

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11581 OF 2017

Parag Subhash Parelkar]
Age-46 years, Occ. Service, Pilot]
R/at – Flat No. 1003, Jay Jaywanti]
Asiatic Enclave, Vartak Nagar,]
Thane-400 606]
Maharashtra] .. Petitioner

Vs.

1. State of Maharashtra]
Through Learned Govt. Pleader]
Appellate Civil Side,]
Hon'ble Bombay High Court,]
Fort, Mumbai.]
2. N. Geetanjali Parag Parelkar]
Age-48 years, Occ.-Service, Pilot]
31 & 32A, Brrokhavens, J.V. Link]
Road, Jogeshwari East,]
Mumbai – 400 060.] .. Respondents

Mr. Vivek Joshi a/w. Mrs. Jaylaxmi Konnar i/b Vivek Joshi for the Petitioner.

Mr. J. A. Madane, AGP for Respondent No.1.

Mr. Dakshesh M. Vyas i/b Mr. Ramesh Makhija & Co. for Respondent No.2.

CORAM : K. K. SONAWANE, J.

Judgment reserved on : 18.07.2018

Judgment pronounced on : 07.08.2018

JUDGMENT

1. Heard.

2. Rule. Rule made returnable forthwith. The matter is taken up for final hearing at the stage of admission.

3. The present writ petition is directed against the impugned order passed by the Family Court, Thane below application, Exhibit 10 dated 10.08.2017 in Execution Proceeding bearing R.D. No. 20/2015. The petitioner-Parag Parelkar moved the application (below Exhibit 10) seeking dismissal of the execution proceeding being barred by period of limitation.

4. The factual aspect of the matter in nutshell is that, the petitioner-Parag Parelkar and respondent No.2- N. Geetanjali Parelkar both were legally wedded husband and wife. Unfortunately, there was a marital discord in between the spouses resulting into Court litigation bearing Marriage Petition No. A-249 of 2010 (old Marriage Petition No. 387 of 2008) for dissolution of marital relations between the spouses. Pending the marriage petition, respondent-wife filed an application for interim maintenance under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred as "the Act"). The learned Judge, Family Court, Thane, considered the attending circumstances on record and allowed the application partly. Accordingly, the petitioner-husband was bade to pay Rs.10,000/- p.m. each to two daughters of the spouses i.e. Rs.20,000/- p.m. from the date of application filed on 17.06.2010 till final decision of

the marriage petition. It has been alleged that the petitioner-husband did not give response to the order passed by the Family Court, Thane nor deposit the amount of interim maintenance for the daughters. Eventually, circumstances constrained the respondent-wife to file R.D. No. 20/2015 for recovery of arrears of interim maintenance from the petitioner-husband.

5. On receipt of notice of Darkhast, the petitioner-husband appeared in the proceeding and raised the objection that the present Darkhast-Petition is not maintainable as same is barred by period of limitation. The learned Judge of the Family Court, Thane appreciated the circumstances on record and found reluctant to nod in favour of petitioner-husband and proceeded to dismiss the application with costs. The learned Judge of the Family Court passed the impugned order (below Exhibit 10), the validity and legality of which is agitated in the present petition.

6. The legal issue to be determined in the present writ petition is:

“Whether the execution of decree or order passed by the Court and enforceable under Section 28-A of the Act, 1955 as well as execution of decree or order passed by the Family Court and enforceable under Section 18 of the Family Courts Act, 1984 are governed by the Article 136 of the Limitation Act or it would governed by Article 137 of the Limitation Act.”

7. At the threshold, it would be apposite to have a glance over the legal provisions of law relevant to execution of decree or order by the Court under Hindu Marriage Act as well as decree or order passed by the Family Court. The provision of Section 24 of the Act is enacted to provide relief of interim maintenance and litigation expenses to a spouse to enable to maintain itself during pendency of proceeding. The Section 26 of the Act enables the Court to pass such interim order from time to time and to make such provisions as it may deem fit in respect of custody, maintenance and education of minor children. The Section 28-A of the Act describes the mode and manner for enforcement of decree or order made by the Court under Hindu Marriage Act. Section 28-A is reproduced as under:

28-A. Enforcement of decrees and orders.- All decrees and orders made by the Court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction for the time being are enforced.

8. The Family Court has also an authority to deal with issue of maintenance pendente lite under Section 24 of the Act. The Section 18 of the Family Courts Act, 1984 not merely declares that the Judgment and decree/order of the Family Court have the same force and effect as that of the Civil Court, it also empowers the Family Court to execute its decree or order as Civil or Magistrate Court execute them. The Section 18 of the

Family Courts Act, 1984 would be read as under:

18. Execution of decree and order.- (1) *A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] passed by a Family Court shall have the same force and effect as decree or order of a Civil Court and shall be executed in the same manner as prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.*

(2) *An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.*

(3) *A decree or order may be executed either by the Family Court which passed it or by the order Family Court or ordinary Civil Court to which it is sent for execution.*

9. Now, turning to the another spectrum of the matter in regard to provisions of Articles 136 and 137 of the Limitation Act, 1963, it reflects that the Article 136 of the Limitation Act provides twelve years period of limitation for execution of any decree or order of Civil Court other than a decree granting mandatory injunction. The Article 137 of the Limitation Act prescribe period of limitation of three years for any other application for which no period of limitation is provided elsewhere in the Third Division of the Schedule of Limitation Act.

