

IN THE HIGH COURT OF TRIPURA
AGARTALA

MAT APP. No. 15 of 2014

Sri Dulal Shil,
son of late Anil Shil,
resident of Singhi Chara,
P.O. Paschim Singhi Chara,
P.S. Khowai, District – West
Tripura.

..... **Appellant**

- V e r s u s -

Smt. Dali Shil,
Wife of Sri Dulal Shil,
D/O- Lt. Sachindra Kumar
Shil, resident of Chandrapur,
Near Tata Company, P.O.
Reshambagan, P.S. East
Agartala, District – West
Tripura

..... **Respondent**

B E F O R E
THE HON'BLE MR. JUSTICE U.B. SAHA
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant	:	Mr. A. Bhowmik, Advocate.
For the respondent	:	Ms. K. Roy, Advocate.
Date of hearing	:	11.02.2015
Date of delivery of Judgment & order	:	06.05.2015

Whether fit for reporting	:	YES	NO
		√	

JUDGMENT & ORDER

(S. Talapatra, J)

Having questioned the legality of the order dated 10.07.2014 directing payment of maintenance pendente lite and expenses of the proceeding in Misc. 26 of 2014, related to the Title

Suit (Divorce) 410 of 2013 delivered by the Judge, Family Court, Agartala, West Tripura, this appeal under Section 19(1) of the Family Courts Act, 1984 has been preferred by the petitioner who instituted the suit seeking dissolution of marriage by decree. The respondent herein, in the Title Suit (Divorce) 410 of 2014, filed an application under Section 24 of the Hindu Marriage Act for provisioning maintenance pendente lite and the expenses of the proceeding. By the order dated 10.07.2014, the petitioner has been directed to pay the respondent a sum of Rs.5,000/- by the next date and to provide maintenance @Rs.3,000/- per month w.e.f. 01.07.2014 till disposal of the Title Suit (Divorce) 410 of 2013. It has been further directed that the remittance be made by the money order within 10th day of every English calendar month. The petitioner shall also bear the charge for money order. The petitioner however has been given liberty to remit in the bank account of the respondent, if the details are furnished later on.

[2] The respondent has raised a preliminary objection as to the maintainability of the appeal under Section 19(1) of the Family Courts Act, 1984 contending that the impugned order is an interlocutory order and against an interlocutory order neither an appeal under Section 19(1) nor any revision can be carried out in view of Section 19(5) of the Family Courts Act, 1984.

As agreed by the counsel, this Court has decided that the question of maintainability would be heard along with the merit in the appeal and in the event it is held for any reason that appeal is maintainable under Section 19(1) of the Family Courts Act, 1984, the appeal would be decided on merit. Hence, by the order dated 14.01.2015 we called for the records.

[3] Ms. K. Roy, learned counsel appearing for the respondent has taken us to the provisions of Section 19(1) of the Family Courts Act, 1984 to contend that 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. For purpose of reference, Section 19(1) of the Family Courts Act, 1984 is reproduced hereunder:

Section 19. Appeals : - (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Criminal Procedure, c1908 (5 of 1908) or in the Code of Civil Procedure, 1973(2 of 1974) or in any other law, an appeal shall lie from every judgment and order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

[4] Section 19(5) of the Family Courts Act, 1984 provides that no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court except as provided in sub-sections (1)& (4) subject to sub-sections (2)& (3) of Section 19 of the Family Courts Act, 1984. Ms. Roy, learned counsel has submitted that the impugned order is an interlocutory order as it has not

determined the rights of the parties finally. It is an interim order till disposal of the suit. Thus, no appeal from the order being an interlocutory order shall lie. Hence, this appeal be shot down at the threshold.

[5] From the other side, Mr. A. Bhowmik, learned counsel appearing for the appellant while responding to the objection as to maintainability of the appeal has submitted that Section 19(1) of the Family Courts Act, 1984 has accommodated a provision for appeal against every judgment or order. An order can also be a judgment within the meaning of Section 2(9) of the C.P.C. which provides that “*‘judgment’ means the statement given by the Judge on the grounds of a decree or order.*” He has further contended that the order passed under Section 24 of the Hindu Marriage Act, 1955 cannot be termed as interlocutory order inasmuch as what is decided under Section 24 of the Hindu Marriage Act, 1955 is not a decision subject to the final decision that would be taken in the suit. This provision is independent of the suit. It can only be invoked where any proceeding under the Hindu Marriage Act is in seison and it appears to the court that either the wife or the husband as the case may be has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding and monthly maintenance during the proceeding such sum as having regard to the petitioner’s

