present applicant had made the application for getting the certified copy of the judgment and order dated 21.04.2022 passed by Principal Judge, Family Court, Mahesana. The certified copy was delivered to present applicant on 02.05.2022. Therefore, she filed the captioned first appeal before this Court under Section-19 of the Family Courts Act, 1984 on 13.06.2022. It is also the case of present applicant that the Registry raised objection that the first appeal was supposed to file within a period of 30 days as provided under Section - 19(3) of the Family Courts Act, 1984, whereas, present appeal has not been filed within prescribed period of limitation i.e. 30 days. It is also the case of the applicant that prescribed period of limitation in challenging the judgment and order passed by the Family Court

with regard to issue arising under the provision of Hindu Marriage Act is of 90 days as provided under Section 24(4) of the Hindu Marriage Act and therefore, present first appeal has been filed within prescribed period of limitation. Hence, present application may be allowed.

5. Mr. Kaash Thakkar, learned advocate for the applicant, by taking us through the provision of Section 19 of the Family Courts Act and the provision of Section 28 of the Hindu Marriage Act, would submit that the enactment of Family Courts Act, 1984 is mainly for establishing the Family Court providing the procedure for expeditious disposal of the matrimonial dispute and the said law is of general nature, whereas, the Hindu Marriage Act is a special law enacted for resolving the disputes arising between the husband and the wife with regard to their marriage. He would submit that Section-28 of the Hindu Marriage Act provides for the appeal from a judgment and order challenging the jurisdiction of the Court below, who has dealt with the disputes between the husband and the wife. He would submit that as per Section 28(4) of the Limitation Act, time limit to file appeal against the judgment and order is of 90 days, which was amended in the year 2003 i.e. subsequent to establishment of the Family Courts Act, 1984, and therefore, the limitation of 90 days is to be calculated for the purposes of filing the appeal. In support of his submissions, he has relied upon the decision of Full Bench of the Bombay High Court in the case of **Shivram Dodanna Shetty Vs. Sharmila Shivram Shetty** reported in **2017(1) Mh.L.J.** By taking us through the said decision, he would submit that the

Full Bench of the Bombay High Court, after discussing the relevant provisions, has categorically held that the time limit for preferring the appeal challenging the judgment and order passed by the Family Court arising out of matrimonial disputes under the provision of the Hindu Marriage Act would be 90 days. He would further submit that, by relying upon the decision in the case of **Shivram Dodanna Shetty (Supra)**, the Rajasthan High Court, in the case of **Kuldeep Yadav Vs. Anita Yadav** reported in **2020(3) RLW 2595 (Raj.)**, has held that the period of limitation would be applicable under Section-28(4) of the Hindu Marriage Act and not under Section-19 of the Family Courts Act and he, therefore, would submit that appropriate order may be passed by holding that the appeal is filed within prescribed period of limitation.

6. Mr. Bishma A. Rawal, learned advocate for the respondent herein - original petitioner - husband, would submit that appropriate order may be passed.
7. We have heard learned advocates appearing for the respective parties.
8. The parliament enacted the Family Courts Act, 1984, which provides for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. Chapter - II of the Family Courts Act provides for the establishment of Family Courts, appointment of Judges, association of social welfare agencies, etc. and

counsellors, officers and other employees of Family Courts. Chapter-III and IV of the Family Courts Act provides for jurisdiction and procedure. Chapter-V, Section - 19 of the Family Courts Act, provides for appeal.

9. Section – 19 of the Family Courts Act reads 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.

(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.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.”

As per aforesaid section 19(3) of the Family Courts Act, period of 30 days is prescribed for filing the appeal.

10. The Hindu Marriage Act, 1955 was enacted to amend and codify the law relating to marriage among Hindus. Under the aforesaid Hindu Marriage Act, certain provisions have been made to solve the various types of disputes, which may arise between the husband and the wife and the family members i.e. restitution of conjugal rights, judicial separation, divorce, maintaining the spouse, permanent alimony and maintenance, custody of children etc. The parties may seek appropriate relief under the said provisions of Hindu Marriage Act, 1955. When such petitions are filed before the Family Courts under the Family Courts Act, 1984, the Family Court are supposed to follow the provision made under this Act.
11. Section 28 of the Hindu Marriage Act, 1955 deals with the appeal from judgment and order, which might be filed before the Court for the issue arising between the husband and the wife and the family members, can be challenged before the appropriate appellate Court.
12. Section-28 of the Hindu Marriage Act, 1955 reads as under:

