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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 624/2016 & I.A. 2955/2017, 3368/2017, 5370/2017

SHRI ABHISHEK PRABHAT Plaintiff

Through Mr. Amit P. Deshpande, Advocate

versus

SMT HENA SHAH

..... Defendant

Through Ms. Deepti Kathpalia, Advocate.
Defendant in person.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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25.10.2017

Present suit has been filed for declaration, cancellation, injunction and other consequential reliefs by the plaintiff-husband against the defendant-wife.

In pursuance to the Division Bench's judgment in *Amina Bharatram Vs. Sumant Bharatram and Ors.*, CS (OS) 411/2010 dated 19th July, 2016, the jurisdiction to try and decide cases of causes listed under Sections 7 and 8 of the Family Courts Act, 1984 lies with the Family Courts.

This Court in *Rupali Lamba & Anr. Vs. Sukhwant Singh Lamba in IPA No. 28/2015* decided on 24th August, 2017 has held as under-

5. In the opinion of this Court, as the primary relief in the present petition is for maintenance under the Hindu Adoption and Maintenance Act, 1956, the same is liable to be transferred to the Family Court in view of the 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)

6. 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)*

7. *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.”*

Though the defendant has filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that this Court has no jurisdiction to entertain the present suit, yet in view of the Division Bench’s judgment in **Amina Bharatram** (supra), the Practice Direction dated 23rd December, 2016 (supra) and this Court’s judgment in **Rupali Lamba & Anr.** (supra) present suit along with pending applications would have to be transferred to the Family Court. Ordered accordingly.

For the aforesaid purpose, the parties are directed to appear before the Principle Judge (HQs), Family Courts, Dwarka on 18th November, 2017, who in turn is directed to transfer the case to the appropriate Family Court.

At this stage, learned counsel for the defendant fairly states that the undertaking given by the defendant on 20th July, 2017 shall continue till the Order 39 Rules 1& 2 CPC application filed by the plaintiff is heard and decided. The said statement is accepted by this Court and the defendant is held bound by the same.

MANMOHAN, J

OCTOBER 25, 2017

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