

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CIVIL APPLICATION NO. 444 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 3357 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. 9094 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 9125 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 9546 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 15434 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. 14563 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 14793 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 9540 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 14102 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 13170 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. 15552 of 2017**

With
R/SPECIAL CIVIL APPLICATION NO. 3642 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 6104 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 8286 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 8158 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 11720 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 20723 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 22121 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 23410 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 933 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. 17395 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. 7042 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 9734 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. 12984 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 13552 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. 15013 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 15310 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 20093 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 9248 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 18573 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 7514 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 8550 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 12141 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 20005 of 2023

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JIGNESH DEEPAKKUMAR SONI
 Versus
 ROSHNI ARVINDBHAI PATADIA

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Appearance:
 MR DHVALKUMAR R PRAJAPATI(12251) for the Petitioner

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CORAM: HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 20/01/2025

COMMON ORAL ORDER

1. Heard Senior advocate Mr. B.B. Naik with Mr. Umang Vyas , Mr. Nandish Thaker, Mr. Prerak Oza, Mr. Dhavalkumar R. Prajapati, Mr. Hitendra D. Raput, Mr. Maulik M. Soni, Mr. R. G. Chaudhary, Mr. A. A. Zabuawala, Ms. G.R. Vijayalakshmi, Mr. Parthiv A. Bhatt, Mr. Pratik G. Advani, Mr.

Noyel A. Christian, Mr. Vishal D. Davda with Mr. Sneh R. Purohit, Mr. S. P. Majmudar with Ms. Radhika M. Bhatt, Mr. Nehul Dave, Madhavi @ Monika Haridas Dave - party-in-person, Mr. Bhadresh Raju with Mr. Dhanesh R. Patel, Mr. Jucky Lukcy Chan, Mr. Pritesh M. Shah, Ms. Nikita S. Barot, Mr. Jaydeep Sindhi, Mr. Vishal N. Pandit, Mr. Aditya A. Gupta, Mrs. Priti J. Joshi, Ms. Kitty S. Mehta, Mr. J. B. Dastoor, Mr. Nasir Saiyed, Mr. Samrat R. Updhyay, Ms. Roopal R. Patel, Mr. Dhaval G. Barot with Mr. Sanket K. Pandya, Dr. Hardik K. Rawal, Mr. Alay A. Dave, Dr. Abhisht K. Thaker, Mr. Hitesh V. Patel, Mr. Rajpurohit R. Bhawarlal, Mr. Dhaval A. Parmar, Mr. Swapneshwar Goutam, Mr. P. P. Majmudar with Mr. Jamshed Kavina, Ms. Alka B. Vaniya, Mr. Vicky B. Mehta, Mr. Anvesh Vyas, Mr. M. H. Shaikh, Mr. Ketul R. Patel, Mr. Darshkumar B. Bunha, Mr. N. V. Gandhi, Mr. Tatvdeep Jani, Mr. Premal R. Joshi, Ms. Gaytriba B. Jadeja and Mr. Shivam R. Pandey, learned advocates on record for petitioners in respective petitions.

2. Learned advocateS on record Mr. R. G. Chaudhary, Mr. Samir Afzal Khan, Mr. Dhanesh R. Patel, Mr. S. P. Majmudar, Mr. Mehul M. Mehta, Mr. Maulik Soni, Mr. N.K. Majmudar, Mr. Jagat V. Patel, Senior advocate Mr. S.I. Nanavati with Mr. Vandan K. Baxi, Mr. Zubin F. Bharda, Mr. Saurabh G. Barot, Mr. V.A. Zala with Mr. Devansh N. Kakkad, Ms. Urmila N. Desai, Mr. Parag C. Gandhi with Mr. Vatsal S. Shah, Ms. R.V. Acharya, Mr. Bhavin B. Thakkar, Mr. Rajesh M. Chauhan, Mr. S.M. Sojatwala, Mr. Khatri for Mr. Salil M. Thakore, Mr. Hemal Shah, Mrs. Krishna G. Rawal, Mr. Aditya J. Pandya, Mr.

