

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No.208 of 2023****Decided on: 26.11.2025**

Sanjay Kumar Gangania	... Petitioner
Versus	
Rita Sharma	... Respondent

Coram**Hon'ble Mr. Justice Ajay Mohan Goel, Judge.****Whether approved for reporting?¹Yes**

For the petitioner	:	Mr. Bimal Gupta, Senior Advocate, with Mr. Varun Thakur, Advocate.
For the respondent	:	Mr. Neeraj Gupta, Senior Advocate, with Mr. Ajeet Pal Singh Jaswal, Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioner has assailed order dated 29.12.2022 (Annexure P-2), passed by the Court of learned Additional District Judge, Sundernagar, District Mandi, H.P., in terms whereof, in the course of an appeal filed under Section 28 of the Hindu Marriage Act, an application filed under Order 7, Rule 10A read with Section 151 of the Civil Procedure Code for return of the appeal to be presented before the appropriate Appellate Court has been rejected.

2. The facts necessary for the adjudication of this petition are that proceedings under Section 9 of the Hindu Marriage Act, 1955, were filed before the Court of learned Civil Judge (Senior

¹ Whether reporters of the local papers may be allowed to see the judgment?



Division), who at the relevant time was exercising the the power of District Judge, as far as Hindu Marriage Act is concerned, in light of Notification No.C.L.No.HHC/Admn. 6(24)/74-II-8925-8933, dated 18th July, 1987 read with C.L. No.HHC/Admn. 6 (24)/74-II, dated 28th July, 1987.

3. The Court dismissed the petition filed under Section 9 of the Hindu Marriage Act. Feeling aggrieved the petitioner preferred an appeal under Section 28 of the Hindu Marriage Act before the learned District Judge. In the course of the adjudication of this matter which was pending before the learned Additional District Judge, the petitioner herein filed an application under Order 7, Rule 10A read with Section 151 of the Civil Procedure Code on the ground that as the appellate jurisdiction was vested with the High Court in terms of the provisions of the Hindu Marriage Act, therefore, the appeal before the learned District Judge was not maintainable and erroneously filed. Learned Appellate Court below in terms of the impugned order dismissed this application by holding that the appeal against the judgment passed by the learned Civil Judge (Senior Division), exercising the powers of District Judge would lie before the Court of the learned District Judge.

4. Learned Senior Counsel for the petitioner has argued that the impugned order is *per se* perverse. He submitted that all



that the learned Civil Judge was exercising was actually the power that was conferred upon the learned District Judge in terms of the provisions of the Hindu Marriage Act. Learned Senior Counsel further submitted that what was delegated was only the original power of the learned District Judge to hear a petition may be under Sections 9 or 13 of the Hindu Marriage, but this did not mean that the Notification also delegated the power of hearing the appeal which vested with the High Court under Section 28 of the Act, upon the learned District Judge. Learned Senior Counsel further submitted that even the Notification did not say so.

5. On the other hand, learned Senior Counsel for the respondent submitted that in light of the fact that the matter was decided by an Officer of the rank of learned Civil Judge (Senior Division), the appeal was correctly filed before the learned District Judge, who was the superior Judge in the hierarchy and therefore, the order cannot be faulted with.

6. I have heard learned Senior Counsel for the parties and have also gone through the order in issue.

7. It is not in dispute before this Court that the petition under Section 9 of the Hindu Marriage Act was decided by the learned Civil Judge (Senior Division), in exercise of powers which conferred upon the said Judicial Officer as per Notifications dated



18.07.1987 and 28.07.1987 referred to hereinabove. It was also not disputed before this Court that in terms of these two Notifications whereas the power of hear the original petition vested under the District Judge was delegated to the learned Civil Judges (Senior Division), but no simultaneous conferment of appellate power was conferred upon the District Judges.

8. In terms of Section Section 28 of the Hindu Marriage Act, all decrees made by the Court in any proceedings under the Hindu Marriage Act shall subject to the provisions of sub-section (3) of Section 28 be appealable as decrees of the Court made in exercise of its original civil jurisdiction and every such appeal shall lie to the Court to which ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction.

