Reserved On : 08/07/2025
Pronounced On : 16/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17293 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 9917 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 16013 of 2019
With
CIVIL APPLICATION (FOR VACATING STAY) NO. 1 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 16013 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 6104 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 8286 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 18573 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 2643 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 2706 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 10104 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 12141 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 20723 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 3268 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 7275 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 11119 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 11389 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 14563 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 14793 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 17395 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 19239 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 20005 of 2023

With
R/SPECIAL CIVIL APPLICATION NO. 1993 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 7042 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 7815 of 2024
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2024
In R/SPECIAL CIVIL APPLICATION NO. 7815 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 5654 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 9125 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 9248 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 9540 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 14102 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 9546 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 12489 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. 13429 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 13552 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 13887 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 14751 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 14916 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 15310 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 15565 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 16138 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 16355 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 16630 of 2024

With
R/SPECIAL CIVIL APPLICATION NO. 17567 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 718 of 2025

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MR.JUSTICE R. T. VACHHANI Sd/-

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Approved for Reporting	Yes	No
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JANKIBEN NARENDRABHAI TRIVEDI
Versus
GAURANGBHAI DALSUKHBHAI PANDYA

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Appearance:
MR BHARAT B. NAIK, SENIOR ADVOCATE with
MR. UMANG R. VYAS, MR. ATULKUMAR P. KAMDAR, MR.MANMEETSINGH P. CHHABRA, MR. AMMAR M. MANSURIPINJARA, MR.MAULIK G. NANAVATI AND MANVI DAMLE FOR NANAVATI & CO., MS.NIKITA S. BAROT, MS.SANSKRUTI R. SHUKLA, MS.JAYDEEP H. SINDHI, MR. N. V. GANDHI, MR. SANJAYKUMAR S. PATEL, MR. NEEL B. DAVE, MS. KHYATI A. CHUGH, MR. TATVDEEP J. JANI, DR. HIREN S. SOMAIYA, MRS. PRITI J. JOSHI, MR. PRERAK P. OZA, MR. NASIR SAIYED, MR. SAMRAT R. UPADHYAY, MS. ROOPAL R. PATEL, MR.DHAVAL G. BAROT, MR. SANKET K. PANDYA, MR. VALMIK M. VYAS, MR VARUN H. MODASIA FOR MR. S. P. MAJMUDAR, MS.RADHIKA M. BHATT, DR. HARDIK K. RAVAL, MS. URMILA N. DESAI, MR. ADIL R. MIRZA, MR. SHIVAM R. PANDEY, MR. VEDANT AVADHOOT SUMANT, MR. ALAY A. DAVE, MR. HITESH V. PATEL, MR. MAULIK M. SONI, MS.G. R. VIJAYALAKSHMI, MR.NADISH THACKER AND MR.MEET JANI FOR DR. ABHISST K. THAKER, MR.NEHUL L. DAVE, MR. DARSHAN K. KOTHARI, MR. PARTHIV A. BHATT, MR. DADHICHI L. LIMBOLA, MR. SWAPNESHWAR GOUTAM, MR. DHARM K. RAVAL, MS. ALKA B. VANIYA, MR. B. J. TRIVEDI, MS JIGNASA B. TRIVEDI, MR. VICKY B. MEHTA, MR. ANVESH V. VYAS, MR. KETUL R. PATEL, MR. DHANESH R. PATEL, MS. SRUSHTI A. THULA, MR. NOYEL A. CHRISTIAN, MS KIRAN UDASI, MR. VISHAL D. DAVDA, MR. SNEH R. PUROHIT, MR. PARV S. GUPTA FOR THE RESPECTIVE PETITIONERS

MR. AAKASH GUPTA, AGP, MR. KAUSHAL H. PATEL, MR. JIGAR G. GADHAVI, MR. RAHUL M. BAROT, MR. N. K. MAJMUDAR, MR. J. V. PADHIYAR, MR. VATSAL S. PARIKH, MR. HARDIK D. MEHTA, MR. VISHAL K. ANANDJIWALA, MR. AADITYA P. DAVE, MR. ZUBIN F. BHARDA, MS. R. V. ACHARYA, MR. BHAVIN B. THAKAR, MR VICKY MEHTA, MR. RAJESH M. CHAUHAN, MR. S. M. SOJATWALA, MR. P. R. ABICHANDANI, MR. HARDEEP L. MAHIDA, MS. DIMPLE PATEL, MR. HEMAL SHAH, MR. R. G. CHAUDHARY, MS. SONAL M. JOSHI, MR. RAHIL P. JAIN, MR. MANAN K. PANERI, MS URMILA N DESAIMR. VARUN H. MODASIA, MS. FALGUNI D. TRIVEDI, MR. NIRAV C. SANGHAVI, MR. KISHAN H. DAIYA, MR. ANKIT Y. BACHANI, MR. V. A. ZALA, MR DHANESH R. PATEL, FOR THE RESPECTIVE RESPONDENTS

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR.JUSTICE R. T. VACHHANI
COMMON CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present writ petitions have been assigned to this Bench by the Hon'ble the Chief Justice, in view of the order dated 20.01.2025 passed by the learned Single Judge (Coram: Hon'ble Ms. Justice Nisha M. Thakore) referring the issue under the provisions of Rules 5 and 6 of the Gujarat High Court Rules, 1993.

