

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No.149 of 2015

Anil Mishra, S/o Late Vishnu Prasad Mishra, aged about 30 years, Occupation Government Service (In Military), R/o Kukusada, Police Station Pathariya, District Mungeli, presently at Chilfi, Police Station Chilfi, Tahsil Bodla, District Kabirdham (C.G.), Civil & Revenue District Kabirdham.

(Non-applicant)
---- Appellant

Versus

Sakshi Mishra, W/o Shri Anil Mishra, aged about 27 years, Occupation Teacher & School Management, Durg Shiv Public School, Durg, presently residing at Irrigation Colony, Bandhatola, Bodla, Police Station & Tahsil Bodla, District Kabirdham (C.G.)

(Applicant)
---- Respondents

For Appellant: Mr. Sandeep Shrivastava, Advocate.
For Respondent: Mr. Dharmesh Shrivastava, Advocate.

Hon'ble the Acting Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

Sanjay K. Agrawal, J

22/02/2017

1. In a proceeding initiated by the petitioner / plaintiff under Section 13 of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955') for dissolution of marriage on the ground enumerated in sub-section (1) of Section 13 of the Act of 1955, the respondent / defendant filed an application under Section 24 of the Act of 1955 stating inter alia that she has no independent income sufficient for her support and for

necessary expenses of the proceeding therefore maintenance *pendente lite* and expenses of the proceeding be granted to her. The Judge, Family Court, Kabirdham after hearing the parties, by the impugned order dated 21-8-2015 granted maintenance *pendente lite* of ₹ 4,000/- per month along with expenses of the proceeding of ₹ 3,000/- and conveyance allowance of ₹ 50/- per date of hearing to the respondent / defendant, and fixed the case for framing of issues.

2. Feeling aggrieved against the order granting maintenance *pendente lite* and expenses of the proceeding under Section 24 of the Act of 1955, the appellant herein preferred an appeal under Section 19 (1) of the Family Courts Act, 1984 (for short, 'the Act of 1984').
3. This Court had earlier issued notice to the respondent and now, the respondent / defendant has appeared and opposed the appeal. The case came up for hearing before this Court today for admission.
4. The question that has cropped up for consideration is, whether an order passed by the Judge, Family Court granting application under Section 24 of the Act of 1955, is amenable to appeal under Section 19 (1) of the Act of 1984.
5. Mr. Sandeep Shrivastava, learned counsel for the appellant / plaintiff, would submit that order under Section

24 of the Act of 1955 is covered within the meaning of order employed in Section 19 (1) of the Act of 1984, as the question of maintenance *pendente lite* has been finally determined, therefore, appeal would be maintainable.

6. Mr. Dharmesh Shrivastava, learned counsel for the respondent / defendant, would submit that the Judge, Family Court has rightly granted the order of maintenance and the appeal deserves to be dismissed. He would further submit that the appeal as framed and filed is not maintainable against the interlocutory order, as appeal against interlocutory order is barred under Section 19 (1) read with Section 19 (5) of the Act of 1984.
7. We have heard learned counsel for the parties and perused the order impugned and also the other documents available on record with utmost circumspection.
8. In order to appreciate the point in dispute, it would be apt to notice Section 28 of the Act of 1955, unamended, which reads as follows: -

“28. Enforcement of, and appeal from, decrees and orders.—All decrees and orders made by Court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of the original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force:

Provided that there shall be no appeal on the subject of costs only.”

9. The Parliament by Act No.68 of 1976 substituted Section 28 of the Act of 1955 which now states 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 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.”

10.If unamended Section 28 and amended Section 28 of the Act of 1955 are read in juxtaposition, it is quite vivid that before amendment even the order granting interim maintenance was also appealable, but after amendment, the right of appeal particularly of order granting Section 24 of the Act of 1955, has expressly been taken away by providing that appeal would lie if it is not interim order. The question of appealability of order under Section 24 of the Act of 1955 came-up for consideration before the Supreme Court in the matter of **Captain Ramesh Chander Kaushal**

v. Mrs. Veena Kaushal and others¹ wherein Their

Lordships have held as under: -

“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.”