own income and the income of the respondent, it may seem to the court to be reasonable. Even such decision on the right to have maintenance pendente lite and expenses of proceeding is independent of the provision of Section 25 of the Hindu Marriage Act, 1955 where the court exercising the jurisdiction under Section 25 of the Hindu Marriage Act, 1955 decides entitlement and quantum of permanent alimony or maintenance. In support of his contention, Mr. Bhowmik, learned counsel has relied mainly on 3(three) decisions whereas he has candidly admitted that there exists divergent views. In **Rahul Samarat Tandon vs. Smt. Neeru Tandon**, reported in **AIR 2010 Uttarakhand 67**, a Division Bench of Uttarakhand High Court on considering the divergent decisions of the several High Courts has held that an appeal under Section 19(1) of the Family Courts Act, 1984 is maintainable against an order passed under Section 24 of the Hindu Marriage Act, 1955. In a latter decision, the Delhi High Court in **Manish Aggarwal vs. Seema Aggarwal and others** by their decision dated 13.09.2012 delivered in FAO No.388 of 2012 has concurred with the decision of the Uttarakhand High Court in **Rahul Samarat Tandon vs. Smt. Neeru Tandon**. Delhi High Court in **Manish Aggarwal vs. Seema Aggarwal and others** has observed as under:

26. We, thus, conclude as under:

(i) in respect of orders passed under Sections 24 to 27 of the HM Act appeals would lie under Section 19(1) of the said Act to the Division Bench of this Court in view of the

provisions of sub section (6) of Section 19 of the said Act, such orders being in the nature of intermediate orders. It must be noted that sub-section (6) of Section 19 of the said Act is applicable only in respect of sub-section (1) and sub-section (4) of Section 19 of the said Act.

[6] In **P.T. Lakshman Kumar vs. Mrs. Bhavani**, Madras High Court in their decision dated 23.04.2013 delivered in CRP PD No.1765 of 2010 after considering all the divergent opinions of the various High Courts has held that an order passed by the Family Court under Section 24 of the Hindu Marriage Act is appealable under Section 19(1) of the Family Courts Act, 1955 to the High Court. Mr. Bhowmik, learned counsel has urged this Court to accept the analogy as provided by the Uttarakhand High Court, Delhi High Court and Madras High Court in relegation of the analogy provided by the decision contrary to those by the Rajasthan High Court in **Mahesh Bhardwaj vs. Smt. Smita Bhardwaj**, reported in **AIR 1995 Rajasthan 47**, Karnataka High Court in **R. Varadaraj vs. Smt. Nirmala**, reported in **AIR 2002 Karnataka 241** and Full Bench of the Orissa High Court in **Swarna Prava Tripathy and another vs. Dibyasingha Tripathy and another**, reported in **AIR 1998 Orissa 173**. It has been held on those decisions that an order passed under Section 24 of Hindu Marriage Act, 1955 is not open to an appeal under Section 19(1) of the Family Courts Act, 1984 as the order is interlocutory in nature.

[7] Our purpose would be to locate or innovate a sound analogy and to determine the question of maintainability on the cleavage of divergent decisions of the several High Courts. What surfaces primarily from the contentions advanced by the learned counsel for the parties that if the order passed under Section 24 of the Hindu Marriage Act has the trappings of the judgment or if it is not an interlocutory order, the said order is amenable to appeal under Section 19(1) of the Family Courts Act, 1984. Therefore, the fundamental question involved in the controversy is whether the order passed under Section 24 of the Hindu Marriage Act is an interlocutory order or not. The question as to whether a judgement or an order is final or not has been subject matter of a good number of decisions, yet no single general test for finality has been laid down till **Mohanlal Maganlal Thakker vs. State of Gujarat**, reported in **AIR 1968 SC 733**, where the apex court per majority has observed that:

'The reason probably is that a judgment and order may be final for one purpose and interlocutory for another or final as to part an interlocutory as to part. The meaning of the two words 'final' and 'interlocutory' has, therefore, to be considered separately in relation to the particular purpose for which it is required. However, generally speaking a judgment or order which determines the principle matters in question is termed final. It may be final although a direct inquiries or is made on interlocutory application or reserves the liberty to apply. In some of the English decisions where this question arose one or the other of the following four tests was applied:

(i) Was the order made upon application such that a decision in favour of either party would determine the main dispute?

(ii) Was it made upon an application upon which the main dispute could have been decided?

(iii) Dose the order as made determine the dispute?

(iv) If the order in question is reserved would the action have to go on?