2. At the outset, we were inclined to remit the matters to the respective Benches, as we were of the opinion that the reference made by the learned Single Judge was uncalled for.

3. All the learned advocates appearing for the respective parties are *ad idem* on the view expressed by us, however, they have urged that since the issues raised in the present writ petitions have been pending for more than three to four years, the same may now be finally decided and further clarified.

SCOPE OF REFERENCE MADE BY THE LEARNED SINGE JUDGE :

4. Before addressing the substantive issue, we consider it necessary to deal with the reference made by the learned Single Judge vide common oral order dated 20.01.2025. The learned Single Judge has invoked Rules 5 and 6 of the Gujarat High Court Rules, 1993, which are reproduced below:-

*"**Rule 5.***

1. *A Single Judge may refer any matter before him or question arising in such matter to a Division Bench of two Judges, or a larger Bench.*

2. *A Division Bench of two Judges may refer any matter before it or any question arising therein or any question referred to it under sub-rule (1) above to a larger Bench.*

Rule 6. Powers of Chief Justice to order hearing by a larger Bench

Notwithstanding anything contained in these Rules, the Chief Justice may by a special or general order direct that any matter or class of matters be placed before a Division Bench or a Special Bench of two or more Judges."

5. Though learned Single Judge was conscious of the principles of judicial discipline and propriety, as laid down by the Constitution Bench in the case of Mary Pushpam Vs. Telvi Curusumary & Ors., (2024) 3 SCC 224, learned Single Judge, while expressing doubt over the legal precedent set by the Division Benches of this Court, requested Hon'ble the Chief Justice to place the matter before a Bench of larger quorum.

6. A bare perusal of the common oral order dated 20.01.2025 passed by the learned Single Judge, while making the reference, reveals that the matters were referred on two specific issues; (i) the maintainability of the First Appeals against the interlocutory / interim orders directing custody passed under Section 12 of the Guardian and Wards Act, 1890; and (ii) the maintainability of the First Appeals against the orders passed on applications under Section 24 of the Hindu Marriage Act, 1955.

7. Interestingly, albeit the judgments of the Division Benches of this Court, having binding precedential value, were brought to the notice of the learned Single Judge, and are in fact, referred to in the order, the learned Single Judge still proceeded to rely upon the Full Bench judgment of the Delhi High Court in the case of Dr. Geetanjali Aggarwal Vs. Dr. Manoj Aggarwal, (2024) 4 HCC (Del) 451, and referred the Issue No.(i) for consideration by a Larger Bench. However, since there exists no contrary or conflicting decisions of either Single Judge or of the Division Bench of this Court on the aforesaid issue, in our opinion, the reference was unwarranted, particularly in view of the Delhi High Court's decision having only persuasive value.

8. With respect to another issue No.(ii), regarding the maintainability of an appeal against an order passed under Section 24 of the Hindu Marriage Act, 1955, two judgments were cited, and are also referred to by the learned Single Judge, a) the judgment of the Division Bench dated 08.10.2024 passed in Letters Patent Appeal No.1469 of 2024 in the case of Pranalinaben w/o Sanjaybhai Sharma Vs. Sanjay Bachubhai Sharma and the common order dated 09.12.2024 passed in First Appeal No.3603 of 2024 and allied matter in the case of Vaishaliben Amitbhai Rawal d/o. Prakashbhai Trivedi vs. Amitbhai Yogendrabhai Rawal. However, the learned Single Judge chose to rely on the judgment of the Allahabad High Court and the decision of the Supreme Court in the case of Amina Ahmed Dossa & Ors. Vs. State of Maharashtra, AIR 2001 SC 656, which elaborates on the nature of interlocutory orders. In addition to that, the reliance was also placed on a Full Bench

decision of the Orissa High Court, as well as on the judgments of the Bombay and Patna High Courts, and the issue was referred to be decided by a Larger Bench. In our considered opinion, the Division Bench judgment of this Court had already conclusively dealt with the issue, and there was no contrary view expressed by any other Benches of this Court, the reference made by the learned Single Judge was erroneous.

9. At this stage, we may reiterate the scope of reference to be made under Rules 5 and 6 of the High Court Rules. The Division Bench of this Court in the case of Chandubhai Govindbhai Patel Versus Deputy Collector, 2024 (4) GLH 78 has elucidated the power under the aforesaid Rules. The relevant observations are as under:

> *"25. There is another aspect of the matter. The question is whether the learned Single Judge was right in making the reference by invoking the power under Rule 5(1) of the Gujarat High Court Rules, 1993 for the mere necessity of creating a precedent when he was not facing any conflict that too casting aspersions on another decision wherein earlier law stated had been followed. In other words, the question is whether the reference made by the learned Single Judge was proper or not and whether the academic issues on the question of law has to be answered by the Larger Bench when there is no conflict or controversy.*
>
> *26. There cannot be two opinion that if a question of law of whatever importance arises before the Bench having jurisdiction, ordinarily, that Bench (whether Single or Division) shall decide it itself and not refer it to a Larger Bench, unless there is a conflict of precedent, which makes it impossible for the Bench to decide this way or other. [Ref. Suo Motu Action Taken by the Court vs. ICICI Bank Ltd., Allahabad (2006(4) ADJ 106)].*
>
> *27. xxxxxxx*
>
> *30. In view of the above discussion, from a reading of Rule 5(1), Rule 5(2) and Rule 6 of the Gujarat High Court Rules, 1993, it is found that when it appears to a Single Bench or a Division Bench*

that there are conflicting decisions of the co-ordinate strength of the same Court or that a question of law of importance having conflicting views arises in the trial of a case, the Judge or the Bench passes an order that the papers be placed before the Chief Justice of the High Court with the request to form the Special or Full Bench to hear and decide the case on the questions that arise in the matter. Though the judge concerned should make a reference briefly indicating reasons for his views which necessitated to refer the matter to a Larger Bench, but the same is not indispensable. The Full Bench cannot decline to answer the question referred to it in respect of the order of reference. It is a matter of judicial propriety that brief reasons for making a reference are to be indicated so as to enable the Larger Bench to know the minds of Hon'ble Judge(s) making the reference. This view has been stated by the Full Bench of the Allahabad High Court in Suresh Jaishwal Vs. State of U.P [(2021) 147 ALR 19].

31. Similar view has been expressed by the Full Bench of this Court in Panoli Intermediate (India) Pvt. Ltd. vs. Union of India [2015 (2) GLR 1359] wherein it was observed that though in the referred order no specific reasons are recorded by the Division Bench for disagreement with the view taken by the another Division Bench of this Court, but the questions which have been referred, though not directly, but indirectly are of general importance and, therefore, the Full Bench found it appropriate to answer the questions was to be given by the Full Bench instead observing the reference as incompetent.

32. In Rama Fertilizers Pvt. Ltd. vs. State of Gujarat [2001 (3) GLR 2261] , it was held by this Court that :-

> *"4.1 It will be seen from the provisions of Rule 5 of the Gujarat High Court Rules, 1993 that a Single Judge may refer any matter before him or question arising in such matter to a Division Bench of two Judges or a larger Bench. The rule does not require any reasons being recorded for the purpose and it is sufficient if in the opinion of the learned Single Judge the matter requires to be considered by a Division Bench of two Judges or a larger Bench. Therefore, even if no reason is recorded for referring the matter, there can arise no question of a larger Bench not being able to consider the matter, because, the process of assignment of work to Benches is purely an internal matter of the High Court governed by these Rules and a matter which could have been considered by a learned Single Judge can always be referred for a decision to a larger Bench. A bare look at the order referring the matter to a larger Bench would, however, show that very cogent reasons are recorded by the learned*

Single Judge for referring the matter for a decision by a larger Bench. We therefore do not find any substance in the preliminary objection which was raised against the Full Bench hearing the matter, on the ground that the reference was not validly made."

33. In Gujarat Forest Producers, Gatherers & Forest Workers Union vs. State of Gujarat [2004(2) GLR 1488] , it was observed by the Full Bench that :-

"*26.3.....Even if it may have appeared to the learned Single Judge that there was a conflict between the two judgements of the Supreme Court, the question for the High Court to consider is not which decision lays down the correct law, as has been framed in the reference but the real question would be, which of the two decisions should be treated as binding on the basis of the well known principles of law governing precedents. When, however, the Supreme Court has itself considered its earlier judgement in Jaggannath case (supra) and distinguished it in Prathamsinh Parmar case (supra), then there can arise no question of conflict between the two and the earlier judgement has to be read in the manner found distinguishable by the Supreme Court in the later judgement which has considered it.*"

34. In Principal, Shri Jivkor Vanita Vishram vs. Savita Saymon Parmar [2004(2) GLR 1488] , it was noted by the Full Bench that in the reference made by the learned Single Judge to the decision of the Apex Court in Jyotindranath's case and the Full Bench judgment in Shantiben of this Court rendered on the same issue has been referred by the learned Single Judge noticing that the Apex Court decision in Jyotindranath Roy was not brought to the notice of the Full Bench in Shantiben. Taking note of the questions referred and the decision of the Full Bench in Shantiben and the judgment of the Apex Court in Jyotindranath Roy, though the Full Bench in the said case was of the view that the Apex Court decision in Jyotindranath Roy was with respect to a different class of employees and the Full Bench in Shantiben was pertaining to teaching staff, but it has refused to go into the propriety and legality of the reference by the learned Judge. The question of law was restated referring to the decision of the Full Bench in Shantiben and judgment of the Apex Court in Jyotindranath Roy, has referred to the Full Bench in Principal, Shri Jivkor Vanita Vishram (supra).

35. In a recent decision of the Full Bench of Allahabad High Court in Manish Kumar Mishra vs. Union of India [AIR 2020 All 97 : AIROnline 2020 All 813] , it was noted that the reference to a Larger Bench ordinarily, can only be made when there are conflicting views

of the coordinate bench or the larger bench, facing the learned Judge on a subject/controversy before him making it difficult for him to take one or other view. Reference cannot be made merely to create a precedent or to get an authoritative pronouncement by the Larger Bench on any "assumed conflict". Whenever a matter is placed before the Court (whether Single or Division Bench) for adjudication, if a question of law of whatever importance arises before that Bench, ordinarily the Court should decide it itself by applying legal principles and judicial pronouncements on the subject. Only if the learned Judge reaches at a conclusion that there is a conflict of precedent, i.e. conflicting views of the coordinate bench or the larger bench on the subject making it impossible for the Court to decide this way or other, reference can be made.