Manan K. Paneri, Mr. Vicky B. Mehta, Mr. Swapneshwar Goutam, Mr. Ankit Y. Bachani, Ms. Bhavika Kotecha, Ms. Kruti M. Shah, Ms. Sonal M. Joshi, Mr. Rahil P. Jain, Mr. Nirav C. Sanghavi, Mr. J.V. Padhiyar, Mr. Nabil O. Bloch, Mr. Girish K. Patel and Mr. Hardeep L. Mahida for the respondents in respective petitions and learned Assistant Government Pleaders Mr. Manohar Rahevar, Ms. Tanushree Shrimal for the respondent-State.

3. The glance at the facts of each of the cases and challenges made in these writ petitions are the orders passed by the learned Judge, Family Courts whereby the interim applications moved by the party to the main proceedings are decided. The writ petitions have been preferred either invoking supervisory writ jurisdiction under Article 226 read with Article 227 or under Article 227 of the Constitution of India praying for writ of certiorari or any other writs to quash and set aside the impugned orders passed by learned Judge, Family Court on an interim application preferred under section 12 of the Guardians and Wards Act, 1890 or under section 26 of the Hindu Marriage Act, 1955 or under section 24 of the Hindu Marriage Act, 1955.

4. Learned Advocates for the Respondents have objected to entertaining the writ petitions against the orders passed by the learned Judge, Family Court in view of section 19 of the Family Courts Act. Learned Advocates for the Petitioners have responded by relying upon various judgments of the Full Bench as well Division Bench of different High Courts.

5. Since a common question of law was raised about the maintainability of these petitions, all matters were heard together on this preliminary issue. The learned advocates appearing for the respective parties as well as party in person were heard at length. Essentially, the matters fall into two categories ; the first group of matters were the issue of visitation rights / interim custody of the child and second, pertains to interim maintenance.

6. **Matters under the Guardians and Wards Act, 1890 :**

6.1 The learned Judge Family Court has decided such applications by in exercise of power conferred under subsection (1) of section 12 of the Guardians and Wards Act, 1890 or under section 26 of the Hindu Marriage Act, 1955. The Act of 1890 confers wide powers upon the Courts while dealing with petitions for appointment/declaration of Guardians and while deciding issues of custody during the pendency of a guardianship petition. The Act also provides for the procedure for appointment/declaration of Guardians for minor children. Ordinarily the applications under section 12 of the Act of 1890 are filed by the persons seeking visitation rights or temporary custody of the minor from the person having custody.

6.2 Against the order of granting or refusing the temporary custody of the child under section 12 of the Act of 1890, no provision of appeal is prescribed in light of section 47 of the Act of 1890. In view of section 48 of the Act of 1890, the order

passed by the learned Judge Family Court is to be treated as final, except in cases where an appeal is provided against the order as prescribed under section 47 of the Act of 1890. Thus, the special enactment curtails the right of appeal against such orders passed under section 12 of the Guardians and Wards Act, 1890.

6.3 Similar provision appears with regard to custody of child under section 26 of the Hindu Marriage Act, 1955, which authorizes the Court to pass interim orders of custody of child in any proceedings pending under this Act. It also authorized the Court to make provision in the decree as it may deem just and proper with respect to the custody and other vital rights of the minor child. The provision also confers power upon the Court to revoke, suspend, or vary any such orders and provisions previously made. Section 28 of the Act of 1955 provides for an appeal from decrees and orders passed by the Court in any proceedings under this Act. Subsection (2) of section 28 provides for appeals from orders made by the Court in any proceeding under this Act under section 25 or 26 if they are not interim orders. Thus, the provisions of Hindu Marriage Act, 1955 curtails the right of appeal under section 28 (2) of the Act against an interim order passed under section 26 of the Act.

