IN THE HIGH COURT OF JHARKHAND AT RANCHI
First Appeal No. 49 of 2019

Dr. Pankaj Kumar --- --- Appellant
Versus
Prerna --- --- Respondent

CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**
Hon'ble Mrs. Justice Anubha Rawat Choudhary
Through : Video Conferencing

For the Appellant: Mr. Indrajit Sinha, Advocate
For the Respondent: Mr. Kaushik Sarkhel, Advocate

16/16.12.2020 Heard Mr. Indrajit Sinha, learned counsel for the appellant and Mr. Kaushik Sarkhel, learned counsel representing the Respondent on the question of limitation involved in the present appeal.

2. Appellant has preferred I.A. No. 539/2020 under section 5 of Limitation Act for condonation of delay of 30 days in preferring the instant Memo of Appeal.

3. In order to appreciate the legal issues involved herein, some relevant facts and dates are being briefly indicated hereunder.

Appellant instituted Matrimonial Title Suit No. 300/2011 before the learned Family Court, Ranchi under section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage with the Respondent on the ground of cruelty. By an order dated 14.03.2012, learned Family Court allowed interim maintenance and litigation cost to the Respondent. Since the appellant failed to comply with the order dated 14.03.2012, the suit was dismissed on 05.08.2015 on the ground that the petitioner had not paid ad interim maintenance of Rs. 7,000/- per month and Rs. 10,000/- lump sum as litigation cost to the Respondent. As such, he is not entitled to get relief on his own fault. The Respondent facing hardship was not able to contest the case. The case was accordingly dropped.

4. Being aggrieved, appellant preferred writ petition WPC No. 4989/2015 under Article 227 of Constitution of India instituted on 12.10.2015. By order dated 03.12.2018, petitioner was allowed to convert the writ petition into an appeal under section 19 of Family Courts' Act, 1984. The present appeal was instituted on 04.02.2019 thereafter. Office pointed out a delay of 30 days in preferring the instant Memo of Appeal, for condonation of which, the instant I.A has been preferred.

5. Two important questions arose on the point of condonation of delay which have been indicated in the previous order dated 09.12.2020 and are as follows.

(i) What is the manner of computation of the period of limitation when a petition under Article 227 of the Constitution of India or any other petition/application/appeal is permitted by an order of this Court to be converted into an appeal under Section 19 of the Family Courts Act, 1984?

(ii) What is the period of limitation for filing an appeal under Section 19 of the Family Courts Act from a judgment and order passed by the Family Court in a suit instituted under the provisions of Hindu Marriage Act, 1955 i.e., 30 days in terms of Section 19(3) of the Act of 1984 or 90 days in terms of amended Section 28 of Hindu Marriage Act, 1955 by the Marriage Laws (Amendment Act), 2003?

6. Learned counsel for the appellant has addressed the Court on both issues. We proceed to address the legal issues involved, hereinafter. Learned counsel for the appellant has placed reliance upon the decision of the Apex Court in the case of **Nawab Shaqafath Ali Khan & others** versus **Nawab Imdad Jah Bahadur & others**, **(2009) 5 SCC 162** on the proposition that a petition under Article 226 and / or 227 of the Constitution of India or a revision under section 115 of Code of Civil Procedure can be permitted to be converted into an appeal which lies before the High Court. However, the Court must also be satisfied that the initial petition / application was not filed mala fide. Para-48 of the Report is quoted hereunder for better appreciation:

> "**48.** If the High Court had the jurisdiction to entertain either an appeal or a revision application or a writ petition under Articles 226 and 227 of the Constitution of India, in a given case it, subject to fulfillment of other conditions, could even convert a revision application or a writ petition into an appeal or vice versa in exercise of its inherent power. Indisputably, however, for the said purpose, an appropriate case for exercise of such jurisdiction must be made out."

Reliance has further been placed on the decision of Bombay High Court in the case of **Vinod Kumar versus Kailash Kumar** reported in **[2011 (1) Mh. L.J.] 269** on the identical question involved therein. There was a delay of 46 days up to the date of filing of the writ petition or 384 days up to the date of conversion of writ petition into an appeal against the order impugned. Learned Single Judge of Bombay High Court considered the issue and held as under:

> 18. However, when the Court permits the petitioner to convert writ petition into an appeal, it is only upon reaching the satisfaction that the prosecution of writ petition was in good faith and the applicant is entitled to get the benefit of exclusion of such period. Once the conversion is permitted by the Court, the same relates back to the date of filing of writ petition. Such conversion is permissible, when the proceedings are prosecuted in the same Court, but in different jurisdiction. It is not necessary either to file separate application for condonation of delay or to explain the delay from the date of filing writ petition till the date of its conversion. The reason is obvious that proceedings of writ petition are before the Court. In such a situation, the period for condonation of delay needs to be counted up to the date of filing of writ petition and not up to the date of the order of conversion of writ petition into an appeal. In the present case, this Court has permitted conversion of writ petition into an appeal against order on 10-7-2009, and hence the delay was required to be explained only up to the stage of filing of writ petition on 22-9-2008. In view of

> this, the contention of Shri Sadavarte that the delay was required to be explained till the order of conversion, i.e. 10-7-2009, is rejected."