[8] The apex court after surveying the precedents in **Mohanlal Maganlal Thakker vs. State of Gujarat** has finally held that:

The aforesaid discussion leads the conclusion that when the Magistrate ordered the filing of the complaint against the appellant, the parties to that controversy were te State and the appellant and the controversy between them was whether the appellant had committed offence charged against him in that complaint. The appeal filed by the appellant before the Additional Sessions Judge was against the order filing the complaint, the controversy therein raised being whether the Magistrate was justified in filing it, that is to say, whether it was expedient in the interest of justice and for the purpose of eradicating the evil of false evidence in a judicial proceeding before the Court. The controversies in the two proceedings were thus distinct thought the parties were the same. When the additional Sessions Judge held that the complaint was justified in respect of the offence under Section 205 read with Section 114 an was not justified in respect of the other offences his judgment in the absence of a revision by the State against it finally disposed of that part of the controversy, i.e, that the complaint in respect of offences under Ss. 467 and 468 read with Section 114 was not justified. When the appellant filed revision in respect of the complaint for the remaining offence under Section 205 read with S.114 the Single Judge of the High Court dismissed that revision. His order of dismissal disposed of that

controversy between the parties and the proceedings regarding that question as to whether the complaint in that regard was justified or not was finally decided. As observed in 1966-3 SCR 198= (AIR 1966 SC 1445) (supra) the finality of that order was not to be judged by c-relating that order with the controversy in the complaint, viz., whether the appellant had committed the offence charged against him therein. The fact that the controversy still remained alive is irrelevant. It must consequently be held that the order passed by the High Court in the revision filed by the appellant was a final order within the meaning of Article 134(1) (c).

[Emphasis added]

[9] That proposition per majority has been dissented per minority as under:

In a civil proceeding, an order is final if it finally decides the rights of the parties, See *Firm Ramchand Manjilal v. Firm Goverdhandas Vishindas Ratanchand*, 47 IND App 124 = (AIR 1920 PC 86). If it does not finally decide the rights of the parties, the order is interlocutory, though it conclusively determines some subordinate matter and disposes of the proceeding in which the subordinate matter is in controversy. For this reason, even an order setting aside an award is interlocutory, see *Croasdell and Cammel Laird and Co., Ltd., In re*, (1906) 2 KB 569. A similar test has been applied for determining whether an order in a criminal proceeding is final. See 1947 FCR 180 = (AIR 1949 FC 1). For the purposes of this appeal, we do not propose to examine all the decisions cited at the bar and to formulate a fresh test on the subject. Whatever test is applied, an order directing the filing of a complaint and deciding that there is a prima facie case for an enquiry into an offence is not a final order. It is merely a preliminary step in the prosecution and therefore an interlocutory order. As the order is not final, the High Court was not competent to give a certificate under Article 134(1) (c) of the Constitution. The appeal is not maintainable and is dismissed.

[10] Similar controversies continue to visit in the proceedings seeking a response in the factual background of cases. In **Tarapore & Co. vs. M/s. V/O Tractors Export, Moscow and Anr.**, reported in **AIR 1970 SC 1168**, the apex had occasion to revisit **Mohanlal Maganlal Thakker vs. State of Gujarat**. On observing that an order is final if it amounts to final decision on the rights of the parties in dispute in the suit or proceeding. If after the order is made, the suit or proceeding still remains to be tried and the rights and dispute have to be determined, the order is interlocutory. The apex court in **Tarapore & Co. vs. M/s. V/O Tractors Export, Moscow and Anr.** has observed as under:

11. In our judgment an order passed by the High Court in appeal which does not finally dispose of a suit or proceeding and leaves the rights and obligations of the parties for determination in the suit or proceeding from which appeal has arisen, is not final within the meaning of Article 133(1)(a) and (b). The order refusing to grant an interim injunction did not determine the rights and obligations of the parties in relation to the matter in dispute in the suit. We are unable to hold that because the plaintiff's suit as a result of the order of the High Court may become infructuous as framed, and the plaintiffs may have to seek amendment of the plaint to get effective relief, an order which is essentially an interlocutory order may be deemed final for the purposes of Article 133(1) of the Constitution. In our judgment, *Mohanlal Maganlal Thakkar's* case makes no departure from the earlier judgments of the Judicial Committee, the Federal Court and this Court. The plaintiffs will pay the costs of the petitioners of the application for revocation of the certificate.

[11] The apex court has again endeavoured to define the interlocutory order in a meaningful way in **Madhu Limaye vs. The State of Maharashtra**, reported in **(1977) 4 SCC 551** and revisited **Mohanlal Maganlal Thakker vs. State of Gujarat** as well as the precedents considered in **Mohanlal Maganlal Thakker vs. State of Gujarat** and thereafter observed without entering into the 'controversial arena' that an obvious, almost unsurmountable, difficulty in the way of applying literally the test laid down in **Kuppuswami Roa vs. The King**, reported in, **AIR 1933 PC 58 (V 20)** and in holding that an order sometimes being not a final order must necessarily be an interlocutory one. Thereafter, it has been observed as under:

Does it stand to reason, then, that an accused will have no remedy to move the High Court in revision or invoke its inherent power for the quashing of the criminal proceeding initiated upon a complaint or otherwise and which is fit to be quashed on the face of it? The legislature left the power to order further inquiry intact in Section 398. Is it not, then, in consonance with the sense of justice to leave intact the remedy of the accused to move the High Court for setting aside the order adversely made against him in similar circumstances and to quash the proceeding? The answer must be given in favour of the just and reasonable view expressed by us above.