6.4 On the other hand, after enactment of Family Courts Act, 1984, right of appeal is conferred against every judgment or order not being an interlocutory order in any proceedings arising under the Family Courts Act. Thus, section 19 of the

Act, 1984 provides right of appeal against every order passed by the Family Court except interlocutory order.

6.5 Admittedly, the orders under challenge are the orders passed by the learned Judge, Family Courts. The Family Courts Act, 1984 has been enacted with an object to provide for the establishment of Family Courts with a view to provide conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. On establishment of Family Courts, by virtue of section 7 of the Act of 1984, the Family Courts have been conferred exclusive jurisdiction to decide any suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor. Section 19 of the Family Courts Act, 1984 provides remedy of appeal against every judgement or order, not being an Interlocutory order, of a Family Court to the High Court both on facts and on law. Again, section 20 of the Act of 1984 provides an overriding effect over the inconsistent provisions of other law.

6.6 Thus, after introduction of the Family Courts Act, 1984 the intention of the legislation was to provide a single window of appeal against any adjudication or decision of a Family Court to the High Court, except for interlocutory orders. In other words, in view of the aforesaid legal provisions having overriding effect, the statutory right of appeal is made available against every judgement or order. However, it also carves out exceptions where appeal would not lie. This includes interlocutory orders passed in the main proceedings,

decrees or orders passed on consent of both the parties and a consented order passed under Chapter IX of the Code of Criminal procedure, 1973.

6.7 Looking to the nature of orders under challenge, at the outset the High Court is under obligation to ascertain in the facts of the case as to whether order under challenge is an interlocutory order or a judgment or order appealable under section 19 of the Family Courts Act, 1984.

6.8 The Court's attention was invited to the decision of the Hon'ble Division Bench of this Court In the case of ***Rajan Ankleshwaria vs. Vinii Ankleshwaria, 2023 scc online Guj 2828***, the Court has treated an order for return of custody of minor and relief for permanent restrain from taking minor outside jurisdiction of the Court as interlocutory order. The reading of reasons assigned indicates that the Hon'ble Division Bench has applied the principles laid down by the High Court of Rajasthan in the case of ***Vishal Kochar vs. Pulkit Sahni, 2022 scc online Raj 3337*** which relied upon the decision of Hon'ble Supreme Court in the case of ***V.C. Shukla vs. State , AIR 1980 SC 962***. The Court has thus concluded that an order which does not terminate the proceedings or finally decide the rights of the parties is only an interlocutory order. The Court therefore held that so long as the relief of seeking return of the child is not finally decided by virtue of impugned order, the same cannot be said to be an interim order, but is merely an interlocutory order since it finally does not decide the rights of custody nor

terminates main proceedings. In light of the aforesaid conclusion drawn, the Hon'ble Division Bench has held the appeal preferred under section 19 of the Family Courts Act as not maintainable.

6.9 Another decision of the Division Bench of this Court in the case of **Mayurbhai Kantibhai Gohil vs. State, 2015(1) GLR 894** has held that order under section 12 of the Guardians and Wards Act can be challenged under Article 226 of the Constitution of India by taking cognizance of section 48 of the Act of 1890.

6.10 As against the aforesaid law laid down by this Court, attention of this Court was drawn to the recent decision of the Full Bench of Delhi High Court, in the case of **Dr. Geetanajali Aggarwal vs. Dr. Manoj Aggarwal , 2024 scc online 7220** the reference was raised as to whether an order passed by the learned Family Court under section 12 of the Guardians and Wards Act, granting/ refusing visitation/ interim custody would be appealable under section 19 of the Family Courts Act? In the process, the Court framed two issues ; first being as to whether the provisions of section 19(1) of the Family Court Act can be read independently of the provisions of the Guardians and Wards Act and whether, taking into account the nature of the order passed by learned Family Court under section 12 of the Guardians and Wards Act, has to be treated as an interlocutory order under Guardians and Wards Act, has to be treated as an interlocutory order for the purposes of the Family Court Act