36. Taking note of the above decisions on the aspect of propriety of the reference to be made by the learned Judge to a Larger Bench, considering the language employed in Rule 5(1) and (2) of the Gujarat High Court Rules, 1993, specifically the decisions of this Court noted hereinabove, we answer the second question posed by us that the provisions of Rule 5 of the Gujarat High Court Rules, 1993 contemplate a reference by a Single Judge or a Division Bench, not merely because the learned Single Judge or both the Judges of the Division Bench are of the view that the decision involves a question of law and an authoritative pronouncement of law by a Larger Bench is needed so as to create a precedent. A reference by the Court (whether Single or Division Bench) is to be made only if there is a conflict of decision of the coordinate bench of the same Court and there is no latter decision of the Apex Court resolving the conflict directly or impliedly. Ordinarily, the Court (whether Single or Division Bench) having jurisdiction should decide the question of law raised before it and merely because the learned Judge(s) is/are of the opinion that the decision involves a question of law the matter should not be referred to a Full Bench, to decide either on a question of law or the entire matter itself. Reference to a Larger Bench under Rule 5 of the Gujarat High Court Rules, 1993 can be made to resolve a conflict faced by the Court in arriving at its own decision on a question of law and not on the 'assumed conflict'."

10. We may succinctly reiterate the aforesaid observations. On an analogous reference to the present one, the Coordinate Bench has asserted that there cannot be two opinion that if a question of law of whatever importance arises before the Bench having jurisdiction, ordinarily, that Bench (whether Single or Division) shall decide it itself and not refer it to a

Larger Bench, unless there is a conflict of precedent, which makes it impossible for the Bench to decide this way or other. It is also clarified, after considering the aforesaid Rules, that from a reading of Rule 5(1), Rule 5(2) and Rule 6 of the Gujarat High Court Rules, 1993, that in case it appears to a Single Bench or a Division Bench that there are conflicting decisions of the co-ordinate strength of the same Court or that a question of law of importance having conflicting views arises in the trial of a case, the Judge or the Bench passes an order that the papers be placed before the Chief Justice of the High Court with the request to form the Special or Full Bench to hear and decide the case on the questions that arise in the matter. In the present case, there was no conflict in legal precedent in view of the binding decision of the Division Benches. It is held that the Reference cannot be made merely to create a precedent or to get an authoritative pronouncement by the Larger Bench on any "assumed conflict". In the instant case, the learned Single Judge, in order get the authoritative pronouncement, has invoked Rules 5 and 6 of the Rules, instead the learned Single Judge ought to have decided the question of law of by applying the legal principles and judicial pronouncements on the subject, and only if the learned Single Judge had formed an opinion that there is a conflict of precedent, i.e. conflicting views on the subject making it impossible for the Court to decide this way or other, reference can be made. A reference by the Court (whether Single or Division Bench) is to be made only if there is a conflict of decision of the Coordinate Bench of the same Court and there is no latter decision of the Apex Court resolving the conflict directly or impliedly.

11. In our considered view, learned Single Judge erred in referring the aforesaid issues to a Larger Bench, especially in the absence of any conflicting decisions from either the Division Benches or Single Benches of this Court. A reference is not maintainable merely because a Larger Bench of another High Court has taken a different view, such a situation does not, in itself, create a binding conflict in terms of judicial precedent.

12. Rules 5 and 6 of the Gujarat High Court Rules, 1993 are to be invoked only in the cases, where there is a divergence of opinion among Benches of this Court, either between learned Single Judges or between the Division Benches. These provisions are not intended to apply, where the referring Bench disagrees with the view taken by other High Courts. On this count alone, we were inclined to remit the matters back to the respective Benches, however, since the learned advocates appearing for the respective parties have submitted that the pending writ petitions would be directly affected by the outcome of these observations made by this Court, and they have requested that appropriate orders may be passed in light of the binding judgments of this Court, we proceed to address the substantive legal issues accordingly.

13. Thus, no further orders are required to be passed by us, except to direct that the judgments of this Court, which are already holding the field on the issues. However, in view of the requests of all the learned advocates, we may further clarify the issues.