[12] Therefore, a new category of orders, which are not final or interlocutory but intermediate in nature has been innovated. Applying the test of **Kuppuswami Roa vs. The King** such an order as referred in **Madhu Limaye vs. The State of Maharashtra** will

not be a final order. But applying the fourth test as formulated in **Mohanlal Maganlal Thakker vs. State of Gujarat** and as referred above, it would be a final order. Thus in **Madhu Limaye vs. The State of Maharashtra**, it has been categorically culled out by the apex court that:

'in our opinion whether the type of the order aforesaid would be a final order or not, surely it would be not be an interlocutory order within the meaning of sub section (2) of Section 397 of the 1973 code'.

Based thereon, it has been held that the order would be amenable to the revisional jurisdiction. Thus, it can safely be inferred that whether an order is in the nature of interlocutory order can fundamentally be gathered from the very nature of the order.

[13] In **Shah Babulal Khimji vs. Jayaben D. Kania and Anr**, reported in **(1981) 4 SCC 8**, a larger Bench of the apex court has considered the distinction between the judgment and interlocutory judgment and distinctly categorised three kinds of judgment in the following terms, even though on some aspects there had been difference of opinion as regards the conclusion arrived at or on purpose of such extensive exercise but not on the categorisation. The relevant part of the said judgment [from para-113] is extracted hereunder:

113. Thus, under the Code of Civil Procedure, a judgment consists of the reasons and grounds for a decree passed by a court. As a judgment constitutes the reasons for the decree it follows as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by Sub-section (2) of Section 2 cannot be physically imported into the definition of the word 'judgment' as used in Clause 15 of the Letters Patent because the Letters Patent has advisedly not used the terms 'order' or 'decree' anywhere. The intention, therefore, of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a Trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds:

(1) A *Final Judgment*- A judgment which decides all the questions or issues in controversy so far as the Trial Judge is concerned and leaves nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the Trial Judge indisputably and unquestionably is a judgment within the meaning of the Letters Patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.

(2) A *preliminary judgment*- This kind of a judgment may take two forms-(a) where the Trial Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the Trial Judge

would be a judgment finally deciding the cause so far as the Trial Judge is concerned and therefore appealable to the larger Bench. (b) Another shape which a preliminary judgment may take is that where the Trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g., bar of jurisdiction, res Judicata, a manifest defect in the suit, absence of notice under Section 80 and the like, and these objections are decided by the Trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the Trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to larger Bench.

(3) *Intermediary or Interlocutory judgment-* Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43 Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43 Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. For instance, where the Trial Judge in a suit under Order 37 of the Code of Civil Procedure refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy is confined only to contest the plaintiff's

case on his own evidence without being given a chance to rebut that evidence. As such an order vitally affects a valuable right of the defendant it will undoubtedly be treated as a judgment within the meaning of the Letters Patent so as to be appealable to a larger Bench. Take the converse case in a similar suit where the trial Judge allows the defendant to defend the suit in which case although the plaintiff is adversely affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still possesses his full right to show that the defence is false and succeed in the suit. Thus, such an Order passed by the Trial Judge would not amount to a judgment within the meaning of Clause 15 of the Letters Patent but will be purely an interlocutory order.

[14] In a decision in **State represented by Inspector of Police and Ors. vs. N.M.T. Joy Immaculate**, reported in **(2004) 5 SCC 729**, the apex court has observed that the order of remand has no bearing on the proceeding of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or termination of the proceeding. A remand order cannot affect the progress of a trial or its decision in any manner. Therefore, applying the test laid down in **Madhu Limaye vs. The State of Maharashtra**, it cannot be categorised even as an 'intermediate' order. The order is, therefore, is pure and simple interlocutory order. In view of the bar created by sub section 2 of Section 397 of Cr.P.C., revision against the said order is not maintainable.

