

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

APPEAL FROM ORDER NO. 281 OF 2023

02ND AUGUST, 2023

BETWEEN:

Smt. Priyanka Gupta

.....Appellant.

And

Ankit Gupta

....Respondent.

Counsel for the Appellant : Mr. Abhishek Verma, learned counsel.

Counsel for the Respondent : Mr. Piyush Garg, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

An interesting issue arises in the present appeal with regard to the maintainability of this appeal before this Court.

2. The issue of maintainability arises in view of the fact that the order impugned by the appellant under Section 19 of the Hindu Marriage Act, was passed by the Family Court, Bulandsahar, Uttar Pradesh on 27.04.2023. The application seeking recall of the said order was also dismissed by the Family Court, Bulandsahar on 03.05.2023. Thereafter, *vide* order dated 08.05.2023, the Supreme Court transferred the proceedings in the divorce case preferred by the respondent- husband before the Family Court, Bulandsahar to the court of competent jurisdiction at Haridwar, Uttarakhand.

The proceedings, therefore, now stand transferred to the Family Court, Haridwar.

3. Since the orders impugned in the present appeal were passed by the Family Court, Bulandsahar, which falls in the State of Uttar Pradesh, we had doubts whether the appeal against the said orders would lie before the Allahabad High Court, or before this Court, under Section 19 of the Family Courts Act.

4. On that aspect, we have heard learned counsels.

5. Our attention has been drawn to Section 105 of the Code of Civil Procedure by Mr. Garg. The relevant portion thereof reads as follows:-

"105. Other orders.- (1) *Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal".*

6. It is argued by Mr. Garg that, orders from which no appeal specifically lies, could still be questioned in an appeal arising from the final judgment, or decree.

7. That being the position, if no appeal were to be preferred against the impugned orders, or this Court were not to entertain the present appeal, and a final decree/ judgment is passed against the appellant, the appeal against the final

judgment & decree would still be maintainable before this Court against, and at that stage, the orders impugned in the present appeal could also be challenged, and appealed against before this Court.

8. The argument of Mr. Garg is that it would be incongruous, if two High Courts were to exercise the appellate jurisdiction in respect of the same orders. Therefore, the present appeal would lie before this Court.

9. Learned counsels submit that they have not been able to find any decision dealing with the aspect raised by us specifically. Though, there are cases which state that once a case is transferred from one State to another, the appeal would lie before the Superior Courts/ High Courts, which exercise the appellate jurisdiction in respect of the orders passed by the Transferee Court

10. We may refer to the judgment of the Madras High Court in the case of "**Kongandra Appayaa and others vs. Kongandra Kuttappa and others, AIR 1921 Mad 687 (1)**". This decision has been followed by the Allahabad High Court in the case of **M/s Bata India Limited & others vs. Vth Additional District Judge, Agra & others, (1999) 2 AWC 999; 1999 All LJ 775.**

11. We find merit in this submission and accept the same.

12. We are, therefore, inclined to entertain the present appeal.

13. By the impugned orders, the right of the appellant-wife to file her written statement was closed by the Family Court, and her application to seek recall of the said order was also rejected. The said orders materially affect the rights of the appellant- wife, and causes serious prejudice to the appellant.

14. Mr. Garg fairly does not oppose the present appeal, but submits that the proceedings before the Family Court be expedited.

15. In the light of the aforesaid, we allow the present appeal and set-aside the impugned orders.

16. The appellant is granted one week's time to file her written statement. In case the written statement is not filed within one week, the right of the appellant to file the same shall stand closed once again.

17. The Family Court shall endeavour to decide the case within six months from the date of service of this order upon the Family Court. No undue adjournments shall be sought by either of the parties, and none shall be granted by the Court.

18. The appeal stands disposed of in the aforesaid terms.

19. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 02nd August, 2023

NISHANT