ISSUE OF MAINTAINABILITY OF THE FIRST APPEAL AGAINST AN INTERLOCUTORY ORDER PASSED UNDER SECTION 12 OF THE GUARDIANS AND WARDS ACT, 1890 BY THE FAMILY COURT :

14. With respect to the first issue, the Division Bench of this Court, in the case of Rajan Ankleswaria S/o Manojkumar Babulal Ankleswaria Vs. Vinni Ankleshwaria D/o Mahesh Gulshanrai Malhotra W/o Rajan Ankleshwaria, 2024 (3) GLR 1810, after considering the provisions of the Family Courts Act, the Guardians and Wards Act, 1890, and the Code of Civil Procedure, 1908, has categorically held that no appeal lies against an interlocutory order passed under Section 12 of the Guardians and Wards Act, 1890. Since it was urged by the learned advocates for the respective parties that this Court may consider the Full Bench decision of the Delhi High Court in the case of ***Dr.Geetanjali Aggarwal (supra)***, which was relied upon by the learned Single Judge, while making the reference, we find it appropriate to distinguish the same. The Full Bench of the Delhi High Court considered the provisions of the Family Courts Act, 1984 more particularly, Section 19 read with Section 12 of the Guardians and Wards Act, 1890. Section 19 is specifically discussed in paragraph No.18 of the said judgment. We do not find it necessary to reproduce the entire provision, however the relevant portion may be read as under:

> *"**Section 19 – Appeal***
>
> *(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908, or in the Code of Criminal Procedure, 1973, or in any other law, 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."*

15. The relevant provisions of the Guardians and Wards Act, 1890, would be Section 12, which reads as under : -

> *"Section 12 – Power to make interlocutory order for production of minor and interim protection of person and property*
>
> *(1) The Court may direct that the person, if any, having the custody of a minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper."*

16. The Delhi High Court has held that the provisions of the Family Courts Act cannot be overridden or controlled by the provisions of the Guardians and Wards Act, 1890. It is held that mere classification of an order, as an interlocutory order under the Guardians and Wards Act, cannot be a ground to treat the same order as "interlocutory" for the purposes of the Family Courts Act. The Court further observed that an order, which clearly affects the substantive rights of the parties, and which may influence the final determination of those rights as well as the welfare of the child, cannot be regarded as merely interlocutory in nature. Such an order necessarily deals with the matters of significance and bears the trappings of a final order. Moreover, the nomenclature of an order alone cannot determine its nature. Since the Family Courts Act neither defines the term "interlocutory order" nor contains any ouster clause excluding such orders from appeal, it would be contrary to the very object and spirit of the Act to exclude orders dealing with matters of substance from the ambit of the appellate provision under Section 19(1) of the Family Courts Act. The Delhi High Court also relied on the Supreme Court's

judgment in the case of Shah Babulal Khimji Vs. Jayaben D. Kania, (1981) 4 SCC 8, to elucidate the meaning of “interlocutory order.” It was ultimately held that the mere fact that an order passed under Section 12 of the Guardians and Wards Act, is labelled as “interlocutory” under that Act, cannot automatically render it “interlocutory” under the Family Courts Act, which was enacted 94 years later with the intention of providing a broader scope for appeals. Thus, the nature of the adjudicatory order, particularly whether it decides valuable rights of the parties, must be examined. When a Court finds that an order touches upon vital rights of the parties, as opposed to merely procedural matters, an appeal should be entertained, regardless of whether the order was passed during the pendency of proceedings before the Family Court.

17. The Division Bench of this Court in in the case of ***Rajan Ankleshwaria (supra)*** also placed reliance on the judgments of the Supreme Court explaining the meaning and scope of an "interlocutory order." The relevant portion is as under: —

> *“(1) In the case of Vishal Kochar v. Pulkit Sahni and Another reported in 2022 SCC OnLine Raj 3337, the Court has observed based upon the decision of Hon'ble the Apex Court reported in AIR 1980 SC 962 and since some of the observations are very relevant, we deem it proper to quote paragraph 7 hereunder:-*
>
> *"7. Term 'Interlocutory Order' has not been defined in the Cr.P.C.*
>
> *Hon'ble Apex Court in the case of V.C. Shukla vs State, reported in AIR 1980 (SC) 962, has given following observation in para No.23 regarding the nature of interlocutory order:-*
>
> *"Thus, summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in the ordinary sense of the term, an interlocutory order is one which*

only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having to resort to Criminal Procedure Code or any other statute. 'That is to say, if we construe interlocutory order in ordinary (4 of 13) [CRLR-462/2021] parlance it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in s. 11(1) of the Act."

8. Further, in the case of Madhu Limaye vs State of Maharashtra, reported in (1977) 4 SCC 551, the Hon'ble Apex Court has made following observations with regard to the criterion of interlocutory order:-

"*Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606:-*

"*..... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of two words must therefore be considered separately in relation to the particular purpose for which it is required.' In para 1607 it is said:-*

"*In general a judgment or order which determines the principal matter in question is termed "final".*

"*In para 1608 at pages 744 and 745 we find the words:-*

"*An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the- final judgment are to be worked out, is termed "interlocutory". An (5 of 13) [CRLR-462/2021] interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals.*"

18. We may refer to the Constitution Bench judgement of the Supreme Court in the case of Mohan Lal Magan Lal Thacker Vs. State of Gujarat (1998) 2 S.C.R. 685, wherein His Lordship, R.S.Bachawat, J has expressed as under:

> *"15 In a civil proceeding, an order is final if it finally decides the rights of the parties, See Firm Ramchand Manjilal V/s. Firm Goverdhandas Vishindas Ratanchand, AIR 1920 PC 86 . If it does not finally decide the rights of the parties, the order is interlocutory, though it conclusively determines some subordinate matter and disposes of the proceeding in which the subordinate matter is in controversy. For this reason, even an order setting aside an award is interlocutory. A similar test has been applied for determining whether an order in a criminal proceeding is final. For the purposes of this appeal, we do not propose to examine all the decisions cited at the bar and to formulate a fresh test on the subject. Whatever test is applied, an order directing the filing of a complaint and deciding that there is a prima facie case for an enquiry into an offence is not a final order. It is merely a preliminary step in the prosecution and therefore an interlocutory order."*