[15] The apex court however, had no occasion to consider whether an order passed under Section 24 of the Hindu Marriage Act is amenable to appeal under Section 19(1) of the Family Courts Act. Several High Courts on applying the tests as stated, have recorded divergent opinions. In **Raghvendra Singh Choudhury vs. Smti. Seema Bai**, reported in **1988 MPLJ 450**, Madhya Pradesh High Court, having referred to **Shah Babulal Khimji vs. Jayaben D. Kania and Anr** that an order of the trial Judge, refusing to appoint a receiver or to grant an ad-interim injunction is undoubtedly a judgment within the meaning of the Letters Patent both because Order XLIII Rule 1 applied to internal appeal in the High Court and apart from it such an order even on merit contends the quality of finality and would therefore, be a judgment within the meaning of the Clause- 15 of the Letters Patent, has observed as under:

This decision has been distinguished in the aforesaid second decision of this Court by saying that it is essentially on the basis of the provision contained in Order 43, Rule 1 read with Section 104 Civil Procedure Code and applies to internal appeals in the High Court against the judgment of a single judge in exercise of original jurisdiction. Though reference has also been made to the corresponding provision of Clause 15 of the Letters Patent of the Bombay High Court but the decision of the Supreme Court was independent of the provisions contained in clause 15. It may be mentioned here that Clause 10 of the Letters Patent of the Nagpur High Court is similar to the aforesaid Clause 15 of the Bombay High Court. The Supreme Court has clearly mentioned in the judgment that refusing to appoint a receiver or to grant an ad interim injunction is undoubtedly a judgment within the meaning of the Letters Patent. So the earlier view has been reiterated. However, in the aforesaid second

decision of this Court it has wrongly been held that no letters patent appeal lies against the interlocutory order passed in appeal by the single judge of this Court, by referring to the aforesaid decision in *Shah Babulal Khimji (supra)* the Supreme Court made it applicable in cases of interlocutory orders passed in original proceedings by the single judge. Though that was a case arising out of the interlocutory order in the original jurisdiction of the Bombay High Court, the Supreme Court has not laid down that no appeal lies against the interlocutory order passed in appeal. Therefore, an appeal will lie against an interlocutory order if it is a judgment. Clearly the order passed under Section 24 of the Hindu Marriage Act is a judgment as it decides the question of maintenance during the pendency of the suit and therefore, there is final adjudication so far this question is concerned and an appeal lies against such an order. We are fortified by the view taken by the Bombay High Court in *Dinesh vs. Usha*, : *AIR 1979 Bom. 173*, that pendente lite maintenance under Section 24 of the Hindu Marriage Act, 1955, raises controversy independently of the suit and decision thereon concludes controversy finally between parties and as such letters patent appeal is maintainable.

[16] Karnataka High Court in **T.V. Satyanarayana vs. Subba Aruna Meenakshi**, reported in **ILR 1988 Karnataka 1074** has categorically held differently on discussing the **Shah Babulal Khimji vs. Jayaben D. Kania and Anr**, in extensu as under:

10. We are entirely in agreement with the submissions made by the learned Counsel Sri B.P. Holla. While we agree with the submission of Sri G.S. Rao that an interlocutory order made under Section 24 of the Hindu Marriage Act certainly amounts to a 'judgment', the very fact that it is an interlocutory order makes it non appeal able in view of the express words of Section 19(1) of the Act. As can be seen from the Preamble to the Act, one of the objects of this special enactment is to provide for speedy settlement of disputes relating to marriages and family affairs. Therefore, it is obvious that the Parliament intended to avoid

procrastination of the proceedings and for that purpose barred appeals and revisions against interlocutory orders by incorporating Sub-section (1) and Sub-section (4) to Section 19.

11. The learned Counsel for the appellant made a feeble attempt to say that an order granting maintenance under Section 24 of the Hindu Marriage Act should be regarded only as a 'judgment' and not an 'interlocutory order.' The very fact that an application under Section 24 of the Hindu Marriage Act is contemplated only as an interlocutory application in a main proceeding and the very fact that an order made under Section 24 of the Hindu Marriage Act automatically comes to an end with the disposal of the main proceedings, makes it impossible to accept the submission that the order is not an interlocutory order.

12. For the aforesaid reasons, we answer the question of law set out in the first paragraph, as follows:

"An appeal does not lie against an order made by the Family Court on an application presented under Section 24 of the Hindu Marriage Act granting interim maintenance under Section 19 of the Family Courts Act."

[17] In **Sunil Hansraj Gupta vs. Payal Sunil Gupta**, reported in **AIR 1991 Bombay 423**, Bombay High Court had occasion to consider this aspect of the matter and observed that:

