

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 20723 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 14563 of 2023****With****R/SPECIAL CIVIL APPLICATION NO. 14793 of 2023****With****R/SPECIAL CIVIL APPLICATION NO. 1993 of 2024****With****R/SPECIAL CIVIL APPLICATION NO. 4153 of 2024****With****R/SPECIAL CIVIL APPLICATION NO. 9248 of 2024****With****R/SPECIAL CIVIL APPLICATION NO. 12661 of 2024****With****R/SPECIAL CIVIL APPLICATION NO. 13170 of 2024****With****R/SPECIAL CIVIL APPLICATION NO. 13887 of 2024****With****R/SPECIAL CIVIL APPLICATION NO. 718 of 2025**

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MOHAMMED IRFAN ABDULSAMAD DELAIR**Versus****AAYSHA MUHMMAD EKALVAYA**

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Appearance:**MRS. PRITI J JOSHI(3641) for the Petitioner(s) No. 1****PRERAK P OZA(8279) for the Petitioner(s) No. 1****MR ZUBIN F BHARDA(159) for the Respondent(s) No. 1**

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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV**and****HONOURABLE MR. JUSTICE HEMANT M.****PRACHCHHAK****Date : 05/03/2025****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)**

1. We have heard learned counsel for the parties on the order of reference made by the learned Single Judge vide

order dated 20.01.2025. The Hon'ble the Chief Justice on the administrative side has referred the Special Civil Applications before this Bench and pursuant to the same, we made an endeavour to segregate classes of cases i.e. the Special Civil Applications involving issue with regard to interim custody/visitation rights of a child passed by the Family Courts under Section 12 of the Guardian and Wards Act, 1890 and issue with regard to interim maintenance. We note that by the order of reference even the issue whether an appeal would lie against an order passed by the Family Courts under Section 24 of the Hindu Marriage Act, 1955 has been referred to us in light of the judgements of the Division Bench referred therein.

2. Today when the matters with regard to interim custody were taken up, Mr. Nandish Thakkar, learned advocate appearing for the petitioners in one of the petitions invited the attention of this court to a Division Bench judgement of this court in the case of **Rajan**

Ankleshwaria S/o Manojkumar Babulal Ankleshwariya Vs. Vinni Ankleshwariya D/o mahesh Gulshanrai Malhotra W/O Rajan Ankleshwaria reported in (2024) 3 GLR 1810 where the Division Bench has taken a view that in matters connected to interim custody, since the orders are interlocutory in nature, First Appeal is not maintainable. He would press into service the language of Section 12 of the Guardians and Wards Act. He would also press into service decision of the Apex Court in the case of **Mary Pushpam vs. Telvi Curusumary & Others reported in (2024) 3 SCC 224** particularly paragraph no. 21 thereof to impress upon us that considering the Division Bench judgement in **Rajan Ankleshwaria** (supra) of this Court, unless we take a view contrary to the one taken by it, the decision of this Court shall be binding and that in case we disagree with the view taken by the Division Bench, we need to refer the question of maintainability of the appeals to a larger bench.

3. Mr. Brijesh Trivedi, learned advocate appearing in one of the petitions so as learned advocate Mr. Zubin Bharda, for the respondents have drawn our attention to a decision of the Full Bench of the Delhi High Court in the case of **Dr. Geetanjali Aggarwal vs. Dr. Manoj Aggarwal rendered in (2024) 4 High Court Cases (Del) 451** which is subsequent to the decision of the Division Bench of this court in the case of **Rajan Ankleshwaria** (supra) where the Full Bench of the Delhi High Court has taken a view that orders under Section 12 of the Guardians and Wards Act are final in nature and have trappings of a final order and therefore an appeal would lie.

4. We note that though we have segregated Special Civil Applications inasmuch as ones which involve interim custody matters viz-a-viz ones involving interim maintenance, learned counsel today have addressed us on both the issues i.e. on the maintainability of appeals either in the case of matters pertaining to interim custody

and/or interim maintenance. At this stage, we note that as far as matters of maintenance are concerned, a bench where one of us (Hon'ble Mr. Justice Biren Vaishnav) was a member has already taken a view that appeals are maintainable so far as issue of maintainability of appeals in cases of interim maintenance is concerned. The question that beckons us is whether we should pass orders retaining the issue of maintainability of appeals in one of the cases and hear the other set of cases with regard to interim custody or should we refer the same to a larger bench.

Registry to list all the matters referred to by the learned Single Judge vide order dated 20.01.2025 passed in SCA No. 444 of 2024 and allied matters including the captioned petitions for orders on 10.03.2025.

(BIREN VAISHNAV, J)

(HEMANT M. PRACHCHHAK, J)

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