19. Thus, two Constitutional Benches of the Apex Court, in the case of V.C. Shukla Vs State through CBI, AIR 1980 (SC) 962, relied upon by the Division Bench, and the decision in the case of ***Mohan Lal Magan Lal Thacker (supra)***, have held that, the natural and logical meaning of an interlocutory order, is that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in the ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term "interlocutory order" is interpreted in its natural and logical sense without having to resort to Criminal Procedure Code or any other statute. If it does not finally decide the rights of the parties, the order is interlocutory, though it conclusively determines some subordinate matter and disposes of the proceeding in which the subordinate matter is in controversy.

20. Keeping in mind the aforesaid observations of the Constitution Benches, we shall now make an endeavor to distinguish the decision of the Full Bench of Delhi High Court in ***Dr.Geetanjali Aggarwal (supra)***, which has supplied the cause for the learned Single Judge to make reference. The Delhi High Court has primarily relied upon the judgment of the Supreme Court in the case of ***Shah Babulal Khimji (supra)*** for interpreting the nature and scope of interim or interlocutory orders.

21. The view expressed by the Delhi High Court that the powers exercised by the Family Court under the Family Courts Act cannot be controlled by provisions of other statute, if applied *stricto sensu* will render the Guardians and Wards Act as otiose. The quintessential feature which has to be borne in mind is the nature of suit which is filed under the Explanation to section 7 of the Family Courts Act, and the application filed under section 12 of the Guardian and Wards Act seeking interlocutory order of interim custody or for any purpose mentioned therein. An order passed in such application, cannot lead to the final disposal of the suit filed under section 7, though it may have some bearing on the final disposal of the suit, but such interlocutory order of handing over the custody of a minor temporarily, does not finally decide the rights of the parties, but only decides the subordinate matter of custody of a child temporarily. As discussed hereinabove, order, which does not finally decide the rights of the parties to the suits, though it conclusively determines some subordinate matter and disposes of the proceeding, in which the subordinate matter is in controversy will be an interlocutory order. In our

considered opinion, none of the categories specified by the Supreme Court in paragraph No.20 in the case of ***Shah Babulal Khimji (supra)*** can have the same impact as an order passed under Section 12 of the Guardian and Wards Act, which is specifically framed by the legislature to allow a party to obtain temporary custody and protection of a person or property of a minor. The intent of Section 12 of the Guardian and Wards Act cannot be introduced into the categories listed by the Supreme Court in the aforementioned judgment.

22. We shall now further, make an attempt to distinguish the view expressed by the Full Bench of Delhi High Court.

23. At this stage, it is apposite to refer to the interplay between the Family Courts Act, and the Guardians and Wards Act, which is found under Explanation (g) to Section 7(1)(b) of the Family Courts Act, relating to "jurisdiction". The relevant portion is as follows:–

> *"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, 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 sub-section are suits and proceedings of the following nature, namely:--*
>
> *xxxx....*
>
> *(g) a suit of proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.*

24. Thus, the Explanation (g) to Section 7(1)(b) of the Family Courts Act clearly establishes that the Family Court has jurisdiction to entertain a suit or proceeding relating to the guardianship of the person or the custody of, or access to, any minor. This provision has a direct nexus with Section 12 of the Guardians and Wards Act, which empowers the Court to make interlocutory orders for the production of a minor and for the interim protection of the person and property of the minor. Section 12 of the Guardians and Wards Act reads as under: -

> "*12.* ***Power to make interlocutory order for production of minor and interim protection of person and property*** *- (1)The Court may direct that the person, if any, having the custody of the minor, shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper. (2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country."*

25. The relevant provision, excluding appeal against interlocutory orders in Section 19 of the Family Courts Act, reads as under:

> ***"SECTION 19 : Appeal***
>
> *(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973 or in any other law, 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."*

26. By virtue of Section 20 of the Family Courts Act, the provisions of this Act, has an overriding effect over any other

law for the time being in force or any instrument having effect by virtue of any law other than this Act. Thus, it is true that Section 20 has an overriding effect on the Guardians and Wards Act, however, while framing Section 19 of the Family Courts Act, it has to be presumed that the legislation was conscious Section 12 of the Guardians and Wards Act, hence the Explanation (g) to Section 7(1)(b) of the Family Courts Act has been incorporated.

27. A conjunctive reading of Explanation (g) to Section 7(1)(b) of the Family Courts Act, Section 20 and Section 19 of the Family Courts Act, which specifically bars filing an appeal from interlocutory orders, leads to the conclusion that these provisions have to be construed in connection with interlocutory orders passed under Section 12 of the Guardians and Wards Act.

