IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3311 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In
R/FIRST APPEAL NO. 3311 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI Sd/-
and
HONOURABLE MR. JUSTICE DIVYESH A. JOSHI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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RAJAN ANKLESHWARIA S/O MANOJKUMAR BABULAL ANKLESHWARIYA
Versus
VINNI ANKLESHWARIA D/O MAHESH GULSHANRAI MALHOTRA W/O RAJAN ANKLESHWARIA

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Appearance:
MR JAL UNWALA, SENIOR ADVOCATE with MS TEJAL A VASHI(2704) for the Appellant(s) No. 1
MR NIRAV C THAKKAR for MR BHAVIN J SATWARA(3718) for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI**
and
HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 06/09/2023

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI)

1. By way of present First Appeal under Section 96 of the Code of Civil Procedure and Section 19 of the Family Courts Act, appellant- original applicant has challenged the validity of an order dated 4.7.2023 passed below Exh.6 of Civil Misc. Application No.4 of 2023 passed by learned Principal Family Court at Anand.

2. The background of case which has given rise to present appeal is that appellant and respondent got married on 19.1.2013 and on 19.1.2014, their marriage was solemnized as per Hindu Customary Rites and Ceremonies at Anand and during their wedlock, a son, named as Dhven, was born on 26.7.2018. According to appellant, during passage of time, some difference of opinion generated between appellant and respondent and according to appellant, respondent wife left the matrimonial house on 26.10.2022 without any valid reason. When the respondent left the house, their son was with appellant husband at his residence at Ahmedabad and appellant alone used to take care of all needs of the son and used to take care of academic schedule and used to pick and drop the son from school. Later on, some arrangement has taken place for

dropping the son with respondent at her above-mentioned place at Anand in the weekends, i.e. on Friday, Saturday and Sunday, and pick him up on Sunday from Anand. Said arrangement was continued and academic schedule of their son was also not got disturbed. Minor son had a vacation in the school from 24.12.2022 till 2.1.2023 and as such respondent requested the appellant to drop their son at Anand for whole vacation period and keeping faith on respondent, appellant has dropped their son at the residence of respondent wife at Anand. Thereafter, on 2.1.2023, appellant called the respondent informing about his schedule to pick up their son, but respondent wife conveyed that she will not return the son to reside with appellant and thereafter having received such non-cooperative attitude, appellant was constrained to prefer an application being Civil Misc. Application No.4 of 2023 for seeking custody of their minor son Dhven under Sections, 7, 17 and 25 of Guardians and Wards Act, read with Section 13 of Hindu Minority and Guardianship Act read with Section 7 of the Family Courts Act and read with Order-XXXIX of Code of Civil Procedure and in that proceedings, an application was submitted below Exh.6 for

seeking interim and temporary injunction.

3. It is the case of the appellant that during pendency of the main proceedings, i.e. Civil Misc. Application No.4 of 2023, appellant received a notice on 4.3.2023 from the Family Court at Anand informing that respondent wife has preferred Civil Misc. Application No.1 of 2023 under Section 7 of the Guardians and Wards Act. Said applications then were referred for mediation on 4.3.2023 and later on, failure report was submitted on 27.3.2023 since mediation remained unsuccessful and matter came back in the Family Court. Subsequently, a joint pursis at Exh.18 was preferred on 28.3.2023 in Civil Misc. Application No.4 of 2023 indicating that minor son shall be with wife from Monday to Friday and in the weekends, i.e. from Saturday 5.00 p.m. to Sunday 6.00 p.m. minor son shall with present appellant. Said arrangement was abided by both the parties to the proceedings till hearing of interim and temporary injunction application being Exh.6. It is the case of the appellant that incidently, appellant has also filed an application under Section 9 of the Hindu Marriage Act before the Family Court on 28.6.2023 which has not been processed further, but then while

taking decision on 4.7.2023, learned Principal Family Judge, according to appellant, has traveled beyond the scope of application which has led the appellant to submit present First Appeal for the reliefs which are set out in paragraph 6 of the appeal. Operative part of the order passed below Exh.6 reads as under:-

O R D E R

(1) This application is partly allowed.

