



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (C) No.10751 of 2021

ARUNODAY SINGH

... PETITIONER (S)

VERSUS

LEE ANNE ELTON

... RESPONDENT (S)

J U D G M E N T

Indira Banerjee, J.

1. This Special Leave Petition is against an order dated 9th March 2021 passed by the Jabalpur Bench of the High Court of Madhya Pradesh allowing I.A. No.5526 of 2020 being an application for condonation of the delay in filing First Appeal No.445 of 2020.

2. The High Court has, by the impugned order condoned the delay in filing the First Appeal under Section 19 of the Family Courts Act, 1984, read with Section 39 of the Special Marriage Act, 1954, challenging an *ex parte* judgment and decree of divorce dated 18th December 2019 passed by the First Additional Principal Judge, Family Court, Bhopal in Regular Civil Suit No.89-A/2019 filed by the Petitioner.

3. The marriage between the Petitioner and the Respondent was dissolved by the Family Court by a judgment and a decree of divorce dated 18th December 2019 under the provisions of the Special Marriage Act, 1954. Being aggrieved the Respondent filed an appeal being F. A. No.445 of 2020 under Section 19 of the Family Courts Act, 1984 read with Section 39 of the Special Marriage Act, 1954. The Appeal appears to have been filed on 1st March 2020.

4. The High Court has, on consideration of the application for condonation of delay, been satisfied that there was sufficient cause for the delay in filing the First Appeal and accordingly condoned the delay. The finding of the High Court of existence of sufficient cause for the delay in filing the Appeal does not warrant intervention in exercise of powers under Article 136 of the Constitution of India.

5. Mr. Ravindra Shrivastava, Senior Counsel appearing on behalf of the Petitioner submitted that the High Court grossly erred in law in condoning the delay in filing the appeal from a decree of divorce under the Special Marriage Act, 1954 passed by a Family Court constituted under the Family Courts Act, 1984.

6. The short question raised by the Petitioner for determination in this Appeal is, whether delay in filing an Appeal from a decree of divorce, granted by a Family Court under the Special Marriage Act, 1954, can be condoned under Section 5 of the Limitation Act, 1963.

7. The relevant provisions of the Limitation Act 1963, Family Courts Act, 1984 and Special Marriage Act, 1954 are set out hereinbelow for convenience:-

“Section 29(3) of the Limitation Act.

29. Savings.-

.....

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.”

Section 19(3) and 20 of the Family Courts Act, 1984.

19. Appeal -.

.....

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

20. Act to have overriding effect -.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Section 39(4) and 40 of the Special Marriage Act, 1954

39. Appeals from decrees and orders.—

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

40. Application of Act 5 of 1908.—*Subject to the other provisions contained in the Act, and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (5 of 1908).*”

8. Mr. Shrivastava argued that Section 19(3) of the Family Courts Act, 1984, mandates that every appeal under the said Section is to be preferred within 30 days from the date of judgment or order of a Family Court and Section 20 of the said Act confers overriding effect on the provisions of the Family Courts Act, notwithstanding anything inconsistent in any other law for the time being in force. Section 39(4) of the Special Marriage Act mandates that every appeal under the aforesaid Section shall be filed within a period of 90 days.

9. Relying on Sections 19(3) and 20 of the Family Courts Act, 1984, Mr. Shrivastava forcefully argued that every appeal from a decree passed by a Family Court had to be filed within 30 days from the date of the decree. By reason of the overriding provision of Section 20 of the Family Courts Act, the provision of Section 19(3) of the Family Courts Act would prevail over Section 39(4) of the Special Marriage Act under which the period of Limitation for filing an appeal from a decree under the said Act is 90 days. Mr. Shrivastava argued that Section 19(3) of the Family Courts Act which required an appeal to be filed within 30 days was binding.

10. Emphasizing on Section 29(3) of the Limitation Act, Mr. Shrivastava submitted that no provision of the Limitation Act is

applicable to any suit or other proceedings relating to marriage or divorce, including an appeal therefrom, unless the specific law governing the marriage or divorce makes an exception.

11. Mr. Shrivastava argued that the Special Marriage Act does not make any exception to Section 29(3) of the Limitation Act. There is no provision in the special Marriage Act making the Limitation Act applicable to suits or proceedings under the Special Marriage Act. The delay in filing an appeal from any decree or order in any suit or other proceeding relating to marriage or divorce under the Special Marriage Act is therefore, not condonable under Section 5 of the Limitation Act.