9. In light of the fact that the learned Civil Judge was only exercising a delegated power which otherwise was vested with the learned District Judge, this Court is of the considered view that in light of the exercise of this delegated power the appeal was to be filed against the order/judgment of the said Court before a Court ordinarily before which a decree passed by the learned District Judge was appealable. This Court is making this observation for the reason that the language of Section 28 of the Hindu Marriage Act is to the effect that all decrees made by the Court in any proceeding



under the Hindu Marriage Act shall be appealable as decrees of the Court made in exercise of its original civil jurisdiction. Now herein, admittedly the Court of learned Civil Judge (Senior Division) was not exercising its original jurisdiction but it was only exercising a delegated jurisdiction. Therefore, the original jurisdiction anyways was vested only with the learned District Judge and the appeal against the same had to be filed before the Court where the decree passed by the learned District Judge under the provisions of the Hindu Marriage Act was assailable.

10. Under the Himachal Pradesh Courts Act, 1976, District Judges and Additional District Judges stand defined. Section 5 of the Act reads as under:-

“5. District Judges.- The State Government shall, after consultation with the High Court, appoint as many persons as it thinks necessary to be District Judges, and the High Court shall post one such person to each district as District Judge of that district : Provided that the same person may, if the High Court thinks fit, be appointed to be the District Judge of two or more districts.”

Similarly, Section 6 of the Act reads as under:-

“6. Additional District Judge.- (1) When the business pending before the Court of any District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the State Government may, after consultation with the High Court, appoint such Additional District



Judges as may be necessary.

(2) An Additional District Judge so appointed shall discharge any of the functions of a District Judge which the High Court or the District Judge may assign to him and in the discharge of his functions he shall exercise the same powers as the District Judge.”

11. Similarly, Section 20 of the Act which deals with appeals from District Judge or Additional District Judges, reads as under:-

“20. Appeals from District Judges or Additional District Judges.-

(1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional District Judge exercising original jurisdiction shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional District Judge in any case, in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.”

12. Therefore, in light of Section 20 of the Himachal Pradesh Courts Act, 1976, an appeal shall lie from a decree or order of the District Judge or Additional District Judge, exercising original jurisdiction only to the High Court.

13. This Court again reiterates that in terms of the Notifications the Court of learned Civil Judge (Senior Division) was only exercising a delegated power which originally vested with the learned District Judge.



14. Therefore, for all intends and purposes, the decree may be having been passed by the learned Civil Judge or any Judicial Officer exercising the delegated power, at least for the purpose of appeal has to be construed as having been passed by the learned District Judge only. Therefore, the appeal against such an order or decree in the considered view of this Court was maintainable only before this Court.

15. At this stage, this Court would like to refer to the judgment of the Hon'ble Full Bench in *S. Kalyan Singh Vs. Sh. Tej Kaur*, AIR 1961 Punjab 480 (V 48 C 144). The question before the Hon'ble Division Bench of Punjab and Haryana High Court was whether an appeal from the order of a Subordinate Judge 1st Class, upon an application under Section 10 of the Hindu Marriage Act, 1955, lies to the High Court or to the Court of the District Judge.

16. A perusal of the judgment demonstrates that the matter had come up for consideration in the original instance before the Hon'ble Single Judge, who had referred the same to the Larger Bench, because it was felt that the matter was of considerable importance and was likely to affect a large number of cases. The issue was answered by the Hon'ble Division Bench as under:-

“ 3. Applications under [Section 10](#) must be presented to the District Court. The "District Court" has been defined in Clause (b) of [Section 3](#) of the Hindu



Marriage Act as follows:--

" 'district court' means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act."

There is a notification empowering Subordinate Judges to entertain applications under [Section 10](#), and in the present case the application was heard and disposed of by a Subordinate Judge of the first class. Ordinarily, appeals from the orders of Subordinate Judges of the first class lie to the Court of the District Judge and in some cases to the Court of the Senior Subordinate Judge. It is, however, urged before us that the appeal in the present case lies to the High Court and not to the Court of the District Judge or to the Court of the Senior Subordinate Judge.

