

Court No. - 30

Case :- MATTERS UNDER ARTICLE 227 No. - 2313 of 2018

Petitioner :- Yogish Arora

Respondent :- Smt. Jennette Yogish Arora @ Miss Jennette Dsouza

Counsel for Petitioner :- Kshitij Shailendra, Nitin Gupta

Hon'ble Vivek Kumar Birla, J.

1. Heard Sri Kshitij Shailendra alongwith Sri Nitin Gupta, learned counsel for the petitioner.

2. Present petition has been filed with the following prayer:-

"i) kindly, set aside the impugned order dated 1.2.2018 passed by the Additional Sessions Judge / Fast Track Court (Family Court), Court No. 2, Ghaziabad in application (paper no. 5-C) filed by the defendant-respondent in Case No. 1-2674 of 2014 (Yogish Arora vs. Jennette Yogish Arora);

ii) kindly, restrain the defendant-respondent from alienating or transferring or creating any third party's right, in any manner whatsoever, in respect of any of the properties described in the plaint of Case No. A-2674 of 2014 (Yogish Arora vs. Jennette Yogish Arora), especially, properties AR Survey Nos. 173/11, 173/1H, 173/2P3, Village Kumbashi, District Kundapura with two houses thereon, the properties situated at Bangalore and Kolkata, and Maruti Swift Car bearing registration no. MH 02 BT 2101, during the pendency of all the three cases, i.e. Case No. A-2674 of 2014 (divorce matter), Case No. 82 of 2015 (custody matter) and Case No. 83 of 2015 (property matter), before the court below;

iii) issue any other suitable direction or pass an order as this Hon'ble Court may deem fit or proper in the facts and circumstance of the case; and

iv) Award costs of the petition to the petitioner."

3. By the impugned order dated 1.2.2018 the order dated 3.11.2014 granting interim injunction has been recalled by the Principal Judge, Family Court, Ghaziabad.

4. At the very outset, the question that arises is:-

“whether in the light of provisions of Section 19 (1) of the Family Courts Act, 1984 the present petition under Article 227 of the Constitution of India would be maintainable or not?”

5. Before dealing with the question it would be appropriate to take note of the brief background of the case.

6. As per record, on 15.2.1999 marriage between plaintiff-petitioner and the defendant-respondent was solemnized under the Special Marriage Act, 1954 (hereinafter referred to as the Act of 1954) at Mumbai. In the year 2013 the petitioner filed a petition for restitution of conjugal rights under Section 22 of the Act of 1954 and he also prayed for custody of his minor child. As alleged, the respondent filed divorce petition. However, a compromise took place between the parties and accordingly, the divorce petition was withdrawn by the defendant-respondent. Subsequently, it appears that again some dispute arose between the parties and as such the petitioner filed Petition No. A-2674 of 2014 in the Family Court Bandra, Mumbai against the respondent claiming several reliefs, which also included relief regarding some property. For the purpose of present controversy prayers (e) and (i) are relevant, which are quoted as under:-

"e) An order of Injunction be passed restraining the Respondent, her parents, family members, servants, agents, representatives of any other person or persons acting for and on behalf of her, from creating third party interest in any of the properties held in the joint or single names of the Petitioner and the Respondent without following due process of law more particularly the following properties:-

- i) Flat No. 1501 and 1502, on the 15th floor of building Kia Park, Veera Desai road, Andheri (W), Mumbai
- ii) The landed property at Brahmavar, Mangalore, registered in Brahmavar

iii) Landed property at Survey No. 173/1I, 173/1H, 173/2P3, Village Kumbashi, District Kundapura with two houses Residential property at Bangalore and Culcutta which stands in the names of the Respondent.

i) That, pending the final disposal of the Petition, an order of Injunction restraining the Respondent, her parents, family members, servants, agents, representatives of any other person or persons acting for and on behalf of her, from creating third party interest in any of the properties held in the joint or single names of the parties jointly without following due process of law more particularly.

i) Flat No. 1501 and 1502, on the 15th floor of building KIA Apartments, Veera Desai road, Andheri (W), Mumbai

ii) The landed property at Brahmavar, Mangalore, registered in Brahmavar

iii) Landed property at Survey No. 173/1I, 173/1H, 173/2P3, Village Kumbashi, District Kundapura with two houses Residential property at Bangalore and Calcutta which stands in the names of the Petitioner and the Respondent."

7. Subsequently, the suit was transferred by an order of the Hon'ble Apex Court dated 16.2.2015 from Family Court Bandra, Mumbai to Family Court, Ghaziabad, U.P. The petition was registered at Ghaziabad under Section 27 (1) (a) (b) (c) of the Act of 1954. In pursuance of the order dated 1.7.2015 three cases were registered by the Principal Judge, Family Court, Ghaziabad being Case No. A-2674 of 2014 (divorce petition); Case No. 82 of 2015 (custody matter); and Case No. 83 of 2015 (property matter). Apart from other proceedings, the defendant-respondent also filed an application paper no. 5-C for modifying / setting aside the order dated 3.11.2014 with the following prayer:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously allow the application and;-

- a. Modify/Set aside order dated 03.11.2014 restraining Respondent No. 1, and
- b. Direct immediate release of the Swift Case bearing No. MH 02 BT 2101 by

Aggarwal packer and mover at the location of Applicant/Respondent No. 1.

c. Pass any other such order(s)/direction(s) as this court may deem fit and proper in facts and circumstances of the case."

8. The aforesaid application was partly allowed and the injunction order dated 3.11.2014 passed by Bandra Court, Mumbai was recalled, operative portion whereof is quoted as under:-

"प्रतिवादनी की तरफ से प्रस्तुत प्रार्थनापत्र कागज सं० 5ग आंशिक रूप से स्वीकार किया जाता है। आदेश दिनांकित 03.11.2014 सम्पत्ति संख्या एआर सर्वे नं० 173/11, 173/1 एच, 173/2 पी० गांव कुंभसी जिला कंडापुरा दो घरों के साथ की तथा बेंगलूर और कोलकाता में स्थिति सम्पत्ति तथा कार संख्या MH02BT-2101 के बावत वापस लिया जाता है तथा कार संख्या MH02BT-2101 अवमुक्त की जाए।"

9. Although, learned counsel for the petitioner sought to argue the case on merits also by drawing attention to the prayer made for modifying / setting aside the aforesaid order by the defendant-respondent, however, since the question regarding maintainability of the present petition has to be decided first, therefore, the arguments on merits at this stage are not being considered.

10. Learned counsel for the petitioner, in support of the maintainability of the petition, submitted that the impugned order is 'interlocutory' in nature as the same is undisputedly, not a 'judgment' and since appeal under Section 19 of the Family Courts, 1984 (hereinafter referred to as the Act of 1984) does not lie against the 'interlocutory order' therefore, present petition under Article 227 of the Constitution of India would be maintainable. It was next submitted that the appeal against such order would only delay the disposal of the proceedings pending between the parties.

11. Before proceeding further, it would be appropriate to reproduce the relevant provisions, which are quoted as under:-

"Relevant provisions of the Family Courts Act,

1984:-

2. Definitions.- In this Act, unless the context otherwise requires,-

- (a)
- (b)
- (c)
- (d)

(e) all other words and expressions used but not defined in this Act and defined in the Code of Civil Procedure, 1908 (5 of 1908) shall have the meanings respectively assigned to them in that Code.”

7. Jurisdiction.- 1. Subject to the other provisions of this Act, a Family Court shall- -(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 or, 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:-

- (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
 - (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
 - (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
 - (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship
 - (e) a suit or proceeding for a declaration as to the legitimacy of any person;
 - (f) a suit or proceeding for maintenance;
 - (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.
- (2) Subject to the other provisions of this Act, a Family Court shall also have

and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

19. Appeal- (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974), 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 on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991].

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for an examine the record of any proceeding in which the Family Court situate within its jurisdiction passed in order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more judges."

"Relevant provisions of Special Marriage Act, 1954

39. Appeals from decrees and orders.—(1) All decrees made by the court in any proceeding under Chapter V or Chapter VI shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act, under section 37 or section 38 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a period of (ninety) days from the date of the decree or order."

"Relevant provisions of Code of Civil Procedure, 1908:-

Section 2(2), (9) and (14)

(2). "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final"

(9) "Judgment" means the statement given by the Judge on the ground of the decree or order"

(14) "Order" means the formal expression of any decision of a Civil Court which is not a decree"

Order XXXIX Rule 1, 2 and 4

"1. **Cases in which temporary injunction may be granted-** Where in any suit it is proved by affidavit or otherwise-

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,
- (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or dispossession of the property ¹⁶[or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgement, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract, or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may be order grant such injunction, on such terms as to the of the durations injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

4. Order for injunction may be discharged, varied or set aside- Any order for an injunction may be discharged, or varied, or set aside by the Court, on an application thereto by any party dissatisfied with such order :

[Provided that if in an application for temporary injunction or in any affidavit supporting such application a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice :

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party."

"Order XLIII Rule 1 (r)

(r) an order under rule 1, rule 2 (rule 2A), rule 4 or rule 10 of Order XXXIX;"

(emphasis supplied)

12. A perusal of Section 7 of Act of 1984 would clearly indicate that the family court has jurisdiction to pass injunction order. However, unlike Order XXXIX Rule 1, 2 and 4 CPC, no specific provision has been made in the Act of 1984 for grant of interim injunction or modifying or vacating the same. Consequently, apparently for this reason no specific provision for challenging such order whether granting, refusing, modifying or vacating the injunction, has been provided under the Act of 1984.

13. Section 19 of the Act of 1984 clearly provides for an appeal that an appeal shall lie from every judgment or order, not being interlocutory order, of a Family Court to the High Court both on

facts and on law. Section 19(6) provides that the appeal shall be preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

14. Now the question is whether the order granting or refusing or modifying or setting aside injunction, can be treated as 'interlocutory' order or not? It cannot be questioned that such order is not "judgment" (as commonly understood, deciding the entire controversy finally) rendered by the Family Court. However, it can also not be disputed that this, infact, is an "order".

15. It may be specifically noticed that in Section 19(1) of the Act of 1984, word 'decree' has not been used, apparently, for the reasons that object of the Act of 1984 is to eliminate adherence to rigid rules of procedure and evidence and to provide only one right of appeal.

16. In **Kiran Bala Srivastava vs. Jai Prakash Srivastava 2006 ACJ 1936 (FB)** the question before the Hon'ble Full Bench was whether an appeal under Section 19 of the Family Courts Act, 1984 would lie against an order passed under Section 24 of the Hindu Marriage Act, 1955 for grant of interim maintenance. In this case Section 19 of the Act of 1984 was considered. Paragraphs 18, 19, 20, 21, 22, 23, 24, 27, 28 and 31 of the aforesaid judgment are quoted as under:-

"18. A plain reading of **sub-section (1) of section 19** of the Act of 1984 makes it clear that there is a provision for appeal against "judgment" or "order" of a family Court, but not against its "interlocutory orders". The words "judgment" "order" and "interlocutory orders" used in **sub-section (1) of section 19** have not been defined in that Act. Although the words "judgment" and "order" are defined under **section 2(9) (14) of the code of civil procedure** and by virtue of Section 2(e) of the Act of 1984, can be looked into for understanding the meaning of those words, but the expression "interlocutory order" is not defined even in that Code of 1908, though that expression has been used in Order XXXIX of that Code. So with a view to decide whether appeal lies under **sub-section (1) of section 19** of the Act of 1984 against the order of family Court granting pendente lite maintenance under Section 24, we have to first see as to whether the same falls within the definition of a "judgment".

19. Interpreting the word "judgment" appearing in clause 15 of **Letters Patent "Bombay" in Shah Babu Lal Khimii v. Jayaben**, AIR 1981 SC 1786, their lordships of the Apex Court held that those orders which decided matters of moment or which affected vital and valuable rights of the party or which tended to work serious injustice to the party concerned, fell within the expression "judgment" appearing in relevant clause of Letters Patent. Their lordships said that there could be following three kinds of judgments:

1. A final Judgment-A judgment which decides all the questions or issues in controversy so far as the trial Judge is concerned and leaves, nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the trial Judge indisputably and unquestionably is a judgment within the meaning of the Letters Patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.

2. A preliminary Judgment.-This kind of a judgment may take two forms (a) where the trial Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the trial Judge would be a judgment finally deciding the cause so far as the trial Judge is concerned and, therefore, appealable to the larger Bench, (b) Another shape which a preliminary judgment may take is that where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g. bar of jurisdiction, resjudicata, a manifest defect in the suit, absence of notice under Section 80 and the like and these objections are decided by the trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to a larger Bench.

3. Intermediary or interlocutory judgment.-Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order XLIII, Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order XLIII, Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of to the trial in an ancillary proceeding. Before such an order can be a Judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote....."

20. In other words, the Apex Court ruled that order or interlocutory order possessing the characteristics and trappings of finality or affecting valuable, rights of the party or deciding important aspects of the trial in main or in ancillary proceedings, will be "judgment".

21. What noticeable in **sub-section (1) of section 19** of the Act of 1984, is that

deviating from. Section 96 of the Code of 1908 or from sub-section (1) Section 28 of the Act of 1955, it provides for appeals against "judgment". The Code of Civil Procedure, 1908, does not provide for appeal against judgments. It provides for appeals against decrees and orders. Likewise Section 28 of the Act of 1955 also does not provide for appeals against judgments. It provides for appeals only against decrees [see: sub-section (1)] and against certain [see: sub-section (2)]. The question arises as to why the legislature made a departure by providing appeal against judgments-also, under **sub-section (1) of section 19** of the Act of 1984. Not that the legislature was not aware of the established practice or did not know the meaning of the word judgment, given by the Apex Court in Khimji's case (supra),.

22. If we glance at matters enumerated in explanation to sub-section (1) lot Section 7, of the Act of 1984, we find matters, hitherto dealt with and decided by different Courts and different levels of civil Courts, under different enactments were placed within the jurisdiction of a family Court. The legislature was aware of the legal position, that orders and decrees of civil Court of inferior grade, could be subjected to not only one appeal but to more than one. Declaration in the Bill, that only one right of appeal is being provided, should be read in line same context.

23. Before we consider whether orders under Section 24 granting pen-dente lite maintenance to the party to the matrimonial dispute, possesses characteristics and trappings of a "judgment", we would like to refer to two Supreme Court cases, namely **Amar Nath v. State of Haryana, AIR 1977 SC 2185** and **Madhu Limaye v. State of Maharashtra, AIR 1978 SC 47**. The controversy in Amar Math's case centered around the meaning of the expression "interlocutory order" appearing in subsection (2) of Section 397 of the Code of Criminal Procedure, Relying on earlier view in **Mohan Lal Magan Lal Thacker v. State of Gujarat, AIR 1968 SC 733**, the Apex Court said:

"The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the right and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in **section 397 (2) of the 1973 code** has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any orator which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular **provision in section 397 of the 1973 code**, thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, cutting for reports and such other steps in aid of the pending proceeding may no doubt amount to interlocutory orders against which no revision would lie under **section 397 (2) of the 1973 code**. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional

jurisdiction of the High Court."

24. It was pointed out that the finality of an order could not be judged by correlating that order with the controversy in the complaint and the fact that the controversy still remains alive was irrelevant. The said view was reiterated in Madhu Limaye's case with the observation that some kinds of order may fall in between final order" and "interlocutory order" and the bar in sub-section (2) of section 397 was not meant to be attracted to such kind of "intermediary orders". In other words, according to their lordships, what was not final, was not necessarily interlocutory for purposes of sub-section (2) of section 397 of the Code of Criminal Procedure.

27. The argument that appeal against any such order, will delay the disposal of main petition does not appeal to us, so as to give a limited meaning to the word "judgment". In an appeal against any order under Section 24 of the Act of 1955, granting pendente lite maintenance, main proceedings need not necessarily be stayed or held up. The reason is that grant of such maintenance is not to affect the merits of the main petition.

28. The learned Counsel for the respondents has referred to the definition of "interlocutory orders" in Vol.22 of the third edition of Halsbury's Law of England and also to **Central Bank of India v. Gokul Chand**, AIR 1967 SC 799 and also Amar Nath's case and Madhu Limaye's case (supra), so as to say that order under Section 24 of the Act of 1955 are just steps in aid of the main proceedings and have no existence independent of the main proceedings, so will not fall within the definition of the judgment and will be only an interlocutory order. We are of the view that in view of the discussion made above order of pendente 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. In so far as those rights and liabilities are concerned the order is final. The fact that the considerations that matter in granting or refusing pendente lite maintenance under Section 24, have no connection with issues in the main proceedings or the question that even after disposal of application under Section 24, the main petition remains alive for disposal, do not prevent the order under Section 24 from falling within the definition of the "judgment". We are also of the view that the expression "interlocutory order" appearing in sub-section (1) of Section 19 of the Act, 1984 qualify the word "order" only and does not qualify the word "judgment" appearing before the word "order". In other words, if order of pendente lite maintenance is a "judgment" for all legal and practical purposes, it matters, little whether the same is interlocutory or final.

31. So, our answer to the question is in affirmative. Let the record of this appeal be placed before the appropriate Bench, for final disposal."

(emphasis supplied)

17. In Munna Singh @ Shivaji Singh and others vs. State of U.P. and another 2011 (9) ADJ 98 the Hon'ble Full Bench was considering the question whether the orders passed by the Magistrate under Section 145(1) and 146(1) of the Code are interlocutory orders simpliciter and no revision petition under

Section 397 or 403 of the Code or petition under Section 482 of the Code is maintainable against the same. In this case also the Hon'ble Full Bench considered the expression 'interlocutory order', and 'final order' and also considered that as to what is 'intermediate order' and question was answered in negative. Relevant paragraphs 2, 40 and 41 of the aforesaid judgment are quoted as under:-

“2. To be precise, it would be appropriate to gainfully reproduce the issue framed by the learned Single Judge after having noted the decisions relied upon by either of the parties which is as follows:-

"Whether the orders passed by the Magistrate under Section 145(1) and 146(1) of the Code are interlocutory orders simplicitor and no revision petition under Section 397 or 403 of the Code or petition under Section 482 of the Code is maintainable against the same."