(2) The applicant father shall have visitation rights every Sunday of each calendar month for 4 hours between 4 p.m to 8 p.m. at the convenient place at Anand.

(3) The opponent shall handover the custody of minor son to the applicant during visiting hours and the applicant shall return the custody of minor son to the opponent after completion of visiting hours.

(4) The applicant shall pick up the minor at the residence of the opponent where the minor is residing at 4 p.m. and shall drop him back there after completion of visiting hours at 8 p.m.

(5) Parties are directed not to act in a manner that law and order should be breached during visiting hours.

Pronounced today on this 4th day of July, 2023 in the Open Court at Anand.

4. In the background of aforesaid circumstance, appellant has preferred this First Appeal and upon advance copy, learned advocate Mr. Nirav C. Thakkar with Mr. Bhavin J. Sathwara has

represented the respondent and upon request of learned advocates, the matter is taken up for hearing on the preliminary issue raised by the opponent about maintainability of present First Appeal.

5. When the matter is taken up for hearing, learned advocate Mr. Nirav C. Thakkar appearing on behalf of the respondent has submitted that looking to the impugned order which has been passed by the Court below, First Appeal in the present form is not maintainable, at the best, appellant is required to prefer either Civil Revision Application or Special Civil Application. It has been submitted that by virtue of order impugned, essentially the relief contained in Exh.6 is governed basically by Order-XXXIX Rule 1 and 2 of Code of Civil Procedure since what has been asked for is the interim and temporary injunction in which *prima facie*, balance of convenience and irreparable loss aspects are only to be considered. Whereas, entertaining First Appeal under Section 96 of Code of Civil Procedure or under Section 19 of the Family Courts Act would be giving wide scope of jurisdiction which is otherwise not available and since while deciding Exh.6, yet evidence is not led by either parties,

jurisdiction under Section 96 of Code of Civil Procedure or under Section 19 of the Act is not amenable to the appellant. Since order is interlocutory in nature, even taking provisions of the Guardians and Wards Act also, relief such which has been sought for by the appellant can be a subject matter of appeal under Section 47 at the best and as such in no case, present First Appeal under Section 96 of Code of Civil Procedure or under Section 19 of the Act is maintainable. By drawing attention to the relevant provisions of the Guardians and Wards Act, namely Sections 7, 25 as well as 47, a contention is raised that *ex-facie*, present appeal is not maintainable and impugned order being interlocutory order, no appeal is competent. As a result of this, learned advocate Mr. Thakkar has submitted that at the threshold, since appeal is not maintainable, same may be dismissed on this preliminary issue. To substantiate his contention, learned advocate Mr. Thakkar has made a reference to two decisions delivered by Delhi High Court, one in the case of Colonel Ramesh Pal Singh v. Sughandhi Aggarwal delivered in MAT.AP. (F.C.) 211/2017 & CM APPL. 44390/2017 pronounced on 1.10.2019 and another decision dated 13.9.2012

delivered by Delhi High Court in case of Manish Aggarwal v. Seema Aggarwal and Ors. [FAO No.388 of 2012: CM No.15667 of 2012 & CM NO.15668 of 2012]and by referring to these two decisions and relevant observations contained in paragraphs 25 and 26 respectively, a contention is raised that present appeal is not competent and as such same be dismissed.

6. It has further been contended that under the provisions of the Guardians and Wards Act, 1890, a statutory provision is specifically made as to which are the orders appealable and Section 47 is clearly indicating that for the relief, which has been sought for, of interim injunction in nature, such order is not appealable, hence a request is made to dismiss the appeal as not competent.

