

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.76 OF 2016
WITH
CIVIL APPLICATION NO.97 OF 2016
IN
APPEAL FROM ORDER NO.76 OF 2016

Jamaluddin Jabbar Golandaz

.... Appellant

Vs.

Sou. Razia Jamaluddin Golandaz
& Another

.... Respondents

Mr. Faizkhan F. Pathan for the Appellant.

Ms Chaitrali A. Deshmukh for the Respondents.

CORAM: MRS. MRIDULA BHATKAR, J.

DATE : FEBRUARY 24, 2016

P.C:

1. This appeal is directed against order dated 6-7-2015, passed by Judge, Family Court, Kolhapur in the application filed by the opponent-husband being Exhibit-13 in Petition No.E1/2015, filed by the petitioner-wife.

2. The petitioner-wife/respondent No.1 herein had filed an application under Section 125 of the Code of Criminal Procedure for maintenance against her opponent-husband/the

present appellant. The appellant/husband appeared in the said proceedings challenging the jurisdiction of the Family Court, Kolhapur on the ground that under the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Family Court is not the proper forum, unless consent is given by both sides for the said forum or otherwise it is to be filed before the Judicial Magistrate, First Class under the said Act. The said application challenging the jurisdiction of the Family Court was contested by the petitioner-wife and the said application was rejected. Hence this appeal from order.

3. At the outset, learned counsel for the respondent-wife (original petitioner) took objection that the appeal from order is not maintainable and the appellant should have filed either a Writ Petition or Criminal Revision Application, as the order under challenge is an interlocutory order. In support of her contention, she relied on Section 19 of the Family Courts Act, 1984.

4. Per contra, learned counsel for the appellant-husband (original opponent) submitted that this appeal is filed as the appellant-husband's application challenging maintainability of the wife's application on the point of jurisdiction was rejected by the Family Court. He submitted that had the husband's said application been allowed, then the proceedings before the Family Court would have come to an end

and that would have been a final order and therefore the appeal preferred by the appellant is the correct remedy for challenging the impugned order before this Court. In support of his submission, he relied on the Judgment in the case of **Madhavan V/s. Chellamma**, reported in 2003 CJ (Ker) 423. He submitted that similar issue was raised before the Division Bench of the Kerala High Court which held that an appeal is maintainable against such order. The issue involved in the matter before the Kerala High Court and the one involved in the present case is similar.

5. Perused the Judgment in Madhavan V/s. Chellamma's case (supra). Before the Family Court, an application for maintainability on the point of jurisdiction was made and the Family Court held that the application was not maintainable and the original petition was returned for presentation before the proper Court under Order 7, Rule 10. The Division Bench of the Kerala High Court has referred to Sections 7 and 19 of the Family Courts Act. The facts of the case before that Division Bench and the facts of the present case are justifiable on the count that in that matter the petition was returned and in the present case it is held that the Family Court has jurisdiction to entertain the petition.

6. Judgments and Orders passed under the Family Courts Act are appealable only under Section 19 of the Act

which opens with a non-obstante clause. However, the said section carves out an exception to interlocutory orders passed by the Family Courts while preferring appeal under Section 19(1). Thus, all Judgments and Orders are appealable under Section 19(1) excepting interlocutory orders passed by the Family Court.

7. The rejection of the application challenging the maintainability of the wife's application on the point of jurisdiction is an interlocutory order as the petition remains alive. If that application would have been allowed and the petition would have been returned for want of jurisdiction, then that would have been considered as the order giving finality to the status of the application of the petitioner-wife. However, the rights of the parties are not finally adjudicated by the rejection of the application in question and, therefore, under such circumstances, the impugned order is to be considered as an interlocutory order. No appeal can be filed against such Order as decree will not follow such order. Similarly, the order cannot be covered under Order 43 of the Code of Civil Procedure where Appeal From Order is maintainable and thus the remedy open for the appellant is to take recourse to either Criminal Revision Application or a Writ Petition. The appellant may file a separate proceedings before the Court and the delay can be condoned. Hence, while disposing of this appeal in the above terms, liberty is given to the appellant to file appropriate proceedings.

8. In view of disposal of the present appeal, Civil Application No.97 of 2016 does not survive and it accordingly stands disposed of.

(MRIDULA BHATKAR, J.)