28. At this stage, it is also relevant to refer to Section 47 of the Guardians and Wards Act, which explicitly mentions about “appealable orders”. This section, however, does not refer to interlocutory orders. Thus, if an appeal assailing the interlocutory order is barred under the Guardians and Wards Act, it cannot be introduced by way of Section 19 of the Family Courts Act, especially in light of the specific provisions of Section 12 of the Guardians and Wards Act, which deals with interlocutory orders. The nature of the order, whether it is interlocutory or not cannot be delved into in view of the express provisions of Section 12 of the Guardians and Wards Act. If a party invokes Section 12 of the Guardians and Wards Act, seeking custody of a minor, there is no other recourse, but to file an application under Section 12 of the Guardians and

Wards Act itself before the Family Court.

29. A party may file any suit invoking the jurisdiction under Section 7 of the Family Courts Act, and in the category of the suits enumerated under the explanation, the party, in order to secure custody of the minor or other relief, has no other option, but to file an application invoking section 12 of the Guardian Wards Act read with Explanation (g) of Section 7(1) (b) of the Family Courts Act. Any order passed in such application will be an interlocutory order attracting the provisions of Section 19 of the Family Courts Act, read with section 12 of the Guardian and Wards Act creating a bar on an appeal to the High Court.

30. At this stage, we may refer to the observations of the Division Bench of this Court in the case of ***Rajan Ankleshwaria (supra),*** which reads as follows:-

> *"17. We may state that provisions of the Family Courts Act have been brought for speedy settlement of family disputes and thereby for enforcement of such rights looking to the need, for speedy disposal of the disputes relating to marriage and family affairs and for the matters connected therewith, a legislation in the form of Family Courts Act, 1984 has been brought in. Section 19 contained in Chapter-V deals with appeals and revisions. Phraseology used in sub-section (1) of Section 19 provides that no appeal shall lie from any judgment or order which is an interlocutory order. Provision of appeal under Section 19 of the Act as such is stringent by incorporating non- obstante clause therein. Even a revision against an interlocutory order is barred by virtue of sub-section (4) of Action 19 and as such when the legislature in its wisdom thought it fit to enact Section 19 with a particular phrase and object to dispose of matrimonial cases as expeditiously as possible, such clear and unambiguous language cannot be ignored by the Court and literal words which are used in the very Section are not possible to be interpreted in a different way, which may frustrate the very object for which the provision is made and as such when this statutory provision itself is clearly indicating in no uncertain terms that appeal against an interlocutory order is amenable, we are of the*

clear opinion that there is a substance in the preliminary objection raised by learned advocate appearing for the opponent. ”

31. The provisions of Section 12 of the Guardians and Wards Act, use the expression "……..may make such order for the temporary custody and protection of the person or property of the minor……….". This terminology itself suggests that rights are not crystallized by the Court under Section 12 with respect to the final custody of the minor. The order passed under Section 12 is an interlocutory order intended only for temporary purposes, such as the interim custody of the minor’s person or protection of their property, which remains subject to further orders passed either on the application or in the main suit. Thus, in a suit filed before the Family Court invoking its jurisdiction under Section 7(1)(b) of the Family Courts Act, read with Explanation (g), a party may file an interim application seeking temporary custody and protection of the person or property of a minor under Section 12 of the Guardians and Wards Act. In such a suit, the party may also invoke the provisions of the Code of Civil Procedure, particularly under Order XXXIX Rules 1 and 2 thereof. In both cases, any order passed would, by its nature, be temporary and subject to further orders passed in the suit or in the pending application.

32. The necessary corollary of the above discussion is that the learned Single Judge erred in referring the matter to the Larger Bench, though the judgment of the Division Bench in ***Rajan Ankleshwaria (supra)*** was cited. The learned Single Judge, instead of referring the matter to the Larger Bench, should have distinguished the judgment of the Delhi High

Court, which, at best, has persuasive value but cannot have an overriding effect that dilutes the judgment of the Division Bench of this Court. The appropriate course of action would have been to adopt the reasoning of the Division Bench in ***Rajan Ankleshwaria (supra)***. The learned Single Judge also referred to the Division Bench judgment in the case of Mayurbhai Kantibhai Gohil vs. State of Gujarat, 2015 (1) GLR 894, in which this Court held that an order under Section 12 of the Guardian and Wards Act can be challenged under Article 226 of the Constitution of India by invoking Section 47 of the Guardians and Wards Act. Therefore, in light of these two judgments, which were already cited before the learned Single Judge, recourse to refer the settled issue to the Larger Bench on the premise of the Full Bench of the Delhi High Court, was unwarranted.

33. Thus, we hold that the decisions of the Division Bench in ***Rajan Ankleshwaria (supra)*** as well as the decision in ***Mayurbhai Kantibhai Gohil (supra)*** are binding and remains good law. The only aspect which needs to be clarified is that the parties cannot be rendered remediless against the interlocutory orders passed under Section 12 of the Guardian and Wards Act or any interlocutory order passed under the Family Courts Act. Any aggrieved party can assail such order by filing a writ petition under Article 226/227 of the Constitution of India before the High Court.