7. An important question incidental to this issue is, whether the principles contained in section 14 of the Limitation Act apply in such a situation for condonation of delay, though this provision is not applicable to an appeal. In this regard, it is pertinent to refer to the opinion of the Hon'ble Supreme Court in the case of **Consolidated Engineering Enterprises versus Principal Secretary, Irrigation Department & others. [(2008) 7 SCC 169]** which lays down the conditions upon fulfillment of which, the benefit of section 14 of the Limitation Act, 1963 can be extended. Para-21 of the Report is reproduced hereunder:

> "21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:
> (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
> (2) The prior proceeding had been prosecuted with due diligence and in good faith;
> (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
> (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
> (5) Both the proceedings are in a court."

In the case of **Mohinder Singh (Dead) through Legal Representatives versus Paramjit Singh & others**, **[(2018) 5 SCC 698]**, the Apex Court restated the purpose of section 14 of the Limitation Act, 1963 and observed that the provision is intended to provide relief against bar of limitation in cases where remedy is mistakenly taken recourse to or selection of a wrong forum. It was also reiterated that section 14 of the Act is of wide ambit and must receive liberal interpretation. It was further held that the expanse of section 14 of the Act is not limited to mere jurisdictional issue but also other issue of like nature. Learned counsel for the appellant has also placed reliance upon the decision of the Apex Court in the case of **M.P. Steel Corporation versus Commissioner of Central Excise [(2015) 7 SCC 58]** and in the case of **J. Kumaradasan Nair and another versus**. **Iric Sohan and others [(2009) 12 SCC 175]** to advance the proposition that benefit of exclusion in terms of section 14 will apply to a quasi-judicial appeal under section 128 of the Customs Act and to revision application filed before the High Court. Reliance has also been placed upon a decision of the Apex Court in the case of **India Electric Works Ltd versus James Mantosh** [**AIR 1971 SC 2313],** wherein it was observed that the expression "or other cause of a like nature" was to be construed liberally. Learned counsel for the appellant has submitted that exclusion of this period from the date of filing of the initial petition till the date of its conversion is also supported by

the legal maxim *actus curiae neminem gravabit* which means that the act of the Court shall prejudice no man. It is further submitted that pendency of an application or appeal before a Court of Law and the time consumed in disposal of such a petition or application is not entirely in the hands of a litigating party. In this regard, he has further placed reliance upon the Constitution Bench decision of the Supreme Court in the case of **Sarah Mathew** v. **Institute of Cardio Vascular Diseases by its Director Dr K.M. Cherian and others [(2014) 2 SCC 62]**, wherein the Apex Court concluded that for the purpose of computing the period of limitation under section 468 of the Cr. P.C, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. Based on these submissions, learned counsel for the appellant has prayed that the period of limitation should be considered only up to the date of filing of the original petition and the time consumed thereafter i.e. the period during which original petition was pending before this Court till its conversion, should be excluded for the purpose of computation of the period of limitation on principles akin to section 14 of the Limitation Act, 1963.

8. Learned counsel for the Respondent has supported the view advanced by the learned counsel for the appellant, based on these decisions and legal propositions laid down thereunder.

9. On consideration of the salient principles laid down in this regard, we are inclined to agree with the proposition that in a case of such nature, instituted under Article 226 or 227 of Constitution of India, if permission is granted by the Court to convert the petition into an appeal under section 19 of the Family Courts' Act, 1984, the period of limitation must be computed only up to the date of filing of the original petition and time consumed thereafter i.e. during pendency of the petition before this Court, till its conversion, should be excluded for the following reasons.

(i) When the Court permits the petitioner to convert a writ petition into an appeal, it is only upon reaching the satisfaction that prosecution of the writ petition is in good faith;

(ii) Such conversion is permissible when the proceedings are prosecuted in the same court but in different jurisdiction;

(iii) Borrowing the principles enshrined under section 14 of the Limitation Act, though the same does not apply to an appeal, if the conditions prescribed under section 14 of the Limitation Act, 1963 appear to be satisfied, in the sense that the proceedings have been bonafide prosecuted and with due diligence and the failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature, the benefit of exclusion of time after filing of the initial petition till its conversion should be extended for the purposes of computation of the period of limitation in

such a matter.