12. Section 5 of the Limitation Act, 1963 provides:-

“5. Extension of prescribed period in certain cases.—
Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

13. The main question involved in this Special Leave Petition is, whether the delay in filing an appeal from a decree passed by a Family Court under the Special Marriage Act is condonable under Section 5 of the Limitation Act.

14. Section 29(2) of the Limitation Act says that where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, the provision of Section 3 of the Limitation Act would apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

15. Under Article 116 of the Schedule to the Limitation Act the period of limitation prescribed for an appeal to the High Court from any decree or order is 90 days. The period of limitation for appeal to the High Court from the decree or order of the same Court is 30 days. Section 39(4) of the Special Marriage Act also provides that every appeal under the aforesaid Section is to be preferred within a period of 90 days from the date of the decree or order.

16. However, as observed above, Section 19(3) of the Family Courts Act requires every appeal from a judgment or order of the Family Court to be filed within 30 days. The provisions of the Family Court Act have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

17. Section 19(3) of the Family Courts Act provides a shorter period of limitation than Section 39(4) of the Special Marriage Act, 1954 or

Article 116 of the Schedule to the Limitation Act, 1963. There is an inconsistency between the period of limitation for filing an appeal prescribed by the Family courts Act and the Special Marriage Act, as also the Limitation Act.

18. By reason of the non-obstante provision of Section 20 of the Family Courts Act giving overriding effect to the Family Courts Act, the period of limitation for filing an appeal from a judgment and order of a Family Court constituted under the Family Courts Act would be 30 days and not 90 days. The High Court thus found that the Appeal was delayed, even though the Appeal was filed well within 90 days.

19. The Appeal was under Section 19 of the Family Courts Act which is not substantive law relating to marriage and divorce but an Act for constitution of Family Courts to deal with disputes relating to marriage and family affairs. The proceedings in the Family Court relating to marriage and divorce are not proceedings under the Family Courts Act even though the procedure prescribed under the Family Courts Act may be followed. Section 29(3) of the Limitation Act is, therefore, not attracted to appeals under the Family Courts Act. Moreover, there is no inconsistency between Section 19 of Family Courts Act, 1984 and Section 5 of the Limitation Act, 1963 which provides for condonation of delay in filing an appeal where there is no sufficient cause.

20. Section 29(2) of the Limitation Act clearly provides that where any special or local law prescribes a period of limitation different from the period prescribed by the Schedule to the Limitation Act, the provisions contained in Sections 4 to 24 of the Limitation Act would apply only insofar as and to the extent to which they are not expressly excluded by such special or local law.

21. There can be no doubt nor any dispute that the Family Courts Act as also the Special Marriage Act are special laws. However, neither of these special enactments have expressly excluded the application of Sections 4 to 24 of the Limitation Act to Appeals under the said special enactments.

22. The issue before this Court is the scope and ambit of Section 29(3) of the Limitation Act extracted above, which excludes the application of the Limitation Act itself to any suit or other proceeding under any law with respect to marriage and divorce, unless it is otherwise provided by that law.

23. Section 29(3) of the Limitation Act excludes the application of the Limitation Act to any suit or other proceeding under any law with respect to marriage and divorce. The prohibition of Section 29(3) of the Limitation Act is restricted to suits and proceedings in the suit as observed by *Nambiar, J. in **Kunnarath Yesoda v. Manathanath Narayanan***¹. What is excluded from the purview of the Limitation Act, under Section 29(3) thereof, is suits and other proceedings of an original nature relating to marriage and divorce, such as a petition for relief

1. AIR 1985 Ker 220

under the marriage and divorce Laws. The Limitation Act is inapplicable to original proceedings.

24. However, appeals from orders and decrees in suits under the Indian Divorce Act or the Special Marriage Act or the Hindu Marriage Act are not excluded from the operation of the Limitation Act. The reason for excluding matrimonial suits from the operation of the Limitation Act is obvious. It is the policy of law that suits for restitution of conjugal rights, for judicial separation or for divorce should not get barred by limitation if the same are not filed within the prescribed time limit.

25. Original proceedings under the Hindu Marriage Act or the Special Marriage Act or any other matrimonial law are within the ambit of Section 29(3) of the Limitation Act. As held by a Division Bench of Calcutta High Court in ***Smt. Sipra Dey v. Ajit Kumar Dey***², even though lexically, logically and in common as well as in legal parlance the expression “proceeding” would include an appeal, an application and even a suit, there are good and weighty reasons to apply the rule of *noscitur a sociis* to the word proceeding in the expression suit or other proceeding in Section 29(3) of the Limitation Act and to construe the same to mean proceeding in the nature of suit, that is, original proceeding and not to include appeal.