11. In view of the decision in **Captain Ramesh Chander**

Kaushal (supra), now, it is quite clear that the nature of order passed under Section 24 of the Act of 1955 is an interim order and it is not a comprehensive adjudication of the matter in dispute and as such, appeal under Section 28 of the Act of 1955 is not maintainable.

12. The Family Courts Act, 1984 was enacted as an Act to provide 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. Section 7 of the Act of 1984 deals with jurisdiction of the Family Court. Section 8 deals

¹ (1978) 4 SCC 70

with exclusion of jurisdiction and pending proceedings.

Section 17 prescribes that judgment of a Family Court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision. Section 19 provides for appeal. For the sake of convenience, it would be appropriate to reproduce Section 19 of the Act of 1984 which reads as follows: -

“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.

(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.”

13. Section 20 of the Act of 1984 provides that the Act of 1984 shall have overriding effect which states as under: -

“20. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

14. The question for consideration as formulated in the foregoing paragraphs would be, whether an order granting maintenance would be interlocutory order.

15. A studied perusal of Section 19 (1) of the Act of 1984 would show that appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court. Thus, Section 19 (1) expressly bars appeal under Section 19 (1) against an interlocutory order of the Family Court and provides for appeal against judgment or order which is final in nature. Likewise, sub-section (5) of Section 19 also clearly stipulates that except as provided in Section 19 (1), no appeal or revision shall lie to any court from any judgment, order or decree of the Family Court.

16. The words 'interlocutory order' used in sub-section (1) of

Section 19 of the Act of 1984 means if Family Courts in exercising its power passed an order in a way allowing further action to continue in a suit or proceeding before it then such order would be termed as 'interlocutory order' but on the other hand if by an order passed by Family Court the lis between the parties is finally stood disposed of and nothing is left to be decided further such orders would be termed as 'final order' and would be appealable under Section 19(1) of the Act.

17. Order passed under Section 24 of the Act of 1955, as held by Their Lordships of the Supreme Court in **Captain Ramesh Chander Kaushal** (supra), is an interim order and is incidental to the comprehensive adjudication, and is not a final order. In para 6, Their Lordships held as under: -

“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.”

18. In this context, reference may be made herein to a Division

Bench decision of the Bombay High Court in the matter of **Sunil Hansraj Gupta v. Payal Sunil Gupta**² in which S.P. Kurdukar, J, (as His Lordship then was) has clearly held that order of maintenance *pendente lite* passed under Section 24 of the Act of 1955 is not a judgment but an interlocutory order falling outside the scope of Section 19 (1) of the Act of 1984 and appeal is not maintainable.

19. Similar is the proposition laid down by a Full Bench of the Orissa High Court in the matter of **Swarna Prava Tripathy and another v. Dibyasingha Tripathy and another**³ in which the Full Bench speaking through Arijit Pasayat, J (as His Lordship then was), after noticing the decisions on the point adverted to the issues and made distinction between 'interlocutory orders' and 'final orders' and also referred to **Captain Ramesh Chander Kaushal** (supra) rendered by the Supreme Court, and observed as under: -

“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.”

20. Gainfully, reference may be made to a Full Bench decision of the Patna High Court in the matter of **Neelam Kumari Sinha v. Shree Prashant Kumar**⁴ in which Dipak Mishra,

2 AIR 1991 Bombay 423

3 AIR 1998 Orissa 173 (DB)

4 AIR 2010 Patna 184

CJ, (as His Lordship then was) speaking for the Full Bench has clearly held that order granting maintenance under Section 24 of the Act of 1955 is an interim order and incidental to comprehensive adjudication, therefore, not appealable under Section 19 (1) of the Act of 1984, but would be amenable to writ jurisdiction under Article 227 of the Constitution of India.