"28. Appeals from decrees and orders. –
 - (1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.
 - (2) Orders made by the court in any proceeding under this Act

under section 25 or section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

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

13. Section 28(4) of the Hindu Marriage Act, 1955 was amended in the year 2003 and period of 30 days was extended from 30 days to 90 days in view of the decision of the Hon'ble Supreme Court in the case of **Savitry Pandey Vs. Prem Chandra Pandey** reported in **AIR 2002 SC 591**. Keeping in mind all these aspects of two different Acts, the Full Bench of the Bombay High Court has held that when the amendment was made in the Hindu Marriage Act, 1955 in the year 2003, the Legislature was aware about the prescribed period of 30 days by the Family Courts Act, 1984 and therefore, the said period is not required to be calculated while examining the limitation at the time of filing the appeal. The Full Bench of the Bombay High Court, in the case of **Shivram Dodanna Shetty (Supra)**, has held in Para - 11 to 29, which read as under:

(11.) We have considered the submissions advanced before us, perused the provisions of the relevant statutes and the judgments cited. We have also gone through some of the Parliamentary debates in respect of passing of both the enactments.

(12.) In the case of *Seaford Court Estates, Ltd. V/s. Asher, 1949 2 AER 155*, Ltd. vs. Asher, 1949 (2) All England Report 155 Lord Denning stated as under :-

".....Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the

manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity....."

- (13.) The provisions of Section 28 (4) of the Act of 1955 came to be amended consequent to the suggestion given by the Apex Court in Savitri Pandey's case (Supra). In its letter and spirit, the views of the Apex Court in the case of Savitri Pandey are required to be considered. The Apex Court observed that period of limitation prescribed for filing appeal under Section 28(4) was apparently inadequate which facilitates frustration of the marriages by unscrupulous litigant spouses. It is necessary to refer to the observations of the Apex Court in para 18 of the said judgment here itself:-

"18. 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 & Justice for such action as it may deem fit to take in this behalf." (Emphasis supplied)

- (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.
- (17.) Considering the provisions of the Act of 1984 and the Act of 1955, we do not find that there is an express repeal of the provisions of Section 28(4).
- (18.) The Apex Court, in para 11, in the case of R. S. Raghunath vs. State of Karnataka and anr., (1992) 1 SCC 335 by referring to earlier judgment in the case of Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447], observed as under:-

".... In Chandavarkar Sita Ratna Rao v. Ashalata S. Guram the scope of non-obstante clause is explained in the following words: (SCCp.477-78, para 67)

"A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment."

On a conspectus of the above authorities it emerges that the non-

obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of conflict. But the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules."

In the above case, in para 7, the Apex Court referred to the Maxwell on The Interpretation of Statutes (11th Edition, page 168). The principle of law was stated as under :

" A general later law does not abrogate an earlier special one by mere implication. *Generalia specialibus non derogant*, or, in other words, `where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act."

- (19.) Learned Senior Counsel, Mr. Aspi Chinoy, referred to the observations made by the Division Bench of Kerala High Court in paras 17 and 20 of the judgment in the case of Viswanathan P. K. vs. Sindhu M. K., 2009 SCC OnLine Ker 4124 which read as under :

"17. In this case, there is no specific non-obstante clause available in either statute. But both stipulations occupy the same field. The dictum above can hence be relied on safely. The learned counsel contend that the purpose and object of Marriage Laws Amendment Act 2003 must be taken into consideration and evidently the Marriage Laws Amendment Act was enacted in the light of the observations in paragraph 19 of Savitri Pandey (supra) which we have already extracted above. The purpose of amending Section 28(4) obviously was the inconvenience and hardship noted by the Supreme Court in Savitri Pandey (AIR 2002 SC 591). The Supreme Court observed that to prefer an appeal before the High Court against an order passed by the District Court, a period of 30 days may not be sufficient and that such a stipulation is

working out injustice as was revealed in the facts of that case. The purpose of the Marriage Laws Amendment Act, by which Section 28(4) of the Hindu Marriage Act was amended, was obviously to give a larger period of limitation for the parties aggrieved by the orders passed in matrimonial cases under the Hindu Marriage Act and the Special Marriage Act. In this view of the matter, considering the purpose and object of the Act it is evident that the period of limitation under Section 28(4) of the Hindu Marriage Act which amendment was brought in with effect from 23-12-2003 must be given prominence and predominance.

