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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ I.P.A. 8/2015 & I.As.8010-8011/2015, 25376/2015, 25983/2015,
1467/2016, 2934/2016, 9235/2016, 10566/2016 AND 9729/2017

MEGHNA KHANNA THAKUR & ANR Petitioners
Through: Ms. Ankita Gupta, Advocate for
Mr. Prabhjit Jauhar, Advocate.

versus

RAHUL THAKUR Respondent
Through: Mr Kuldeep Mansukhani, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

ORDER
28.08.2017

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Present suit has been filed by the minor daughter and wife of the respondent seeking reliefs under the Hindu Adoption and Maintenance Act, 1956 read with Sections 19, 20, 23 and 26 of the Protection of Women From Domestic Violence Act, 2005.

Learned counsel for respondent states that a Division Bench of this Court in *Amina Bharatram Vs. Sumant Bharatram and Ors., CS(OS) 411/2010* dated **19th July, 2016** has held that the High Court does not have jurisdiction to try and decide cases of causes listed under Section 7 of the Family Courts Act, 1984 (for short “ Act, 1984”). He emphasises that the Division Bench has held that the Delhi High Court does not possess the jurisdiction to entertain, try and decide cases and causes referred to in

Sections 7 and 8 of the Act, 1984.

He states that the present suit does not fall within the Original Civil Jurisdiction of the Delhi High Court insofar as the relief claimed in the suit is for maintenance, which relief, is a cause listed under Section 7(1) Explanation (f) of the Act, 1984. Section 7(1) of the Act, 1984 reads as under:-

“7. Jurisdiction. - (1) Subject to the other provisions of this Act, a Family Court shall-

- a. have and exercise all the jurisdiction exercisable by any district Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and*
- b. be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.*

Explanation -The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely:

- a. a suit or proceeding between the parties to a marriage for decree of a nullity marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;*
- b. a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;*
- c. a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;*

- d. a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;*
- e. a suit or proceeding for a declaration as to the legitimacy of any person;*
- f. a suit or proceeding for maintenance;*
- g. a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.”*

(emphasis supplied)

However, learned counsel for petitioners states that the Bombay High Court in ***Parijat Vinod Kanetkar (Dr.) & Ors. Vs. Malika Parijat Kanetkar & Anr., II (2017) DMC 152 (Bom.)*** has held that Sections 7 and 8 of the Act, 1984 do not oust the jurisdiction of a Magistrate under Section 21 of the Protection of Women from Domestic Violence Act, 2005 (for short ‘Act, 2005’). The relevant portion of the judgment relied upon by the learned counsel for petitioners is reproduced hereinbelow:-

“14.Such being the nature and purpose of power of the Magistrate under Section 21 of the DV Act, it would have to be said that it is separate and independent from and not covered by either of the parts of Section 7 of the Act, 1984. If such interpretation is not given to Section 21, DV Act power, the Section itself can be rendered otiose in a given case and the Magistrate will be divested of his power to adjudicate upon that species of domestic violence issue which arises from jeopardising the welfare of the child. Such is, however, not the intention of the legislature, rather, the interpretation made earlier is in consonance with the intention of the legislature and object of the DV Act to protect women from domestic violence.

15. The interpretation made regarding Section 21, DV Act power would receive further confirmation from the fact that an application filed under Section 21 of the DV Act does not come under the effulgence of Section 8(b) of the Act, 1984 which bars specifically the jurisdiction of the Magistrate, in relation to an

area where a Family Court has been established, only under Chapter IX of the Criminal Procedure Code and not under any other law for the time being in force.

16. Section 8 of the Act 1984 makes jurisdiction of the Family Court under Section 7 sub-Sections (1) and (2) as exclusive. But, this exclusivity, as it emerges from the discussion made so far, would relate to only those jurisdictions which are exercisable by a district Court or any subordinate civil Court in respect of matters referred to in the Explanation or by a criminal Court like the Court of Magistrate of the First Class in respect of matters under Chapter IX of the Cr.P.C. and nothing more or nothing less. It is obvious that the exclusivity of the jurisdiction under Section 8 of the Act, 1984 is extendable to only those matters specifically referred to in Sub-section (1) and sub-section (2) of Section 7 of the Act 1984 and not to the jurisdiction of the Magistrate under Section 21 of the DV Act. Thus, respectfully disagreeing with the learned counsel for the petitioner, I find that Sections 7 and 8 of the Act, 1984 could not be interpreted and understood to mean that they confer sole and exclusive jurisdiction upon the Family Court in respect of all custody matters and, thus oust the jurisdiction of a Magistrate under Section 21 of the DV Act. I would add here, there are certain custody matters, like the one under Section 21 of the DV Act, which are beyond the pale of dominance of Sections 7 and 8 of the Act, 1984.”

In the opinion of this Court, it is essential to analyse the reliefs sought for in the present proceedings. The prayer clause in the plaint is reproduced hereinbelow:-

“a) Pass a decree directing the respondent/husband to pay a sum of Rs.4.00 lacs per month as maintenance and also to provide a separate residence duly furnished for the plaintiff alongwith all the other amenities from the date of filing of the present suit till the passing of the decree and grant 10 per cent escalation after every 3 years.

- b) Pass a decree directing the respondent/husband to pay a sum of Rs.50,000/- per month as educational expenses and also for the plaintiff No.2 and for making a provision for future studies and marriage expenses of the plaintiff No.2.”
- c) *Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.*”

(emphasis supplied)

Keeping in view the aforesaid, this Court is of the view that though certain provisions of the Domestic Violence Act have been invoked, yet the plaintiff in essence seeks relief of maintenance in the present proceedings. There is no relief sought in the present proceedings which can be granted by the Magistrate under Section 21 of the Act, 2005. Consequently, the judgment of the Bombay High Court in ***Parijat Vinod Kanetkar (Dr.)*** (supra) is inapplicable to the present case.