7. As against this, learned senior advocate Mr. Jal S. Unwala appearing for appellant has vehemently contended that Section 19 of the Family Courts Act is wide enough covering any order as appealable and as such impugned order which has been passed is clearly appealable. It has been submitted that looking to the relief which has been sought for in the application Exh.6

and order passed thereupon, Section 47 would not have any application and there is a clear distinction between interim order and interlocutory order, hence has submitted that this being not an interlocutory order, appeal would be maintainable. According to Mr. Unwala, even if it is to be treated as application for interim injunction, then order which has been passed cannot be treated as interlocutory in nature, it can be termed as interim order and that being the position, appeal is competent. Mr. Unwala has made a reference of two decisions, one by Coordinate Bench of this Court [judgment dated 1.5.2023 rendered in First Appeal No.1820 of 2023] and another by Delhi High Court [order dated 22.10.2021 passed in MAT. AAP. (FC) No.126 of 2019] and by making reference of both these decisions, a contention is raised that preliminary objection which has been raised about maintainability out-rightly deserves to be rejected.

8. Learned senior advocate Mr. Unwala has submitted that question was cropped up before Delhi High Court in almost in identical situation about visitation right of a minor and High Court of Delhi has taken a view that nature of order is to be

seen; either to treat the same as interim or interlocutory order. Any order which affects the rights and welfare of minor child always to be treated as interim in nature and it cannot be termed as interlocutory order, hence by referring to paragraphs 12 to 14 of the judgment of Delhi High Court (supra), a contention is reiterated that preliminary issue deserves to be discarded.

9. Additionally, learned senior advocate Mr. Unwala has further submitted that Coordinate Bench of this Court in First Appeal No.1820 of 2023 has also examined the issue relating to interpretation of Section 19 of the Family Courts Act and has submitted that any order which is passed by Family Court with regard to dispute/ controversy/ action between the parties if finally deciding rights and no further issue on such dispute remains to be adjudicated, then such orders can be termed as final orders and same are always appealable under Section 19 of the Family Courts Act. Hence, interim injunction sought below Exh.6 if to be construed in its proper perspective, same is to be treated as interim in nature and not interlocutory order. Accordingly, appeal is very much competent and same deserves

to be adjudicated upon on merits. No other submissions have been made.

10. Having heard learned advocates appearing for the parties and having gone through the material on record, it appears that main application which has been submitted being Civil Misc. Application No.4 of 2023 is filed under Sections 7, 17 and 25 of the Guardians and Wards Act, read with Section 13 of Hindu Minority and Guardianship Act read with Section 7 of the Family Courts Act and read with Order-XXXIX of Code of Civil Procedure and relates to seeking injunction. Relief clause contained in the said application is in paragraph-39 which reads as under:-

> (a) The Hon'ble Court be pleased to direct the Opponent to return the custody of the minor son DHVEN to the Applicant.
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> (b) The Hon'ble Court be pleased to declare that the Opponent is not entitled to take the minor child outside the jurisdiction of this Hon'ble Court without the permission of the Applicant and this Hon'ble Court.
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> (c) The Hon'ble Court be pleased to permanently restraint the Opponent from taking the minor son out of the jurisdiction of this Hon'ble Court without the permission of this Hon'ble Court.
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> (d) The Hon'ble Court be further pleased to grant such other and further relief as may be just and proper in the facts and

circumstances of the case, in favor of the Applicant and against the Opponent.

11. During pendency of aforesaid main application, an application seeking temporary injunction was moved at Exh.6 in which after narrating the circumstance, prayers have been made in paragraph-40 which reads as under:-

(a) Pending hearing and final disposal of the case the Hon'ble Court be pleased to direct the Opponent to return the custody of the minor son DHVEN to the Applicant.

(b) Pending hearing and final disposal of the case Hon'ble Court be pleased to temporarily restrain the Opponent from taking the minor son out of the jurisdiction of this Hon'ble Court without the permission of this Hon'ble Court.

(c) Pending hearing and final disposal of the case the Hon'ble Court be pleased to grant unlimited visitation rights to the Applicant towards the minor son physically and also virtually through video.

(d) The Hon'ble Court be further pleased to grant such other and further relief as may be just and proper in 'the facts and circumstances of the case, in favor of the Applicant and against the Opponent.