as well, thereby rendering unappealable?.The Full Bench after giving thoughtful , consideration to section 7 read with section 20 of the Family Courts Act as against section 12 of the Guardians and Wards Act arrived at conclusion that though section 12 of Guardians and Wards Act describes orders to be interlocutory in nature the same cannot be interlocutory for the purpose of remedy of appeal provided under section 19 of the Family Courts Act. The Full Bench noted the decision of the Hon'ble Supreme Court in the case of **Shah Babulal Khimji vs. Jayaben D. Kania, (1981) 4 SCC 8**, holding that only those orders which have trappings of a final order and substantively decide the rights of the parties are to be treated as appealable under clause 15. The Full Bench therefore held that such order under section 12 of the Guardians and Wards Act undoubtedly impinges on the substantive rights of the parties and can also have effect on the final determination of their rights as also the welfare of the child and therefore cannot be termed as interlocutory order, thereby holding appeal under section 19 of the Family Courts Act maintainable.

6.11 The reference was made to the decision of the learned Judge of Allahabad High Court in the case of **Dilip Kumar vs. Luxmi Devi, MANU/UP/0494/1996** wherein a revision application under section 115 of the Code of Civil Procedure, 1908 preferred against an order passed under section 12 by learned Family Court in proceedings under section 25 of the Guardians and Wards Act. The learned Judge treated the order to be a final order in light of section 48 of the Guardians

and Wards Act and held the order to be appealed under section 19 of the Act. The learned Judge also held that the right of appeal provided under section 19 to be a substantive right and not merely procedural.

6.12 The argument was canvassed by learned advocates for the petitioners that undoubtedly the child custody matters involves factors of paramount interest of child and therefore vital rights of the child are to be decided but not of parties to the litigation. On the contrary, the Hon'ble Supreme Court in the case of ***Dhanwanti Joshi vs. Madhav Unde, (1998) 1 SCC 112*** has held that orders pertaining to custody of child under the Act of 1890 by their very nature are not final but are interlocutory as such orders are subject to modification at any future time upon proof of change of circumstances.

6.13 As against the aforesaid argument of the learned advocate for the petitioner, the respondents have placed reliance upon the view expressed by the Hon'ble Supreme Court in case of ***R. V. Srinath Prasad Vs. Nandamuri Jayakrishna and others, 2001 (4) SCC 71***, the Hon'ble Supreme Court observed that custody of minor children is a sensitive issue, which involves sentimental attachment and such matters are to be approached and tackled carefully. The Court further observed that a balance has to be struck between the attachment and the sentiments of the parties towards the minor children and the welfare of the minors which is of paramount importance. Hence, it was submitted that the matters involving child custody matters the Courts

exercise its *parens patriae* jurisdiction and not only a duty is cast upon the courts but also upon all parties before it, including guardian to safeguard and act in the best interest of child. The purposive interpretation of section 12 of the Act of 1890 cannot be restricted to the visitation rights or custody but it also includes within its ambit the power to make any orders with regard to '*protection of the person or property of the minor as it thinks proper*'.

7. **Hindu Marriage Act, 1955 :**

7.1 Against an order of maintenance passed *pendente lite* under section 24 of the Hindu Marriage Act by the Family Court, whether an appeal under section 19 of Family Courts Act, 1984 would lie or a writ petition under Article 227 of the Constitution of India ?

7.2 The attention of this Court was invited to the Oral Judgement dated 08.10.2024 passed by the Hon'ble Division Bench of this Court in ***R/Letters Patent Appeal no. 1469 of 2024 in R/ Special Civil Application no. 3388 of 2020*** in the case of ***Pranaliben W/o Sanjaybhai Sharma vs. Sanjay Bachubahi Sharma***, wherein the proceedings arising out of interim application under Domestic Violence Act preferred before the learned Judge, Family Court, the hon'ble Division Bench held that the learned Single Judge erred in entertaining the petition invoking jurisdiction under Article 227 of the Constitution of India in a case where the challenge was to the order passed by the Family Court under section 12 and 19 of the D. V. Act. The Hon'ble Division Bench further opined that