Next question is what is the scope and ambit of word 'judgment' used in section 19(1) of the Family Courts Act. To decide this issue we will have to construe provisions of sections 24 and 28 of the H. M. Act and section 19 of the Family Courts Act harmoniously. section 24 of the H. M. Act makes provision for maintenance pendente lite and expenses of proceedings. Application under this section proceeds on the assumption that the relationship between the parties to the Hindu Marriage Petition, as husband and wife legally subsists. If husband or wife is unable to maintain himself or herself, as the case may be, in terms of section 24 of the H. M. Act, the Court may make an order of maintenance as also the order of costs

which may appear to it reasonable. On plain reading of section 24 of the H. M. Act, it appears to us that it is a statutory obligation upon a husband or wife, as the case may be, to provide such maintenance and costs to defend the proceedings, and Court is under obligation to make appropriate order in favour of complaining spouse. Such order does not decide any issue of controversy in the main petition filed and pending under the H. M. Act. It is this character of order passed under section 24 of the H. M. Act being decisive to interpret the word 'judgment' or 'order' but not an interlocutory order used in section 19 of the Family Courts Act. The object of section 24 of the H. M. Act is to protect the weaker spouse and particularly if it is a wife to protect her from vagrancy. Moreover, life of such order is for a limited period namely during the pendency of substantive petition under the H. M. Act. To emphasise the object of section 24 of the H. M. Act, Smt. Nanavati drew our attention to the decision of this Court in *Dilipbhai Chaganlal Patel v. State of Maharashtra: AIR 1983B Bom 128*, wherein this Court observed thus (at page 130 of AIR):

"The object behind section 24 appears to be two-fold, firstly to prevent vagrancy resulting from the strained relationship between the husband and the wife and secondly to ensure that the indigent litigating spouse is not handicapped in defending or prosecuting the Case for want of money. This is why Courts have always insisted that whenever an application is made under section 24 it must be disposed of before any further steps are taken in the main case."

We are in agreement with these observations. Order under section 24 of the H. M. Act, does not decide any issue, either in the substantive petition or in the application under section 24 of the H. M. Act except the quantum of maintenance and costs.

Substantive petition is still alive. In these circumstances, it is difficult to hold that such order answers the description of judgment under section 17 of the Family Courts Act. It must, therefore, follow that it is an order. The next question that needs to be considered is whether it is an order "not being an interlocutory order" in terms of section 19(1) of the Family Courts Act.

Thus, having regard to the object of section 24 of the H. M. Act, the wife of such order and the fact that such order does not decide any issue arising between the parties in the H. M. Petition one way or the other, and that the lis continues, an order under section 24 of the H. M. Act is not a 'judgment' in terms of section 17 of the Family Courts Act but it is an order in the nature of interlocutory order falling outside the scope of section 19(1) of the Family Courts Act.

[18] Thus, the Bombay High Court has unambiguously declared in **Sunil Hansraj Gupta vs. Payal Sunil Gupta** that orders passed under Sections 24,25 & 26 of the Hindu Marriage Act are interlocutory in nature and thus, no appeal would lie to the High Court under Section 19(1) of the Family Courts Act against those orders.

[19] The same view has been expressed by the Orissa High Court in **Swarna Prava Tripathy and another vs. Dibyasingha Tripathy and another**. In that case, the Orissa High Court has resolved the controversy which is as under:

'the main controversy is whether an order passed under Sections 24 & 26 of Hindu Marriage Act is an interlocutory order or a final order.'

[20] Having considered the proposition of law as laid down in **Shah Babulal Khimji vs. Jayaben D. Kania and Anr**, the Orissa High Court in **Swarna Prava Tripathy and another vs. Dibyasingha Tripathy and another** has observed as under:

6. At this juncture it is necessary to pigeonhole which can be called interlocutory orders and final orders. Interlocutory orders are of various kinds; some like orders of stay, injunction, or receiver, are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the Court usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation, the principle of *res judicata* does not apply to the findings on which these orders are based, though if application were made for relief on the same basis after the same has once been disposed of, the Court would be justified in rejecting the same as an abuse of the process of Court. An order may be final for one purpose and interlocutory for another. The expression 'interlocutory order' as used in restricted and not in any broad or artistic sense, denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties, in Webster's Third International Dictionary, the expression 'interlocutory' has been defined as, 'not final or definite, made or done during the progress of an action; intermediate, provisional'. The emphasis is, therefore, at the stage when the order is passed. Interlocutory stage is decidedly the state between the cognisance taken by the Court and the judgment pronounced. The interlocutory order is supplemental proceeding which is a means to an end and not an end itself. The word 'interlocutory' means according to the import of the dictionary 'intermediate' and the interlocutory order is one passed during the progress of the proceeding that is to say, interlocutory order must be an order passed after the initiation of the proceedings and before the final order disposing of the matter. In New Webster's Dictionary, College Edition, the meaning given is 'of the nature of, pertaining to, or occurring in, conversation or dialogue; spoken intermediately, as interlocutory conversation interjected into the main speech. Law, pronounced during the course of an action, as a decision or order, not finally decisive of a case, pertaining to a

provisional decision.' Interlocutory orders are steps taken towards the final adjudication for assisting the parties in the prosecution of their case in the pending proceedings. See *Central Bank of India v. Gokul Chand*: AIR 1967 SC 799. Interlocutory inter alia means not that which decides the case, but that which only settles some intervening matter relating to the cause. As interlocutory order is one which is made pending the cause and before a final hearing on the merits. An interlocutory order is made to secure some end and purpose necessary and essential to the progress of the suit, and generally collateral to the issues formed by the pleadings and not connected with the final judgment.