MAINTAINABILITY OF THE FIRST APPEAL AGAINST AN ORDER OF MAINTENANCE PASSED UNDER SECTION 24 OF THE HINDU MARRIAGE ACT BY THE FAMILY COURT OR A WRIT PETITION :

34. With regard to the second issue of maintainability of the First Appeal filed against an order of maintenance *pendente lite* under Section 24 of the Hindu Marriage Act, we may mention the same also did not call for reference to the Large Bench. On this issue, two Division Benches judgments were cited before the learned Single Judge. The decision dated 18.10.2024 passed by the Division Bench, headed by Hon'ble the Chief Justice in Letters Patent Appeal No.1469 of 2024, was already cited before the learned Single Judge. The Division Bench in the said judgment, after analyzing the provisions of Section 19 of the Family Courts Act, 1984, and considering the provisions of the Domestic Violence Act, along with an array of judgments and the maintainability of petitions under Articles 226 and 227 of the Constitution of India and Section 24 of the Hindu Marriage Act, 1955, has held as follows:-

> *"45. Considering the said principle, the Full Bench of the Allahabad High Court has proceeded to consider the object behind Section 24 of the Hindu Marriage Act, 1955 and noted that the order granting or refusing pendente lite maintenance under Section 24 has no connection with the questions or issues that may crop up in the main proceedings for restitution of conjugal right or judicial separation or divorce or annulment of marriage etc. The ambit and nature of the proceedings for divorce or judicial separation etc. are wholly different from the ambit and nature of the proceedings under Section 24.*
>
> *46. Section 24 of the Hindu Marriage Act is a provision, which decides the right of the party approaching the Court of having maintenance pendente lite or expenses from the other party. The refusal of maintenance under Section 24 is serious to the party in 99% of the cases wherein the applicant is wife, so much so that she may even give up the idea of defending herself for want of sufficient means.*
>
> *47. With the above, considering the law laid down by the Apex Court in the above noted decisions, it was held by the Full Bench that the order of pendent lite maintenance has all the characteristics and*

trappings of the judgment as it decides the valuable rights and liabilities of the parties to the proceedings. Insofar those rights and liabilities are concerned, the order is final."

35. At this stage, we may record that the subsidiary issue, which was also raised before the Division Bench in Letters Patent Appeal No.1469 of 2024, was the maintainability of the Letters Patent Appeal challenging the order of the learned Single Judge under Article 227 of the Constitution of India, however, the learned Single Judge in the present matter, while referring the issue to the Larger Bench, has misconstrued the issue concerning the entertainment of the petition by invoking jurisdiction under Article 227 of the Constitution of India.

36. There was no difference of opinion expressed by the learned Single Judge regarding the maintainability of an appeal under Section 19 of the Family Courts Act against an order passed under Section 24 of the Hindu Marriage Act, as held by the Division Bench in the judgment and order dated 08.10.2024. The learned Single Judge has placed reliance on the judgments of the Division Benches of other High Courts, including Karnataka, Allahabad, Bombay, Patna, Andhra Pradesh, Madras, and Delhi High Courts.

37. We may, at this stage, also refer to another common order dated 09.12.2024, passed in First Appeal No.3063 of 2024 and allied matters of another Division Bench of this Court, which is also referred to by the learned Single Judge in the reference. The Division Bench has held that the proceedings under Section 24 of the Hindu Marriage Act are independent of the proceedings for divorce, custody, etc., and they do not merge in the process. Thus, these proceedings are

not interim orders that would disqualify the appellant from filing an appeal under Section 19 of the Family Courts Act, 1984.

38. Thus, there were two judgments of the Division Benches; one dated 08.10.2024 passed in Letters Patent Appeal No.1469 of 2024, and another dated 09.12.2024 passed in Letters Patent Appeal No. 3063 of 2024, which were cited and also referred in the order of reference. There is no difference of opinion between the Division Benches on this issue of filing an appeal under section 19 of the Family Courts Act. The learned Single Judge, instead of following the aforementioned judgments, has referred the issue to the Larger Bench by placing reliance on the judgments of other High Courts. In our considered opinion, such an approach was unwarranted, and the only course to be adopted by the learned Single Judge was to apply the judgments of the Division Benches rather than referring the matter to the Larger Bench.

39. Thus, insofar as the second issue is concerned, we do not need to clarify anything further, as it has already been clarified by the Coordinate Benches of this Court in the aforementioned judgments. In light of the aforesaid facts, the issues referred to us have been answered accordingly. The respective parties have to invoke the remedy of appeal under section 19 of the Family Courts Act for assailing the order passed under section 24 of the Hindu Marriage Act.

40. Accordingly, we answer both the issues, though they were not required to be examined by us, but for the insistence

of the learned advocates appearing for the respective parties, we have ventured into the legal landscape.

41. We further direct that the parties, who have filed the First Appeals before this Court, against the interlocutory orders passed under section 12 of the Guardians and Wards Act cannot be left remediless. They should not be relegated to avail the remedy of filing the writ petitions challenging the interlocutory orders. We further clarify, that on an application filed by the learned advocates appearing for the respective parties, Registry shall list the same before appropriate bench assigned such roaster for passing appropriate order for converting the First Appeal to Writ Petition.

42. The Registry is directed to list the captioned writ petitions before the concerned Bench(es) assigned such Roster. Interim relief, if any granted in any of the matters, shall remain in operation till further orders are passed by the concerned Court(s).

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(R. T. VACHHANI, J)

MAHESH/02-42