a First Appeal under section 19 of the Family Courts Act, 1984 was the remedy available. In the process the Court observed that an order passed by the Family Court in an application filed under section 12 and 19 read with section 26 of the DV Act would fall meaning “Judgment or Order, not being an interlocutory order”. The reference was made to the Full Bench decision of the Allahabad High Court in the case of ***Kiran Bala Srivastav vs. Jai Prakash Srivastav, 2006 ALL CJ 1936 : 2005 (23) LCD 1***, wherein the full bench has answered the reference “whether an appeal under section 19 of the Family Courts Act would lie against an order passed under section 24 of the Hindu Marriage Act, for granting of interim maintenance?”

7.3 The attention was also invited to the Common Oral Order dated 09.12.2024 passed by the Hon’ble Division Bench of this Court in ***R/First Appeal no. 3063 of 2024*** and allied matters, whereby the Hon’ble Division Bench following the view taken by the Division Bench by relying upon full bench decision of Allahabad High Court, held appeal under section 19 of the Family Court maintainable. The Hon’ble Division Bench also took into consideration the decision of Hon’ble Supreme Court in the case of ***Amina Ahmed Dossa and ors. Vs. State Of Maharashtra, AIR 2001 SC 656*** explaining interlocutory orders and held that that since proceedings under section 24 are independent to the proceedings of divorce or custody etc. they do not merge in the process and therefore they are not interim orders, so as to to disqualify the appellant to file a appeal under section 19 of the Family

Courts Act.

7.4 As against the aforesaid decisions relied upon by the learned advocates for the respondents, the learned counsels appearing for the petitioners have placed reliance upon decisions of different High Courts. In the case of **Swarna Prava Tripathy and ors. Vs. Dibyasingha Tripathy, AIR 1998 Ori 173**, the Full Bench of the High Court of Orissa was constituted to adjudicate on reference as to whether an order granting maintenance *pendente lite* is appealable under section 19 of the Family Courts Act, 1984? If it is held that the appeal is not maintainable, what remedy is available to the aggrieved party?

7.5 During the course of hearing, the Full bench noticed that the main controversy which deserves to be answered first is as to whether an order passed under section 24 or 26 of Hindu Marriage Act is an interlocutory order or a final order. The bench came across divergent views prevailing among different high Courts. The Full bench applied the broad interpretation of the Hon'ble Supreme Court in the case of **Ramesh Chander Kaushal vs. Mrs. Veena Kaushal AIR 1978 SC 1807** by treating such orders under section 24 of the Act of 1955 to be incidental direction without comprehensive adjudication. The Full bench also noticed that as against an order passed under section 25 and 26 of the Hindu Marriage Act, 1955 provision of appeal is provided under section 28 whereas no appeal is provided under section 24.

7.6 The Division Bench of the Karnataka High Court in the case of ***T.V. Satyanarayana vs. Subba Aruna Meenakshi*** , ***ILR 1988 Karnataka 1074*** arrived at conclusion that order under section 24 of the Hindu Marriage Act amounts to 'judgment' however since such order is passed on an interlocutory application pending the main proceedings, it is non appealable in view of express words of section 19(1) of the Family Courts Act.

7.7 The Division Bench of Allahabad High Court in the case of ***Ravi Saran Prasad vs. Rashmi Singh***, ***AIR 2001 ALL 227*** held that by virtue of enactment of 1984 Act the legislation did not intend to nullify section 28 of the Act, 1955 and to provide appellate forum against the orders passed under section 24 of the Hindu Marriage Act.

7.8 The Division Bench of Bombay High Court in the case of ***Vinod Dulerai Mehta vs. Kanak Vinod Mehta*** , reported in ***AIR 1990 Bom 120*** held that interim maintenance orders does not conclusively decide the rights and liabilities of parties and is not a 'Judgment' within the meaning of Clause 15 of the Letters Patent Appeal.

7.9 Again, in the case of ***Sunil Hansraj Gupta vs. Payal Sunil Gupta***, reported in ***AIR 1991 Bom 423***, the Division Bench of Bombay High Court held that no appeal would lie against the interim orders passed under section 24, 25 and 26 of the Hindu Marriage Act, 1955. Though the Court has observed that proceedings under section 24 are independent

of main proceedings and can survive irrespective of main proceedings, while deciding the nature of order under section 24 as interlocutory order for the purposes of section 19(1) of the Act of 1984 on the ground that the term interlocutory is converse of final order and in fact it does not put an end to proceedings or finally does not determines the rights of the parties.

7.10 The Full Bench of Patna High Court in the case of ***Neelam Kumari Sinha vs. Shree Prashant Kumar, AIR 2010 Pat 184*** has held that such order under section 24 is an interlocutory order in nature and no civil revision application would lie as the acid test has to be that it could have finally disposed of the suit or other proceedings.

7.11 The Division Bench of Andhra Pradesh High Court in the case of ***Narendra Kumar Mehta Vs. Suraj Mehta , AIR 1982 AP 100*** has drawn distinction between amended section 28(1) which makes a decree appealable and sub section (2) of section 28 which mentions only certain orders appealable. The Court has therefore concluded that orders under section 24 and interim orders under section 26 of the Act are not appealable

7.12 Again in a recent decision, the Division Bench of Madras High Court in the case of ***S. Maneka vs. K.S.K. Nepolian Socraties, Neutral citation 2024 : MHC : 1405***, order dt. 21.03.2024 passed in CMP no. 18729 of 2023 in CMA no. 1914 of 2021 and allied matters, has held that the special

enactments dealing with subject matters are substantive laws whereas the Family Courts Act is merely procedural in nature. The Court held appeal under section 28 of the Hindu Marriage Act or under section 19 of the Family Courts Act as not maintainable against the order of maintenance under section 24 and further held that such orders shall be amenable for revision to the High Court under Article 227 of the Constitution of India.

7.13 There is a third angle to the aforesaid controversy. The Division Bench of Delhi High Court in the case of ***Manish Agrawal Vs. Seema Agrawal & Others reported in ILR (13) 1 Delhi - 210*** has held that all orders passed by the Family Court, which are intermediate orders and not merely interlocutory orders, would be amenable to appellate jurisdiction under Section 19 of the Act. While expressing this opinion, the Hon'ble Division Bench has held that orders passed under Section 24 to 27 of the Hindu Marriage Act, appeal would lie in view of Section 19(6) of the Act, as such orders are intermediate orders.

8. In light of the aforesaid different interpretation being attributed to the relevant provisions, the ultimate issue which boils down is to whether the order granting/ refusing visitation rights/ interim custody of child under section 12 of the Guardians and Wards Act, 1890 or under section 26 of the Hindu Marriage Act, 1955 and the order passed granting / refusing interim maintenance under section 24 of the Hindu Marriage Act is an "judgment or order, not being an

interlocutory” affecting valuable rights of the parties and therefore appealable under section 19 of the Family Courts Act, 1984?

8.1 In this regard, the attention of this Court was invited to the decisions of the Hon’ble Supreme Court in the case of **Shah Babulala Khimji vs. Jayaben D. Kania, AIR 1981 SC 1786, V.C. Shukla vs. State, AIR 1980 SCR 380, Madhu Limaye vs. State of Maharashtra , AIR 1978 SC 47 and Amranath & ors. Vs. State of Haryana, AIR 1977 SC 2185**. The legal principles laid down in the aforesaid decisions have been relied upon by the respective Courts however, different views have been expressed while interpreting the term ‘*interlocutory order*’, in the facts of the case. The attention of this Court was invited to the decision of a learned single judge of this Court in the case of **Parmar RameshChandra Ganpatray vs. State of Gujarat, (2017) 3 GLR 1825** wherein the learned Judge bearing in mind the various guidelines enunciated in the ratio of aforesaid judicial pronouncements of the Hon’ble Supreme Court, has listed the basic concept which attributes to be recognized as interlocutory order. The same is reproduced here under :

“(1) That the term "interlocutory order" has been used in a restricted sense and not in a broad or realistic sense.