7. The position in law relating to the controversy at hand has been indicated in *Ramesh Chander Kaushal v. Mrs. Veena Kaushal*: AIR 1978 SC 1807 as follows (Para 6);

"Broadly stated and as an abstract proposition, it is valid to assert, as Sri Desai did, that a final determination of a civil right by a civil Court must prevail against a like decision by a criminal Court. But here two factors make the principle inapplicable. Firstly, the direction by the Civil Court is not a final determination under the Hindu Adoptions and Maintenance Act but an order pendente lite, under Section 24 of the Hindu Marriage Act to pay the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable. Secondly, this amount does not include the claim for maintenance of the children although the order does advert to the fact that the respondent has their custody. This incidental direction is no comprehensive adjudication."

8. In view of the law as laid by the Apex Court, the inevitable conclusion is that an order passed under Section 24 or 26 of Marriage Act is an interlocutory order and as such, no appeal would lie in terms of Section 19(1) of the Act. The question is whether revision would lie. In view of what has been stated in Sub-section (5), revision would not lie.

[21] It is to be noted that a substantial reliance has been placed on an apex court decision in **Ramesh Chander Kaushal v. Mrs. Veena Kaushal : AIR 1978 SC 1807**, where the apex court has observed that the direction given by the civil court is not a final determination under the Hindu Adoption and Maintenance Act but an order pendente lite under Section 24 of the Hindu Marriage Act to pay the expenses of the proceeding and monthly maintenance during the proceeding having regard to the income of the respondent as the said sum does not include the claim for maintenance of the children and thus, it has been held that the incidental direction is no comprehensive adjudication. With all humility to the erudite decision in **Swarna Prava Tripathy and another vs. Dibyasingha Tripathy**, this Court finds that **Ramesh Chander Kaushal v. Mrs. Veena Kaushal** did not lay down law as to whether an order passed under Section 24 of the Hindu Marriage Act is an interlocutory order or not.

[22] Decisions in **T.V. Satyanarayana vs. Subba Aruna Meenakshi** by Karnataka High Court, **Sunil Hansraj Gupta vs. Payal Sunil Gupta** by Bombay High Court and **Swarna Prava Tripathy and another vs. Dibyasingha Tripathy** by Orissa High Court have not been considered as proper enunciation by Uttarakhand High Court in **Rahul Samarat Tandon vs. Smt. Neeru Tandon**, in **Manish Aggarwal vs. Seema Aggarwal and others** by Delhi High Court and in **P.T. Lakshman Kumar vs.**

Mrs. Bhavani by Madrass High Court. **Rahul Samarat Tandon vs. Smt. Neeru Tandon** has been approvingly referred in **Manish Aggarwal vs. Seema Aggarwal and others** and in **P.T. Lakshman Kumar vs. Mrs. Bhavani**.

[23] Having referred to **Shah Babulal Khimji vs. Jayaben D. Kania and Anr** and one full Bench decision of the Allahabad High Court in **Smt. Kiran Bala Srivastava vs. Jai Prakash Srivastava : (2005) 23 LCD 1** and also to **Amar Nath vs. State of Haryana**, reported in **AIR 1977 SC 2185** and **Madhu Limaye vs. The State of Maharashtra**, it has been culled out in **Rahul Samarat Tandon vs. Smt. Neeru Tandon** that :

17. The present appeal has been filed by the husband challenging the order of maintenance pendente lite under Section 24 of the Act of 1955, yet we are concerned with the larger impact of a judgment in such cases, where primarily the issue of maintenance is crucial to a party to a litigation. The Full Bench of Allahabad High Court, referred above, after discussing all the relevant law, including the law cited by the learned Counsel for the respondent came to the conclusion that an appeal under Section 19(1) of the Act of 1984 is maintainable against an order passed under Section 24 of the Act of 1955. We are in complete agreement with the observations of the Full Bench of the Allahabad High Court, and we feel that it is necessary that a broad meaning to the word "judgment" must be assigned and therefore, we hold that the impugned order dated 20-3-2010 was in the nature of a "judgment" and the instant Special Appeal preferred by the appellant is maintainable, under Section 19(1) of the Family Courts Act, 1984.

18. The question of law raised by the respondent as a preliminary objection is, therefore, decided accordingly, as stated

above. Let the appeal be listed for final disposal in ordinary course.