10. Learned Counsel Shri Vivek Joshi for petitioner assailed that the Family Courts are the special Courts created under the special statute. It

cannot be considered or equated to Civil Courts as postulate under Section 9 of Code of Civil Procedure. According to learned Counsel, the Family Courts cannot be considered as Civil Courts within the meaning of Article 136 of the Limitation Act. He further added that Sections 24 and 28-A of the Act do not specify any period of limitation for execution of decree or order passed under the Act. The provisions of Section 36 and Order 21 Rule 10 of the Code of Civil Procedure contemplate execution of decree/order of Civil Court. The Section 28-A of the Act or Section 18 of the Family Courts Act are for execution of decree or order made under the Hindu Marriage Act or passed by the Family Court. It is evident that "Application" needs to be filed for execution of decree or order in the proceeding. Learned Counsel Shri Joshi harped on the circumstances that in case the provisions of Article 137 of the Limitation Act, Section 36, Order 21 Rules 10, 11 & 12 of the Code of Civil Procedure all are taken into consideration simultaneously in juxtaposing, it would indicate that they have a common word "Application". He reiterated that the period of limitation has not been provided under Section 24 or Section 28-A of the Act as well as Section 18 of the Family Courts Act. Therefore the provisions of Article 137 of the Limitation Act would be made applicable for its execution. He urged that the impugned order passed by the Family Court is erroneous, illegal and deserves to be upset and the execution petition filed on behalf of respondent-wife be dismissed as barred by period of limitation.

11. Learned Counsel for respondent-wife raised objection and submits that the period of limitation under Article 136 of the Limitation Act for execution of order is applicable to the matter-in-hand. He criticized that the provisions of Article 137 of the Limitation Act could not be made applicable for recovery of arrears of interim maintenance granted by the Family Court under Section 24 of the Act. He explained that Part I of the Third Division of Schedule appended in the Limitation Act for Articles 118 to 136 prescribes application in specified cases. The Part II of the Third Division is meant for any other application for which no period of limitation is provided elsewhere in the Third Division. The learned Counsel for the respondent-wife contends that the specified application for execution of decree or order are governed by Article 136 of the Limitation Act. The specific provisions of 12 years period of limitation is available under law to execute any decree or order of the Civil Court other than decree granting mandatory injunction. Therefore, the decree/order of Family court is to be executed within 12 years at par with procedure prescribed for execution of decree/order of Civil Court. The learned Counsel gave emphasis that the provisions of Article 137 being a residuary clause deals with other applications under Part II of the Third Division to the Schedule of Limitation Act. The impugned order is relating to recovery of arrears of interim maintenance under Section 24 of the Act. Therefore, the order of interim maintenance is enforceable within the period of 12 years as prescribed

under Article 136 of the Limitation Act. He submits that the proceeding of R.D. No. 20/2015 filed on behalf of respondent-wife is amenable within the period of limitation for recovery of arrears of maintenance.

12. The intense scrutiny of the aforesaid legal provisions meant for enforcement of decree or order by the Family Court or any Court under the Hindu Marriage Act reveals that the argument propounded on behalf of learned Counsel for the petitioner appears not sustainable and considerable one. Admittedly, the Hon'ble Apex Court in the case of **S. D. Joshi & Ors. Vs. High Court of Judicature at Bombay & Ors., (2011) 1 SCC 252** held that the Family Court is a Court of limited jurisdiction and being a creature of statute, it has been vested with powers to adjudicate and determine the dispute between the parties which falls within the scope and ambit of explanation to Section 7 of the Family Courts Act and none other. From the perusal of scheme of Family Courts Act, 1984, it is clear that the Family Courts have to exercise two kinds of jurisdiction i.e. one as a District court for dealing with cases except under Chapter IX of the Code of Criminal Procedure and while dealing with proceeding under Chapter IX of the Code of Criminal Procedure, the Family Courts have to exercise jurisdiction of Judicial Magistrate First Class.

13. In the matter in hand, the Family Courts exercised the powers as a District Court and passed the order under Section 24 of the Act for interim

maintenance. The crucial issue for consideration is pertains to mode and manner of its execution. The provisions of Section 28-A of the Act made it clear that the decree or order passed under the Act shall be enforced in the like manner as the decree or order of the Courts made in exercise of its original civil jurisdiction for the time being in force. The Section 18 of the Family Courts Act also prescribes similar mode and manner to execute the decree or order passed by the Family Courts except the order under Chapter IX of the Code of Criminal Procedure. Section 18 of the Family Courts Act provides that the decree or order of the Family Court should be executed in the same manner as given in the Code of Civil Procedure for execution of decree or order passed by the Civil Court. The Section 18 makes it more clear that the decree or order of the Family Court shall have the same force and effect as a decree or order of a Civil Court.

14. On careful analysis of these legal provisions, it becomes manifestly clear that the decree or order passed by the Court under Hindu Marriage Act as well as the decree or order passed by the Family Court except the order under Chapter IX of the Code of Criminal Procedure both have the same force and effect as a decree or order made by the Civil Court. The decree or order also required to be executed in the same mode and manner at par with the execution of decree or order of the Court made in exercise of its original civil jurisdiction.

15. The Article 136 of Part I of the Third Division of the Limitation Act delineated the period of limitation of 12 years for execution of any decree or order of any Civil Court. According to learned Counsel for the petitioner, the Family Court is not a Civil Court and its order cannot be equated as order passed by the Civil Court for its execution under Article 136 of the Limitation Act. According to him, the period of limitation of three years as provided under Article 137 is applicable to the matter-in-hand. He ruled out the applicability of provisions of Article 136 of the Limitation Act for recovery of arrears of interim maintenance beyond the period of three years.

16. I find it painful to accept the contentions put-forth on behalf of learned Counsel for petitioner. The submissions on his parts found rests on the misconception of legal provisions meant for execution of decree or order of the Family Court or passed under Hindu Marriage Act. It is true that the decree or order of the Family Court cannot be termed as a decree or order of a Civil Court as the Family Court is a creature of special statute for limited jurisdiction. But, in view of Section 28-A of the Act as well as Section 18 of the Family Courts Act, the decree or order passed under Hindu Marriage Act or Family Courts Act are having same force and effect for its execution at par with decree or order passed by the Civil Court itself and consequently the decree or order under Hindu Marriage Act or Family Courts Act, both are allowed to be executed in the same mode and

manner as provided for execution of decree or order passed by the Civil Court. The period of limitation for execution of decree or order made by the Civil Court is 12 years as provided under Article 136 of the Limitation Act. Therefore, it is crystal clear that the decree or order of Family Court or any Court under Hindu Marriage Act is required to be executed at par with the mode and manner meant for execution of decree or order of Civil Court and the period of 12 years as contemplates under Article 136 of the Limitation Act is applicable to them.

17. It is fallacious to appreciate that the order or decree passed by the Court under the Hindu Marriage Act as well as by the Family Court, would be enforced under the provisions of Article 137 of the Limitation Act. There is specific provision under Article 136 of the Part I of the Third Division of Schedule of Limitation Act for period of limitation to execute the decree or order of the Civil Court. It would be reiterated that the decree or order under Hindu Marriage Act as well as passed by the Family Court all are having same force and effect as a decree or order of the Civil Court and liable to be executed in the same mode and manner as prescribed under the Code of Civil Procedure for execution of decree or order of the Civil Court. The provision of Article 137 is applicable to the proceedings of “any other application” for which no period of limitation is given elsewhere in the Third Division to the Schedule. As referred above, when the specific period of 12 years is prescribed for execution of decree/order of Civil

Court, the same provision of 12 years period of limitation is essential to be made applicable to the decree/order by the Family Court or by any Court under Hindu Marriage Act. The procedure meant for execution of decree/order of Civil Court is required to be adopted for execution of decree/order of Family Court or any Court under Hindu Marriage Act. Both the procedures for execution are to be considered analogous with each other. Therefore, when there is a limitation period provided under Article 136 for execution of decree/order of the Civil Court, the decree/order of Family Court under Hindu Marriage Act are permitted to be executed within 12 years period with same force and effect as well as with the same mode and manner prescribed for execution of decree/order of Civil Court. In the result, the procedure would be governed by Article 136 and not by the provision of Article 137 of Limitation Act. The Single Judge of the High Court of Orissa in the case of **V. Krishnaveni Vs. V. Narasingha Rao, 1984 LawSuit (Ori) 148** also held that the order under Section 24 of the Act is enforceable within a period of 12 years under Article 136 of the Limitation Act.

18. In view of above, I am of the opinion that the procedure for execution of decree/order of Family Court or passed under Hindu Marriage Act, both are governed by the period of limitation prescribed under Article 136. The provision of Article 137 does not apply to the execution under Section 28-A of the Act or under Section 18 of the Family Courts Act. In

the result, the conclusions drawn by the learned Trial Judge appears just, proper and reasonable. There are no errors in it and needs no interference. The Writ Petition deserves to be turned down.

19. In sequel, the Writ Petition stands dismissed. Rule discharged. No order as to costs.

Arjun
Machhindra
Kadam

Digitally signed
by Arjun
Machhindra
Kadam
Date:
2018.08.07
18:09:49 +0530

[K. K. SONAWANE, J.]