12. Aforesaid prayer contained in Exh.6 had been dealt with by order dated 4.7.2023 in which, as indicated above, while allowing the application in part, visitation rights are prescribed in the manner which is reflecting from the order. It is this order which is made the subject matter of present First Appeal.

13. Main issue raised before the Court is whether this order dated 4.7.2023 is to be construed as interlocutory or interim order and whether is amenable to Section 96 of Code of Civil Procedure or Section 19 of the Family Courts Act to prefer First Appeal and in this context, we have considered the submissions of both the learned advocates.

14. Which orders are to be considered and treated as interim or interlocutory is well propounded in series of decisions by now. Here in this case, prayers which are made in the main application are to the effect to return the custody of minor son to the applicant and declare that opponent is not entitled to take minor child outside the jurisdiction of the Hon'ble Court without permission of the applicant and Hon'ble Court and also sought a relief to permanently restrain the opponent from taking minor child out of the jurisdiction of the Court without permission. Whereas, in application at Exh.6, a prayer is made, as indicated above, to direct the opponent to return the custody of minor son to the applicant and pending that application, opponent be temporarily restrained from taking minor son out of the

jurisdiction of the Court and during pendency and final disposal of the said application, relief is sought to grant unlimited visitation right to the applicant of minor son. It is this relief which is dealt with by learned Family Court and considering the totality of circumstance, visitation rights have been extended to the appellant for a particular period as already mentioned in operative part which is stated herein-before. It appears that this order which has been passed, impugned in the appeal, is not finally deciding the issue in respect of visitation rights or custody of child.

15. The meaning of an interlocutory order is that if the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. So, in the ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial or main application, which does not however conclude the main controversy itself and as such, if the term interlocutory order if interpreted in its logical and natural sense, same would not decide finality of issue. Here in

the case on hand, perusal of the relief of the main application i.e. Civil Misc. Application No.4 of 2023 is clearly indicating that same has been filed for return of the custody of minor and a relief to declare that opponent is not entitled to take minor child outside the jurisdiction and also sought a permanent relief to restrain the opponent from taking the minor out of jurisdiction of the Court, whereas interim prayer which has been made in an application which is filed in the main application below Exh.6, is to direct the opponent to return the custody of minor to the applicant and temporarily restrain the opponent from taking the minor outside the jurisdiction and as such while deciding the application Exh.6, rights with regard to return of the custody issue has not been finally decided and as such, by no stretch of imagination it can be said that impugned order is not an interlocutory order. To more amplify the above conclusion, to treat the impugned order as interlocutory order, we have an assistance of following decisions which we feel it necessary to quote hereunder:-

(1) In the case of Vishal Kochar v. Pulkit Sahni and Another reported in 2022 SCC OnLine Raj 3337, the Court has observed

based upon the decision of Hon’ble the Apex Court reported in AIR 1980 SC 962 and since some of the observations are very relevant, we deem it proper to quote paragraph 7 hereunder:-

> “7. Term 'Interlocutory Order' has not been defined in the Cr.P.C. Hon'ble Apex Court in the case of V.C. Shukla vs State, reported in AIR 1980 (SC) 962 , has given following observation in para No.23 regarding the nature of interlocutory order:-
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> "Thus, summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in the ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having to resort to Criminal Procedure Code or any other statute. 'That is to say, if we construe interlocutory order in ordinary (4 of 13) [CRLR-462/2021] parlance it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in s. 11(1) of the Act."
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> 8. Further, in the case of Madhu Limaye vs State of Maharashtra, reported in (1977) 4 SCC 551, the Hon'ble Apex Court has made following observations with regard to the criterion of interlocutory order:-
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> "Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606:-
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> "..... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of two words must therefore be considered separately in relation to the particular purpose for which it is required.'
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> In para 1607 it is said:-
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> "In general a judgment or order which determines the principal matter in question is termed "final".
>
> "In para 1608 at pages 744 and 745 we find the words:-

> "An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the- final judgment are to be worked out, is termed "interlocutory". An (5 of 13) [CRLR-462/2021] interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