[24] The same analogy has been observed by declaring that the orders passed under Sections 24 and 25 of the Hindu Marriage Act are in the nature of intermediate orders and therefore, those are amenable to appeal under Section 19(1) of the Family Courts Act. Similarly Madras High Court in **P.T. Lakshman Kumar vs. Mrs. Bhavani** having reliance on **Rahul Samarat Tandon vs. Smt. Neeru Tandon** and **Manish Aggarwal vs. Seema Aggarwal and others** has observed that an order passed by the Family Court under Section 24 of the Marriage Act is appealable under Section 19(1) of the Family Courts Act to the High Court. There is no effective alternative remedy, not even under Article 226 or under Article 227 of the Constitution of India for inherent limitation. It may be noted further at this juncture that for proviso to Section 115(1) of the C.P.C. even no revision would lie against the order under Section 24 of the Hindu Marriage Act if the said order is treated as interlocutory order. Such interpretation that the orders passed under Section 24 of the Hindu Marriage Act are interlocutory orders would render the person affected by such order remediless. No interpretation which completely inhibits any remedy is sustainable in the rule of law. The structure of liberty is as such.

[25] Having discussed thus, this Court is of the view that the decision as to the pendente lite maintenance or expenses of the

proceeding under Section 24 of the Hindu Marriage Act, 1955 brings a resolution to the controversy raised independently of the suit and the decision therefore, has the trappings of finality between the parties. Hence, the orders passed under Section 24 of the Hindu Marriage Act are to be held as 'not being an interlocutory order' and such orders are therefore to be amenable to appeal under Section 19(1) of the Family Courts Act.

[26] In the result, the objection as to the maintainability is dismissed. Hence, the order dated 10.07.2014 delivered in Civil Misc. 26 of 2014 by the Judge, Family Court, Agartala, West Tripura is amenable to appeal. The grievance of the appellant is that by the order dated 20.12.2013 delivered in case No.458 of 2012, the Judge, Family Court, Agartala, West Tripura has denied maintenance to the respondent on consideration of the relevant aspects. In that proceeding filed under Section 125 of the Cr.P.C. it has been observed by the Judge, Family Court, Agartala, West Tripura that it has not been established by the respondent herein, the petitioner in that proceeding, that she was neglected or refused by the petitioner in providing maintenance and hence, she is not entitled to maintenance for herself. However, by the said order maintenance to their son has been directed.

[27] Mr. A. Bhowmik, learned counsel has contended that the court below did not consider the analogy provided in the said order dated 20.12.2013. However, this Court finds that even though the

analogy has not been followed, but the order dated 20.12.2013 has been appreciated in the impugned order. It has been observed there that 'it is settled position of law that any order passed earlier in any proceeding under Section 125 of the Cr.P.C. is no bar in presenting an application under Section 24 of the Hindu Marriage Act.' It has been further observed that the earning of the respondent herein, is not sufficient for her maintenance that she requires for her living. Thus, by the impugned order the petitioner has been directed to pay a sum Rs.5,000/- as expenses for the proceeding and Rs.3,000/- per month for maintenance of the respondent w.e.f. 01.07.2014 till disposal of the suit being T.S(Divorce) 410 of 2013. The order of maintenance passed in a proceeding under Section 125 of the Cr.P.C. is an intermediate order without curbing the rights of the wife to approach the court for fair maintenance under any other provisions of law. Under Section 24 of the Hindu Marriage Act, the duty of the court is to see that a suit under the Hindu Marriage Act is pending for adjudication and to determine the fair maintenance having regard to the status of the parties and the income of the spouse who would be made liable to pay the said maintenance.

[28] On scrutiny of the records and from the objection filed by the petitioner opposing the prayer for maintenance pendente lite and the expenses for the litigation, it has been surfaced that he has nowhere denied that he is a government servant and drawing a sum of Rs.16,000/-, rather he has admitted that salary at para-20(d).

The solitary ground of his opposing the prayer is based on the order dated 20.12.2014 as by the said order dated 20.12.2014, the Judge, Family Court had refused to grant her maintenance for not establishing any negligence to maintain against the petitioner. But for the same reason, the maintenance pendente lite and expenses of the proceedings and permanent alimony and maintenance respectively under Section 24 or Section 25 of the Hindu Marriage Act cannot be denied. No provision, *per materia* to Sections 125(1) and (4) of the Cr.P.C., is engrafted either in Section 24 or Section 25 of the Hindu Evidence Act.

[29] Hence, we do not find any infirmity in the impugned order. Accordingly, the appeal is dismissed in exercise of the power of this Court under Section 19(1) of the Family Courts Act read with Order XLI, Rule 11 of the C.P.C.

Prepare the decree accordingly.

Send down the LCRs thereafter.

JUDGE

JUDGE

Sujay