(2) That it merely denotes an order of purely interim or temporary nature. The emphasis in this category is on the word "purely", which would again highlight the concept that the nature of the

order must be pure and simple, temporary or interim in character and ostensibly deceptive appearance of a temporary character should not be confused with the real and outright temporary nature.

(3) Such orders pertaining to some matters in the proceeding which merely and purely assume the character of steps in aid of the proceeding can be embraced by the said terminology, which again affords a pointer about the nature and categories of the orders that re purely temporary or interim without actually affecting or even touching substantially any right or material aspect of the proceeding.

(4) Though a stamp of finality to the proceeding or termination of the proceeding may be quite a relevant and important consideration, yet it is not a sole criterion of the test in that behalf.

(5) So also, the potential capacity to terminate proceeding or to give it a label of finality is also not the only and conclusive criterion though it by itself is a relevant feature.

(6) Therefore, the fact that the main proceeding is kept alive that does not ipso facto give a stamp to several such orders as "interlocutory order".

(7) Consequently it is not permissible to equate the expression "interlocutory order" as invariably being the converse of the term "final order".

(8) An order of moment would obviously be lifted out of the sweep of the said terminology.

(9) Irrespective of the order bearing stamp of finality, there may be an intervening stage which can be called as 'intermediate stage' at which an order may be passed which in turn may be called as 'intermediate order', which neither gives the finality to the proceeding nor is purely interim or temporary and as such is not an interlocutory order, but would fall in between and in certain cases such order can be said to be not interlocutory.

(10) An order which-

(a) decides; or

(b) even touches the important rights or liabilities of the parties; cannot be said to be interlocutory.

(11) An order which

*(a) substantially affects the rights of the parties;
or*

*(b) decides certain rights of the parties :
cannot be termed as 'interlocutory'.*

(12) So also, an order which

(a) adjudicates; or (b) even affects

(i) either the rights of the parties :

(ii) even any particular aspect of the trial or the proceeding cannot be also termed as 'interlocutory order'."

In light of the aforesaid vivid concepts of the term “interlocutory order” recognized, this Court is of the view that the controversy involved needs to be broadly examined. Hence, the legal issues raised require to be examined by a bench of larger strength.

9. In this regard, the attention of this Court is invited to Rule 5 and Rule 6 of the Gujarat High Court Rules, 1993, which confers powers upon the learned single judge to refer any matter before him or question arisen in such matter before him to be referred to the Division Bench of two or more judges or a Larger Bench. It is also pointed out that one has to keep in mind the principles of judicial discipline and propriety whereby if the learned single judge is of the view that the matter requires reconsideration or fresh examination. The aforesaid rules fell for consideration before the Full Bench of this Court in the case of ***Dilip Singh Chauhan vs. Gujarat Vikas Nigam Ltd.***, Special Civil Application no. 18334 of 2011 and allied matters. The Full Bench has followed the principles laid down by the Hon’ble Supreme Court in the case of ***Pradip Chandra*** (supra). The recent view of the Hon’ble Supreme Court in this regard in the case of ***Mary Pushpam vs. Telvi Crursumary and ors.*** , **(2024) 3 SCC 224** , has reiterated the view expressed by the Constitutional Bench of the Hon’ble Supreme Court on the rule of “Judicial Discipline and Propriety” and doctrine of precedents thereby holding bench of lesser strength cannot disagree or dissent with the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to

invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. In case if the bench expresses opinion doubting the correctness of the view taken the matter may be placed before a Bench consisting of a larger quorum.

10. In view of the aforesaid discussion, this Court is of the considered view that these groups of matters deserve to be referred to the Division Bench. The Registry is directed to forthwith place these matters before the Hon'ble the Chief Justice on the administrative side for appropriate orders for assignment of the matters.

(NISHA M. THAKORE, J.)

AMAR RATHOD...