Our attention has been drawn to the provisions of [Sections 38](#) and [39](#) of the Punjab Courts Act which deal with appellate jurisdiction in civil cases. Section 38 provides that an appeal from the order of a District Judge shall lie to the High Court, and the argument is that the Court, which deals with matters under the [Hindu Marriage Act](#), is to be deemed the Court of a District Judge and, therefore, appeals from that Court lie to the High Court. Section 39(1) is in the following terms:-- "39(1) Save as aforesaid, an appeal from a



decree or order of a Subordinate Judge shall lie- (a) to the District Judge where the value of the original suit in which the decree or order was made did not exceed five thousand rupees; and

(b) to the High Court in any other case.” It is argued that in the present case no valuation was put on the application under [Section 10](#) and so it cannot be said that the value did not exceed Rs. 5,000/-. In this view of the matter also the appeal (so it was argued) would lie to the High Court and not to the District Judge.

4. On the other hand, it has been argued that the vesting of the jurisdiction to hear applications under the [Hindu Marriage Act](#) does not raise the status of the Court. The Court hearing the application remains the Court of the Subordinate Judge and, therefore, appeals from orders passed by it must lie to the Senior Subordinate Judge or the District Judge- Our attention was drawn to a Madras case, [Valliamal Animal v. Periaswami Udayar](#), AIR 1959 Mad 510, in which it was held that an appeal from an Order passed on an application under the [Hindu Marriage Act](#) lies not to the High Courts but to the District Court. The Madras Civil Courts Act, however, is in somewhat different terms. [Section 13](#) of that Act provides that appeals shall lie from the Courts of Subordinate Judges to the District Court except when the amount or value of the subject-matter exceeds Rs. 10,000/-. Thus, if no valuation is put upon a suit or an application, it cannot be said that its subject-matter exceeds Rs. 10,000/-. Ramchandra Iyer J. observed-



"In regard to a matrimonial dispute, it cannot be stated that the subject-matter of the dispute exceeds Rs. 10,000/-. That is a matter which is not expable of valuation. It would, therefore, appear that if a subordinate Judge were given jurisdiction under the Act, an appeal from his decision would under Section 13 of the Madras Civil Courts Act lie only to the District Judge."

The learned Judge repelled the argument that the Court of the Subordinate Judge must be deemed to be the Court of the District Judge merely because it was invested with jurisdiction to hear matters under the [Hindu Marriage Act. Section 28](#) of the Hindu Marriage Act makes provision for appeals, but it does not define the forum to which appeals are to be preferred. Therefore, we must have recourse to the provisions [Of the Punjab Courts Act](#) to determine the appellate forum.

In the erstwhile State of Bombay the relevant section of the [Civil Courts Act](#) was in the same terms as the section of the Madras Act. A Division Bench of the Bombay High Court, interpreting this section, took the view that appeals from the orders of a civil Judge lay to the District Court and not to the High Court. Gosain J. has taken the contrary view in two cases which he dealt with sitting singly. He held in F.A.F.O. No. 194-M of 1958, D/- 22-9-1959 (Punj) . and F.A.F.O. No. 28-M of 1959, D/- 17-3-1960 (Punj) that the ap-peal lay to the High Court and not to the District Court.

It seems to me that the provisions of [Sections 38](#)



and [39](#) of the Punjab Courts Act. do not warrant the filing of appeals under the [Hindu Marriage Act](#) to the Court of the District Judge. The insolvency law does not provide an adequate analogy, because [Section 73](#) of the Provincial Insolvency Act, which deals with appeals, specifically provides that where an order in the exercise of insolvency jurisdiction is made by a Court subordinate to the District Court, the appeal would lie to the District Court, and where the order is made by the District Court, the ap-peal would lie to the High Court. There is no such provision in the [Hindu Marriage Act](#).

5. I am, therefore, of the view that the present appeal lies to the High Court. The matter will now be placed before a learned Single Judge for disposal according to law.

(6) Gurdev Singh, J. I agree.”

17. Thus, the view which has been taken by me is also supported by the judgment of the Hon'ble Division Bench of Punjab and Haryana High Court, referred to hereinabove.

18. In light of the above observations, this petition is allowed. Order dated 08.10.2021 (Annexure P-1) is quashed and set aside and the appeal file be returned back to the appellant to present the same before the learned Court concerned. In light of the fact that after the passing of this order, the main appeal was also decided on merit by the learned Additional District Judge, the judgment on merit so passed in appeal by the learned Additional District is also set aside being without any jurisdiction. Consequences to ensue.



19. The petition stands disposed of. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

November 26, 2025
(Rishi)