26. In ***Sipra Dey v. Ajit Kumar Dey*** (supra), the Division Bench held:

“7. A survey of the provisions of the present Limitation Act would also demonstrate that whenever provisions have been made for appeals, the Legislature has expressly used the

2. AIR 1988 Cal 28

expression appeal as in Ss. 3, 4, 5, 12, 13, 29, 30 and 31 of the Act and that being the general frame of the Act, we are inclined to think that if the Legislature intended to make the provisions of S. 29(3) applicable to appeals also, it would have clearly said so in express words. The very preceding sub-sec. (2) of Sec. 29 has also used the expression suit, appeal and application instead of the expression proceeding as that sub-section was clearly intended to apply to appeal also. Our attention could not be drawn to any section or Article of the Limitation Act applying to appeals which has, without expressly using the expression appeal, has used the wider expression proceeding.

8. *Some of the provisions of the Limitation Act relating to appeals enact principles which are eminently 'reasonable' and evidently 'right', 'just and fair.' For example, it is obviously reasonable to provide, as provided in S. 12, that the time requisite for obtaining copies of the judgment and decree shall be excluded in computing the period of limitation for the appeal. The provision of S. 5 empowering the Court to admit appeal even after the prescribed period for good and sufficient cause is also another such provision. To construe the word proceeding in S.29(3) to include appeal would be to overthrow all these reasonable provisions in respect of appeal, while to construe the same as to exclude appeal and to mean only original proceeding in the nature of a suit would be to make all these reasonable provisions available to appeals. The latter construction can easily be arrived at by applying the principle *Noscitur A Sociis* and since where two constructions are possible, that which would be more conducive to reason and justice is to be preferred, we would adopt that construction.*

12. *There is yet another good reason not to construe the expression other proceeding in S. 29(3) of the Limitation Act of 1963 as to include appeals. Until the enactment of this Act of 1963, matrimonial appeals under S. 28 of the Hindu Marriage Act, 1955, as it stood then, were being governed by the provisions of the preceding Limitation Act of 1908 both in respect of the period of limitation as well as in respect of enlargement of that period by extension or exclusion under the provisions of Ss. 5, 12 and other Sections. And though periods of limitation for matrimonial appeals under S. 47 of the Parsi Marriage & Divorce Act, 1936 and under S. 39 of the Special Marriage Act, 1954 were specially provided in those Sections, in respect of computation of such period, the provisions of the Limitation*

Act providing for extension or exclusion as in Ss. 5, 12 etc. used to apply. The reason for application of the provisions of the Limitation Act, 1908 to the matrimonial appeals under the aforesaid three Acts was that S. 29(3) of that Act made the Act inapplicable only "to suits under the Divorce Act." But if we now construe the expression other proceeding in S. 29(3) of the present Limitation Act of 1963 to include appeals also, and thus make the Limitation Act of 1963 inapplicable to all matrimonial appeals, that would deprive the appellants in all such appeals from the benefit of all the beneficial and reasonable provisions of the Act providing for extension and exclusion of periods. Nay, yet more startling results. There is no provision providing for any special period of limitation for a matrimonial appeal under the Indian Divorce Act and the period is computed according to the general law as provided in the Limitation Act. That was also the position in respect of matrimonial appeals under the Hindu Marriage Act until a special period of limitation was provided in S. 28(4) as amended in 1976. Therefore, to hold that the expression other proceeding in S. 29(3) of the present Limitation Act includes appeals and the whole of the Act is thus inapplicable to matrimonial appeals, is to hold that there is no period of limitation for appeals under the Indian Divorce Act and that there was also no period of limitation for appeals under the Hindu Marriage Act from 1955 till 1976. Now it is well-settled that if the language of the legislation can reasonably admit of two constructions, and, if construed in one such way, would lead to palpable absurdity or obvious injustice, the Court must act upon the view that such a result could not have been intended, unless a contrary intention has been manifestly enunciated in express words (Maxwell — 10th Edition, p. 201).