21. Thus, we are of the considered opinion that the order granting maintenance *pendente lite* by granting application under Section 24 of the Act of 1955 by the Judge, Family Court would be an interlocutory order within the meaning of Section 19 (1) of the Act of 1984 and would not be a judgment, therefore, would fall outside the scope of Section 19 (1) of the Act of 1984.

22. Now, the next question would be what can be the remedy available to the affected person like the present petitioner if the order is treated as interlocutory order.

23. Section 19 (5) of the Act of 1984, as noticed herein-above, clearly bars appeal or revision except as provided under Section 19 (1) of the Act of 1984. Thus, appeal as well as revision both have been barred.

24. Reference can be made herein at this stage to a Division Bench decision of the Allahabad High Court in the matter of

Ravi Saran Prasad alias Kishore v. Smt. Rashmi Singh⁵

5 AIR 2001 All 227

in which the Allahabad High Court has held as under: -

“A conjoint reading of sub-section (1) and sub-section (5) makes us crystal clear that only one appeal lies to the High Court; that no appeal or revision lies except as provided under sub-section (1) from any judgment, order or decree of a Family Court; and further that no appeal lies against such judgment or order which is interlocutory. It cannot be said that the Legislature has created an appellate form in 1984 against the orders passed under Section 24 of the Hindu Marriage Act nullifying Section 28 of that Act contrary to the object of enactment of the Act as stated in the Bill.”

25. In the matter of **Shiv Shakti Coop. Housing Society,**

Nagpur v. Swaraj Developers and others⁶ the Supreme

Court has considered the effect of proviso to Section 115 of the CPC brought into force with effect from 1-7-2002 and held that if impugned order is interim in nature or does not finally decide the lis, the revision application will not be maintainable under Section 115 of the CPC.

26. Thereafter, in the matter of **Surya Dev Rai v. Ram Chander**

Rai and others⁷, the Supreme Court has considered the effect of proviso to Section 115 of the CPC and held that the amendment cannot and does not in any manner affect the said jurisdiction under Articles 226 and 227 of the Constitution of India and observed that the curtailment of revisional jurisdiction of the High Court under Section 115 of the CPC by Amendment Act 46 of 1999 does not take away and could not have taken away the constitutional jurisdiction

6 (2003) 6 SCC 659

7 (2003) 6 SCC 675

of the High Court to issue a writ of certiorari to a civil court, nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. The power exists, untrammelled by the amendment in Section 115 of the CPC, and is available to be exercised subject to rules of self-discipline and practice which are well settled. The Supreme Court further held that interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court under Articles 226 and 227.

27. The Full Bench of the Patna High Court in **Neelam Kumari Sinha** (supra) has also stuck similar proposition by holding that an order passed by the learned Principal Judge, Family Court under Section 24 of the 1955 Act would be amenable to writ jurisdiction under Article 227 of the Constitution of India.

28. Thus, on the basis of aforesaid conclusion, we are of the considered opinion that an order passed under Section 24 of the Act of 1955 granting maintenance *pendente lite* would not be amenable to appellate jurisdiction under Section 19 (1) of the Act of 1984, not being a judgment under the said provision and would only be amenable to supervisory

jurisdiction of this Court under Article 227 of the Constitution of India. Accordingly, we hold that the appeal as framed and filed is not maintainable.

29. Mr. Sandeep Shrivastava, learned counsel for the appellant, would submit that in such case, the appellant be returned certified copy of the impugned order and be granted liberty to avail the remedy available under the law.

30. The prayer is fair and reasonable. Registry is directed to return certified copy of the impugned order to learned counsel for the appellant, if the attested true copy of the same is furnished.

31. Concludingly, the appeal is dismissed as not maintainable subject to the aforesaid observation and liberty.

Sd/-
(Pritinker Diwaker)
Acting Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge