

D/L.10.  
January 27, 2025.  
MNS.

FCA No. 1 of 2024  
+  
CAN 1 of 2024  
+  
CAN 2 of 2024

Gautam Wahi  
Vs.  
Aabhilasha Chowdhury

Mr. Abhirup Chakraborty

... for the appellant.

Re: CAN 1 of 2024 (condonation application)

&

CAN 2 of 2024 (stay application)

1. The present applications arise out of an appeal filed against an order passed by the Family Court under Section 24 of the Hindu Marriage Act, 1955 (in short "1955 Act").
2. Learned counsel for the appellant, upon being posed a query by the Court in that regard, submits that since the order was passed by the concerned Family Court, the governing provision for an appeal would be Section 19 of the Family Courts Act, 1984 (hereinafter referred to as the "Act of 1984").

3. Learned counsel seeks to impress upon the court that since the application under Section 24 was disposed of finally by the impugned order, it is not an interlocutory but a final order.

4. However, we are unable to accept such contention. It would be an absurd interpretation of Section 19 of the Act of 1984 to say that orders which are of an interlocutory nature during the pendency of the suit, shall acquire the character of a final order, for the purpose of preferring an appeal under the said Act.

5. If such proposition is to be entertained, an absurd situation would arise to the effect that simply by virtue of a matrimonial suit being filed before a Family Court, whereas another similar suit is filed before a regular Civil Court, the remedy would differ, inasmuch as orders passed under the self-same provision of the concerned matrimonial statute would, in one case, be appealable and in the other be revisable.

6. Even the language of Section 19 of the Act of 1984 does not permit of such an interpretation. Subsection (1) of Section 19 of the Act of 1984 provides that 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.

7. The expression “not being an interlocutory order” should obviously be construed in the context of the main matrimonial Suit/proceeding and not in respect of the interlocutory application itself.

8. In the event the expression “interlocutory” were to refer to ad interim orders passed in connection with interlocutory applications and when interlocutory orders were finally disposed of, those were to be construed as final orders, the concept of finality would be eschewed. Hence, we find it very obvious that the expression “interlocutory” in Section 19(1) of the Act of 1984 is meant in the context of the suit itself.

9. The present impugned order is one disposing of an application of an interlocutory nature under Section 24 of the 1955 Act and as such, is itself an interlocutory order for the purpose of the suit, although passed finally in respect of the Section 24 application.

10. Hence, this Court is of the specific view that the statute does not provide for an appeal against the present impugned order.

11. Accordingly, FCA No. 1 of 2024, along with the connected applications, bearing CAN 1 of 2024 and CAN 2 of 2024, are dismissed as not maintainable, with liberty to the appellant to approach with a properly constituted challenge before the appropriate Bench having determination.

12. It is made clear that nothing in this order shall be deemed to be a final adjudication by this Court on any of the issues involved and it will be open to the Bench, where the appropriate challenge is preferred, to decide all questions independently in accordance with law, irrespective of any finding made herein.

13. The learned Advocate-on-record for the appellant is granted leave to take back the certified copy of the impugned order annexed to the Memorandum of Appeal, upon furnishing a proper photocopy of the same for the records, from the concerned Department.

14. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)