13. *Far from there being any express enunciation in S. 29(3) indicating its application to appeals also, there is clear indication in the Statements of Objects and Reasons accompanying the Bill to the effect that the present sub-sec. (3) of Sec. 29 of the Act of 1963 only "amplifies S. 29(3) of the existing (i.e. the earlier) Act so as to exclude the application of this law to suits under any law dealing with marriage or divorce" and not to exclude its application to appeals under any such law. We do not, as we cannot, for a moment suggest that such statements would determine or clinch the issue. But where, as here, a clear statement has been made as to the object of a clause in a Bill, and that clause has been finally enacted, the object so held out can surely be taken due note of while ascertaining the meaning of that clause. We have now travelled a very long distance*

from the days of 'no-entry' to the present day of 'free-entry' of Hansard in the forensic arena. We, therefore, conclude, and that we do without hesitation, that the words "other proceeding" in the expression "any suit or proceeding" in S. 29(3) of the Limitation Act, 1963 mean original proceeding in the nature of suits and do not include appeals.

14. *There are a number of authorities in support of the view we are taking, but we have so long been considering the question on principles as, in our view, and this we say with due respect, none of the aforesaid authorities has considered the question in such depth or details as we have had to do here in this case, and, in particular, the question does not appear to have been considered in any of those decisions with proper advertence to the Long Tide and in the context of the various other provisions of the Limitation Act. To start with, the Full Bench decision of this Court in *Debi Bhaduri v. Kumarjib Bhaduri*, AIR 1980 Cal 1 cannot be taken to have decided the question because the question which concerned and was decided by the Full Bench was whether the shorter period of limitation prescribed by S. 28 of the Hindu Marriage Act, as amended by the Amendment Act, 1976, would apply to any appeal arising out of a proceeding pending on the date of the commencement of the aforesaid amendment Act. The Full Bench answered the question in the affirmative and as a result the appeal in that case was to be taken to have been filed beyond the period of Limitation. It was in that context that the Full Bench, while returning the case back to the Division Bench which made the reference, observed (at paragraphs 17 and 22) that the appeal being thus barred by limitation, an application for extension under S. 5 of the Limitation Act was to be dealt with and disposed of by the Division Bench and that the decision of the Full Bench on the question of limitation "would not affect or prejudice the rights, if any, of the appellant to make an application under S. 5 of the Limitation Act". This is, therefore, obviously no decision or declaration of law on the question as to whether the provisions of S. 5 of the Limitation Act would apply to matrimonial appeals under S. 28 of the Hindu Marriage Act in view of S. 29(3) of the Limitation Act."*

27. This Court is in full agreement with the view taken by the Division Bench of Calcutta High Court in ***Sipra Dey v. Ajit Kumar***

(supra). In ***Debi Bhaduri v. Kumarjib Bhaduri***³, the Division Bench of Calcutta High Court held that the provisions of Section 5 of the Limitation Act would apply to a matrimonial appeal under Section 28 of the Hindu Marriage Act. In ***Debi Bhaduri*** (supra), the Division Bench of High Court of Calcutta cited with approval a Division Bench judgment of the Delhi High Court in ***Shri Chander Dev Chadha v. Smt. Rani Bala***⁴. In ***Shri Chander Dev Chadha v. Smt. Rani Bala*** (supra), the Delhi High Court correctly held that the provisions of the Limitation Act were only inapplicable to suits and original proceedings and not to appeals.

28. For the reasons discussed, this Court holds that an appeal under Section 19 of the Family Courts Act, from a decree of divorce under the Special Marriage Act is condonable.

29. It is well settled that when rejection of an apparently meritorious appeal on the ground of limitation is pitted against deciding the appeal on merits, the Courts are entitled to take a liberal approach in deciding an application for condonation of delay. That is exactly what the High Court has done.

30. There can be no dispute that appeal was filed by the Respondent within 90 days, which was the period of limitation for filing an appeal prescribed under the Special Marriage Act. The lawyer advising the Respondent was under the mistaken belief that the period of limitation was 90 days as prescribed under the Special

3. (1980) 1 Cal LJ 309

4. AIR 1979 Delhi 22

Marriage Act and proceeded accordingly. The Respondent was misled by the advice of the lawyer. Thus, there was sufficient cause for the delay. It is reiterated that the finding of the High Court of existence of sufficient cause for the delay does not warrant intervention under Article 136 of the Constitution of India.

31. The Special Leave Petition is, therefore, dismissed.

.....J.
[Indira Banerjee]

.....J.
[V. Ramasubramanian]

**New Delhi;
July 23, 2021**