(2) Yet, in another decision of Hon'ble the Apex Court in the case of Honnaiah T.H. v. State of Karnataka and others reported in 2022 LiveLaw (SC) 672, observations contained in paragraph-12 are relevant, which we deem it proper to quote hereunder:

> "12 There would be a serious miscarriage of justice in the course of the criminal trial if the statement were not to be marked as an exhibit since that forms the basis of the registration of the FIR. The order of the trial judge cannot in these circumstances be treated as merely procedural or of an interlocutory in nature since it has the potential to affect the substantive course of the prosecution. The revisional jurisdiction under Section 397 CrPC can be exercised where the interest of public justice requires interference for correction of manifest illegality or the prevention of gross miscarriage of justice. 5 A court can exercise its revisional jurisdiction against a final order of acquittal or conviction, or an intermediate order not being interlocutory in nature. In the decision in Amar Nath v State of Haryana, 6 this Court explained the meaning of the term "interlocutory order" in Section 397(2) CrPC. This Court held that the expression "interlocutory order" denotes orders of a purely interim or temporary nature which do not decide or touch upon the important rights or liabilities of parties. Hence, any order which substantially affects the right of the parties cannot be said to be an "interlocutory order". Speaking for a two-Judge Bench, Justice Murtaza Fazal Ali observed:
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> "6. […] It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because

> that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so Amit Kapoor v Ramesh Chander, (2012) 9 SCC 460; Sheetala Prasad v Sri Kant, (2010) 2 SCC 190 6 (1977) 4 SCC 137 as to be outside the purview of the revisional jurisdiction of the High Court."
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> Explaining the historical reason for the enactment of Section 397(2) CrPC, this Court observed in Amar Nath (supra) that the wide power of revision of the High Court is restricted as a matter of prudence and not as a matter of law, to an order that "suffered from any error of law or any legal infirmity causing injustice or prejudice to the accused or was manifestly foolish or perverse." In KK Patel v State of Gujarat,7 where a criminal revision was filed against an order taking cognizance and issuing process, this Court followed the view as expressed in Amar Nath (supra), and observed:
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> "11. [....] It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath v State of Haryana, Madhu Limaye v State of Maharashtra, 8 VC Shukla v State,9 and Rajendra Kumar Sitaram Pande v Uttam 10). The feasible test is whether upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable."

16. From the aforesaid situation, we are of the clear opinion that so long as the relief of seeking return of the child is not finally decided by virtue of impugned order, same cannot be said to be an interim order, but is merely an interlocutory order since said impugned order is neither finally deciding the right of

the applicant about custody nor terminating the main application. Since that be the situation, it is not possible for us to construe the impugned order as not an interlocutory order.

17. We may state that provisions of the Family Courts Act have been brought for speedy settlement of family disputes and thereby for enforcement of such rights looking to the need, for speedy disposal of the disputes relating to marriage and family affairs and for the matters connected therewith, a legislation in the form of Family Courts Act, 1984 has been brought in. Section 19 contained in Chapter-V deals with appeals and revisions. Phraseology used in sub-section (1) of Section 19 provides that no appeal shall lie from any judgment or order which is an interlocutory order. Provision of appeal under Section 19 of the Act as such is stringent by incorporating *non-obstante* clause therein. Even a revision against an interlocutory order is barred by virtue of sub-section (4) of Action 19 and as such when the legislature in its wisdom thought it fit to enact Section 19 with a particular phrase and object to dispose of matrimonial cases as expeditiously as possible, such clear and unambiguous language cannot be ignored by the Court and

literal words which are used in the very Section are not possible to be interpreted in a different way, which may frustrate the very object for which the provision is made and as such when this statutory provision itself is clearly indicating in no uncertain terms that appeal against an interlocutory order is amenable, we are of the clear opinion that there is a substance in the preliminary objection raised by learned advocate appearing for the opponent.