20. Fifthly, the learned counsel contends that the principle of law is well settled that when a later enactment prescribes a different period of limitation, such later enactment must be preferred. Of course, the Hindu Marriage Act was enacted in 1955. The Family Courts Act was enacted in 1984. But the crucial amendment to Section 28 (4) was enacted later in 2003. The parliament must be presumed to have known the relevant stipulations of general nature in Section 19(3) while bringing in the amendment to Section 28(4). In support of this proposition, the learned counsel relies on the following observations of the Supreme Court in paragraph 21 of Sarwan Singh (AIR 1977 SC 265) (Supra):

(20.) We may refer to the observations made by the Division Bench of this Court in paras 20, 21, 24 and 25 of the judgment in the case of Sonia Kunwar Singh Bedi vs. Kunwar Singh Bedi, 2015 (1) Mh.L.J. 954 which read as under:-

"20. Thus, later enactment must prevail over the former. The same test was approved by the Supreme Court in Shri Ram Narain vs. Simla Banking and Industrial Co. Ltd., 1956 SCR 603 : AIR 1956 SC 614. On the principle that the later enactment i.e. Marriage Laws Amendment Act, 2003 must prevail over the earlier enactment i.e. Family Courts Act, the larger period of limitation prescribed under section 28(4) of the Hindu Marriage Act must prevail. On the principle of equality under Article 14 of the Constitution of India also an identical period of limitation must be held to be applicable against all orders appealable under section 28 of the Hindu Marriage Act. Merely because the order is passed by a District Court, a larger period of limitation i.e. 90 days and merely because the order is passed by the Family Court, a lesser period of limitation of 30 days would be unreasonable and will not stand the test of equality. The interpretation must be such that an identical period of limitation would be available for orders appealable under section 28 of the

Hindu Marriage Act - whether such order is passed by the District Court or the Family Court.

21. Thereafter the learned counsel for the applicant also raised the contention that in view of section 20 of the Family Courts Act in which there is non-obstante clause, the Family Court Act would prevail over the Hindu Marriage Act.

The short question that remains to be considered is whether the non-obstante clauses in section 19 and 20 can override the applicability of the period of limitation prescribed for an appeal under section 28. A non-obstante clause cannot be read mechanically. The totality of the circumstances have to be taken into account. The precise intention of the legislature will have to be ascertained. Vague and general non-obstante clauses cannot operate to militate against specific stipulations made in enactments to meet specific situations. We have already discussed above why section 28 (4) of Hindu Marriage Act was amended, this circumstance has to be given due weightage.

24. The first two decisions relied upon by Mr. Jaisinghani are not applicable to the facts of the present case. The remaining three decisions which are pressed into service by Mr. Jaisinghani were rendered by Allahabad High Court, Madras High Court and Karnataka High Court, whereas the last two decisions in the case of Milan Tandel and Surekha Sawant (supra) are by Division Benches of this Court. We have already observed that the decisions by the Allahabad, Madras and Karnataka High Courts can at the most only have persuasive value.

25. We do not find any reason to take a different view from the one taken by the Division Bench of our Court in Milan Laxman Tandel's and Surekha Savant's cases. In view thereof, we reject the preliminary objection and hold that there is no delay in filing the appeal. In other words, we hold that the appeal having been filed within 90 days, as contemplated by section 28(4) of the Hindu Marriage Act, is within limitation. Hence, there is no merit in this application and the same is rejected."

- (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.
- (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.

14. Considering all these aspects, we are in agreement with the observations made by the Full Bench of the Bombay High Court and hold that the time limit for filing the appeal challenging the judgment and order arising from the dispute between the husband and the wife covers under the Hindu Marriage Act, 1955 as limitation of filing the appeal under the Hindu Marriage Act, 1955 is of 90 days, and therefore, there is no need to entertain present application since the appeal is filed within a period of 90 days prescribed under the Hindu Marriage Act, 1955. Accordingly, present application stands disposed of. Rule discharged.
15. Appeal along with connected civil application be listed on 01.02.2023.

(A.J.DESAI, J)

(RAJENDRA M. SAREEN, J)

•F.S. KAZI....