40. The difficulty again is that can such a list of illustrations be catalogued so as to confine the revisional jurisdiction in relation to such intermediate orders. Our obvious answer is in the light of what has been said in the case of Mohan Lal's case (supra) by the apex court that the determination of such an issue as to whether a revision would be maintainable or not would in turn depend upon the nature of the order and the circumstances in which it came to be passed. Thus it would depend on the facts and circumstances of each separate individual case where the revising authority will have to examine as to whether the Magistrate has proceeded to exercise his judicious discretion well within his jurisdiction or has travelled beyond the same, keeping in view the various shades of litigation in such matters where the apex court and this Court has held that an intermediate order, which is not necessarily an interlocutory order, could be subjected to revision. An order not conclusive of the main dispute between the parties, but conclusive of the subordinate matters with which it deals is not a purely interlocutory order even though it may not finally adjudicate the main dispute between the parties. In our opinion therefore a revision would not be barred under Sub Section (1) of Section 397 of the Code if the orders impugned before the revising authority fall within the tests indicated hereinabove.

41. Our answer to the question referred would be therefore in the negative, and we hold that orders passed under Sections 145(1) and 146(1) of the Code are not in every circumstance, orders simplicitor, and therefore a revision would be maintainable in the light of the observations made in this judgment depending on the facts involved in each case."

(emphasis supplied)

18. It is not in dispute that insofar as the property, which is covered or is subject matter of the order, whereby interim injunction order is either granted or refused or modified or vacated would become final between the parties and thus, this order

becomes final in nature between the parties and till the disposal of the proceedings pending before the family court, their stand on the subject matter of such order cannot be changed unless, interfered by the higher court either way.

19. Section 39 of the Act of 1954 also provides for appeal against the interim orders, however, now challenge to any order passed by the Family Court would be governed by the provisions of the Act of 1984, therefore, Section 39 of the Act of 1954 would not be relevant in the present case.

20. Therefore, in view of the discussions made hereinabove, analogy can safely be drawn from the provisions of Section 34 of the Hindu Marriage Act, 1955 and the judgment of Full Bench of this Court in **Kiran Bala Srivastava (supra)** and also from the provisions of Order XXXIX CPC. There is no doubt that the provisions of Order XXXIX CPC are not specifically applicable in the present case, however, since the principles/guidelines as laid down under Order 39 CPC for the purpose of granting, refusing, modifying or vacating the interim injunction are taken from the aforesaid provisions, it can be safely drawn that the order of injunction would be appealable, inasmuch as such order attains finality during the pendency of the proceedings. No doubt, any provision akin to Order XLIII Rule 1(r) CPC is not present in the Family Court Act, however, once the power of granting, refusing, modifying or vacating injunction is vested under the Family Court Act, the provisions of appeal has to be traced to Section 19(1) of the Family Courts Act, 1984 which undisputedly provides for an appeal against the orders also, though, with a rider that order should not be 'interlocutory' in nature. From the discussion as made above, it is observed that such orders would fall within the category of 'intermediate orders' to which finality is attached, and

by the order impugned herein, finality is attached to subject matter of injunction application or say, finality is attached to a particular stage of proceedings and therefore, would be appealable under Section 19(1) of the Family Courts Act.

21. Under such circumstances, in view of the discussion made hereinabove, it is clear that the order granting or refusing injunction or modifying or vacating injunction passed by the family court would not be purely 'interlocutory order' in nature and would be an 'intermediate order' with finality attached, and would, therefore, be appealable under Section 19(1) of the Act of 1984.

22. Thus, in my opinion, present petition under Article 227 of the Constitution of India challenging the order granting or refusing interim injunction or modifying or vacating the same, would not be maintainable and such order would be appealable under Section 19(1) of the Family Courts Act, 1984. The question framed is answered accordingly.

23. Accordingly, present petition stands dismissed as not maintainable.

24. Office is directed to return certified copies to the learned counsel for the petitioner within 24 hours after obtaining photocopies of the same.

25. With the aforesaid observations/directions, the writ petition stands dismissed.

26. Office is directed to supply a copy of this order to the Stamp Reporter of this Court.

Order Date :- 30.4.2018
Lalit Shukla