18. In the light of the afore-mentioned discussion, when we perused the decisions which have been cited by before us by learned senior counsel Mr. Unwala to withstand the preliminary objection, we noticed a clear distinction between the fact situation than what is on hand of this Court in decision dated 1.5.2023 taken in First Appeal No.1820 of 2023. An overall reading of the said judgment has emerged a situation where right of the appellant wife seeking documents was closed forever, leaving her with no other remedy and as such said order in that case was treated as not interlocutory. The Court at several places has clearly observed that text and tenor of the order reveals that application below Exh.45 seeking documents

has finally determined the rights of appellant as well as the husband with regard to production of documents which would have a direct bearing on the determination of quantum of compensation for the appellant wife and her minor son and in that fact situation, when order has foreclosed the rights of the parties finally, the Coordinate Bench has come to a conclusion that appeal cannot be said to be non-maintainable. Whereas, here in this case, as discussed above, main application is also for return of the custody of minor and interlocutory application below Exh.6 has also contained a relief to return the custody pending hearing of the main application and as such passing of an order below Exh.6 in the case on hand can never be said to be interim order but it is clearly an interlocutory order as is not finallydeciding the right of relief contained in the main application. Hence, judgment referred to by learned senior counsel Mr. Unwala of Coordinate Bench dated 1.5.2023 passed in First Appeal No.1820 of 2023 is of no assistance to the appellant.

19. At this stage, we may observe that decision delivered by the Coordinate bench is no-doubt binding but if the facts

situation are altogether different and Court with above observation has treated that order passed in that proceeding was finally deciding the rights and hence in a different situation prevailing on this case, we are unable to apply said observations as a straitjacket formula without ignoring different facts situation.

20. At this stage, we may quote the observations made by the Hon'ble Apex Court on the issue of precedential value of an order which would clearly support the conclusion which we have arrived in the present case on hand, i.e. paragraph 64 of the decision in the case of ***State of Madhya Pradesh Vs. Narmada Bachao Andolan and Another*** reported in ***(2011) 7 SCC 639***:-

> "64. The Court should not place reliance upon a judgment without discussing how the factual situation fits in with a fact-situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the material facts and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to the precedential value of a decision. A judgment of the Court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases. Disposal of cases by blindly placing reliance upon a decision is not proper. (Vide MCD v. Gurnam Kaur, Govt. of Karnataka v. Gowramma and State of Haryana v. Dharam Singh)"

21. Additionally, the decision of Delhi High Court, which has been pointed out by learned senior counsel Mr. Unwala is also on a different fact situation and candidly, it has been submitted that said order dated 22.10.2021 is referred to a Larger Bench for further consideration of issue and it has been submitted that no final order by Larger Bench is yet available. In that view of the matter, we are not impressed by the submissions made by learned senior counsel Mr. Unwala based upon said decision of Delhi High Court, more particularly when aforesaid discussion is clearly indicating that preliminary objection raised by learned advocate Mr. Nirav C. Thakkar for the opponent is worthy of acceptance. So far as other provisions which are taken in aid for maintainability of the appeal, i.e. Section 96 of the Code of Civil Procedure and provisions which are mentioned in the column below cause title, same having not been so agitated or argued and as such since in substance, impugned order is whether appealable or not in view of Section 19 of the Family Courts Act, we have dealt with the issue and as such when special law has specifically prescribed a statutory provision, same deserves no ignorance. Accordingly, keeping in view the aforesaid

discussion, we are of the opinion that objection which has been dealt with is sustainable.

22. Since we are disposing of the First Appeal only on preliminary issue with regard to its maintainability, we desist ourselves from expressing any opinion on merit with regard to other contentions contained in the proceedings and we leave it open for the appellant to agitate in an appropriate proceeding permissible in law.

23. With aforesaid observations, we hereby DISMISS the First Appeal as being not maintainable.

24. Since the main First Appeal is dismissed, Civil Application does not survive for further consideration. Accordingly, same also stands DISPOSED OF.

Sd/-
(ASHUTOSH SHASTRI, J)

Sd/-
(DIVYESH A. JOSHI,J)

OMKAR