This Court is also of the view that the present case is liable to be transferred to the Family Court in view of the binding Division Bench’s judgment of this Court in ***Amina Bharatram*** (supra). The relevant portion of the said judgment is reproduced hereinbelow:-

“1. These proceedings emanate from an order of reference dated 09.06.2014 (“Reference Order”) made by the Learned Single Judge in CS(OS) No. 411/2010 (“Suit”), formulating the following questions of law for adjudication by this Court:

“(i) Whether the High Court while exercising the Original Civil Jurisdiction is deemed to be a District Court within the meaning of Section 2(4) of CPC in the context of Section 7(1)(a) of the Family Courts Act, 1984?”

(ii) Whether the original civil jurisdiction of the High Court excluded (sic) for any suit or petition by virtue of Sections 7 & 8 of the Family Courts Act, 1984?”

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32. This Court agrees with the plaintiff's submission that an earlier specific enactment would prevail over a subsequent legislation which is general in nature - affirmed recently by the Supreme Court in *Yakub Abdul Razak Memon v. State of Maharashtra*, (2013) 13 SCC 1. Both the Delhi High Court Act (Section 5) and the Family Courts Act (Section 20) contain non-obstante provisions. In *Yakub Memon's* case, the Court held that where two statutes provide non-obstante clauses, the principle that the later legislation would override the earlier one is subject to the principle of '*generaliaspecialibus non derogant*'. A determination as to whether a statute is a general or a specific one requires an examination of its subject matter and the purpose for which it was enacted. Plaintiff urges that the Delhi High Court Act, 1966 is a special enactment and therefore, it ought to prevail over the Family Courts Act, 1984. However, this Court is of the opinion that it is the Family Courts Act, instead, which is specific in nature, as it seeks to constitute a special mechanism for adjudication of disputes of the nature enumerated in Section 7 of the Act (details of the distinct nature of the procedure created under the Act have been discussed above). On the other hand, the Delhi High Court merely provides for original civil jurisdiction of this Court based on a prescribed pecuniary limit, which is applicable to all civil suits. The following observations of the Supreme Court in *Abdul Jaleel's* case (*supra*) support this Court's conclusion that the Family Courts Act is specific in nature:

“The Family Courts Act was enacted 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. From a perusal of the Statement of Object and Reasons, it appears that the said Act, inter alia,

seeks to exclusively provide within the jurisdiction of the Family Courts the matters relating to the property of the spouses or either of them...

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The Family Court was set up for settlement of family disputes. The reason for enactment of the said Act was to set up a court which would deal with disputes concerning the family by adopting an approach radically different from that adopted in ordinary civil proceedings... ”

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35. Learned counsel for the plaintiff had submitted that there is nothing to indicate that Family Courts in Delhi have been released from the pecuniary jurisdiction limit. However, this Court is of the opinion that no such formal notification extending the Family Courts’ pecuniary jurisdiction is required. Once it has been held that ‘District Court’ includes the High Court exercising its original civil jurisdiction, and in the absence of a bar limiting the pecuniary jurisdiction of Family Courts to any pecuniary limit, they would assume jurisdiction exclusively regardless of pecuniary values.

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42. Therefore, the reference is answered as follows:

Point No.1: It is held that the Delhi High Court is a “district court” under Section 8 in respect of all matters enumerated in Explanation to Section 7 (1) of the Act;

Point No.2: The Delhi High Court does not possess jurisdiction to entertain, try and decide cases and causes referred to in Sections 7 and 8 of the Family Courts Act.”

(emphasis supplied)

In pursuance to the said judgment, the Registry of this Court has issued a Practice Direction dated 23rd December, 2016. The said Practice

Direction is reproduced hereinbelow:-

“HIGH COURT OF DELHI AT NEW DELHI

No. 45/Rules/DHC

Dated : 23.12.2016

PRACTICE DIRECTIONS

Hon’ble the Chief Justice, on the recommendations of the Hon’ble Judges of the Original Side, has been pleased to issue following practice directions for information and compliance by all concerned:-

- 1. In view of the Judgment dated 19.07.2016 passed by the Hon’ble Division Bench of this Court on reference in CS (OS) No. 411/2010 & I.A. No. 12186/2010 titled “Amina Bharatram Vs. Sumant Bharatram and Others”, all matters enumerated in Explanation to Sub-Section (i) of Section 7 and Section 8 of the Family Courts Act, 1984 shall be exclusively triable by the Family Courts and the jurisdiction of the High Court to the extent it exercises Ordinary Original Civil Jurisdiction in respect of such matters stands excluded by virtue of Section 8 (c)(ii) of the said Act. Such matters listed before this Court shall be transferred to the Family Courts by passing the necessary Orders in this respect on their dates of listing.*
- 2. The Registry, henceforth, is directed not to accept such matters as enumerated in Explanation to Sub Section (i) of Section 7 and Section 8 of the Family Courts Act, 1984.*

These Practice Directions shall come into force with immediate effect.

By Order

Sd/-

*(GIRISH KATHPALIA)
REGISTRAR GENERAL”*

(emphasis supplied)

Keeping in view the aforesaid mandate of law as well as the Division Bench’s judgment in ***Amina Bharatram*** (supra) and the Practice Direction

No. 45/Rules/DHC dated 23rd December, 2016 issued by the Registrar General of this Court, present suit along with pending applications is transferred to the Family Court. For the aforesaid purpose, parties are directed to appear before the Principal Judge (HQs), Family Courts, Dwarka on 16th October, 2017, who in turn is directed to transfer the case to the appropriate Family Court.

MANMOHAN, J

AUGUST 28, 2017

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