

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 15552 of 2017****With****R/SPECIAL CIVIL APPLICATION NO. 17293 of 2017****With****R/SPECIAL CIVIL APPLICATION NO. 16013 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 20093 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. 7514 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 8158 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 8550 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 10104 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 11720 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. 23410 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 25429 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 933 of 2023****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. 21181 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 444 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 1993 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 3357 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 3642 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. 7815 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 5654 of 2024  
With  
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2024  
In R/SPECIAL CIVIL APPLICATION NO. 7815 of 2024  
With  
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2023  
In R/SPECIAL CIVIL APPLICATION NO. 25429 of 2022  
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. 9094 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. 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. 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. 15434 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**  
 With  
**R/SPECIAL CIVIL APPLICATION NO. 15310 of 2024**

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THAKORBHAI NARANJI TANDEL  
 Versus  
 STATE OF GUJARAT & ANR.

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Appearance:  
 JUCKY LUCKY CHAN(8033) for the Petitioner(s) No. 1  
 DELETED for the Respondent(s) No. 1  
 MR MEHUL M MEHTA(3416) for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**  
and  
**HONOURABLE MR. JUSTICE HEMANT M.**  
**PRACHCHAK**

Date : 10/03/2025

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

1. This court on 05.03.2025 passed the following order:

“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. 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."

2. We have indicated that by an order dated 20.01.2025, the learned Single Judge referred this group of petitions to the Division Bench. This reference was on two questions namely (I) With regard to maintainability of the First Appeals against orders of interim custody passed under Section 12 of the Guardians and Wards Act,

1890 and with regard to maintainability of First Appeals against orders passed on applications under Section 24 of the Hindu Marriage Act, 1955. After extensively referring to various decisions of various High Courts including that of the Division Bench of this High Court in the case of Letters Patent Appeal No. 1469 of 2024 and First Appeal No. 3063 of 2024, the learned Single Judge in paragraph no. 10 of the order held thus:

“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.”

2.1 Thereafter, on the administrative side, the Hon’ble The Chief Justice has assigned these matters to this Bench.

3. As indicated in our earlier order dated 05.03.2025 as far as the issue of interim custody is concerned, a Division Bench 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**, has categorically held that First Appeals against orders passed in interim custody matters is not maintainable. This judgement has been taken note of by the learned Single Judge while making the reference.

3.1 A Full Bench decision 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** has also been referred to. The Full Bench of the Delhi High Court holds that in light of the overriding effect of the Family Courts Act, orders of interim custody are appealable under Section 19 of The Family Courts Act, 1984 as they are not interlocutory orders.

4. On the second issue whether an appeal is maintainable on applications under Section 24 of the

Hindu Marriage Act which also by this common reference made to us arises, the learned Single Judge has referred to the orders passed by the Division Benches of this court in Letters Patent Appeal No. 1469 of 2024 and First Appeal No. 3063 of 2024. We note that the issue of maintainability of First Appeals arising out of Section 24 applications has been held maintainable by way of First Appeal No. 3063 of 2024 and while doing so the bench of this court of which one of us (Hon'ble Mr. Justice Biren Vaishnav) was a member followed the decision rendered by the co-ordinate Division Bench of this court in Letters Patent Appeal No. 1469 of 2024 holding that a first appeal against order under Section 24 of the Hindu Marriage Act is maintainable.

5. Having taken a view of the maintainability of the appeals viz-a-viz Section 24 proceedings, we are of the view that it will not be befitting judicial discipline that this Bench of which one of us (Hon'ble Mr. Justice Biren Vaishnav) is a member takes a view in these matters

referred to us, atleast in context of maintainability of first appeals in Section 24 proceedings.

6. As far as the reference to us in context of interim custody matters is concerned, we note that a Division Bench of this court has already taken a view of the appeals being not maintainable as the orders are treated as interlocutory orders. This it has done in light of the decision of the Apex Court in the case of **Dhanwanti Joshi vs. Madhav Unde [(1998) 1 SCC 112]**. We are however also faced with a judgement of a Full Bench in the case of **Dr. Geetanjali Aggarwal vs. Dr. Manoj Aggarwal rendered in (2024) 4 High Court Cases (Del) 451** of the Delhi High Court.

7. While making the reference to a bench of larger strength, the learned Single Judge has held thus:

“ ...

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..”

8. In light of the fact that one of us (Hon’ble Mr. Justice Biren Vaishnav) has already decided the issue of maintainability of first appeals under Section 19 of the Family Courts Act, which is one of the issues referred to us by a common order, the Registry is directed to place all these matters before the Hon’ble The Chief Justice to assign the matters to a co-ordinate Bench of equal strength or a larger bench of which Hon’ble Mr. Justice Biren Vaishnav is not a member. In petitions, where interim relief has been granted, the same shall continue till further orders.

**(BIREN VAISHNAV, J)**

**(HEMANT M. PRACHCHAK,J)**

DIVYA