10. Learned counsel for the appellant is right that such an approach also derives from the legal maxim *actus curiae neminem gravabit* which means that the act of the court shall prejudice no man. It is true that the time consumed in taking up the matter and passing an order of conversion is not entirely in the hands of a litigating party. Taking all these factors into account, and the principles of law referred to herein-above, as laid down by the decisions of Hon'ble Supreme Court and High courts, we answer the first legal question posed at the outset in the affirmative. In a case where a petition under Article 227 of the Constitution of India or any other petition / application is permitted by an order of this Court to be converted into an appeal under section 19 of the Family Courts' Act, the computation of the period of limitation should be till the date of initial filing of the petition excluding the time spent after filing of the petition, till its conversion to an appeal under section 19 of the Family Courts' Act, 1984.

11. We now proceed to answer the second question, as to what should be the period of limitation for filing an appeal under section 19 of the Family Courts' Act from a judgment and order passed by the Family Court in a suit instituted under the provisions of Hindu Marriage Act, 1955 i.e. 30 days in terms of Section 19(3) of the Act of 1984 or 90 days in terms of amended Section 28 of the Hindu Marriage Act, 1955, as per the Marriage Laws (Amendment Act), 2003?

12. Learned counsel for the appellant has, in support of his proposition that in such matters, the period of limitation should be 90 days, as per the amended section 28 of the Hindu Marriage Act, 1955, made the following submissions:

It is submitted that the Family Courts' Act, 1984 was enacted in public interest for establishment of Family Courts for the speedy settlement of family disputes and it came into force on 14.09.1984. Section 7(1)(a) of the Family Courts' Act confers the entire jurisdiction hitherto exercised by any District Court or any Subordinate Civil Court in suits or proceedings relating to matters mentioned in clauses (a) to (g) of the Explanation. Section 7(2)(a) confers jurisdiction upon the Family Court hitherto exercisable by a First-Class Magistrate under Chapter IX (relating to order of maintenance of wife, children and parents) of the Criminal Procedure Code. It confers limited jurisdiction upon the Family Court relating to those matters only as are covered under Chapter IX of Criminal Procedure Code. However, section 7(2)(b) of the Act relates to conferment of any additional jurisdiction on the Family Courts by other enactments. This provision is an enabling provision by which legislature can enlarge the Court's jurisdiction by conferring additional jurisdiction [**See: Rana Nahid alias Reshma alias Sana and Another** v. **Sahidul Haq Chisti**, (**2020 SCC OnLine SC 522)**].

Section 19 under Chapter V of the Family Courts' Act provides for appeal and revisions. Under section 19(3) of the Family Courts' Act, an appeal against a judgment or order not being an interlocutory order, passed by the Family Court must be filed within a period of 30 days from the date of judgment or order. Section 20 gives overriding effect to the Family Courts' Act. Learned counsel for the appellant Mr. Indrajit Sinha has then referred to the provisions of Hindu Marriage Act, 1955, which according to him, is an amendment to codify the law relating to marriages among Hindus. It is a special Act setting out the provisions relating to marriage, restitution of conjugal rights and judicial separation, as also nullity of marriage and divorce. Chapter V containing (section 19 to 28) deals with jurisdiction and procedure of courts in petitions for restitution of conjugal rights, judicial separation or divorce and appeals. [**See: *Jagraj Singh* Versus *Birpal Kaur***, (**AIR 2007 SC 2083,** Para-12)]. Section 28 of the Act of 1955 provides for appeals from decrees and orders. Prior to Marriage Laws (Amendment) Act, 2003, section 28(4) provided a period of 30 days only for filing an appeal. The Apex Court taking note of inadequacy of time in preferring an appeal of such nature in the case of **Savitri Pandey Versus *Prem Chandra Pandey*** [(**2002) 2 SCC 73**], observed at Para-19, as under.

> "19. At this stage we would like to observe that the period of limitation prescribed for filing the appeal under Section 28(4) is apparently inadequate which facilitates the frustration of the marriages by the unscrupulous litigant spouses. In a vast country like ours, the powers under the Act are generally exercisable by the District Court and the first appeal has to be filed in the High Court. The distance, the geographical conditions, the financial position of the parties and the time required for filing a regular appeal, if kept in mind, would certainly show that the period of 30 days prescribed for filing the appeal is insufficient and inadequate. In the absence of appeal, the other party can solemnise the marriage and attempt to frustrate the appeal right of the other side as appears to have been done in the instant case. We are of the opinion that a minimum period of 90 days may be prescribed for filing the appeal against any judgment and decree under the Act and any marriage solemnised during the aforesaid period be deemed to be void. Appropriate legislation is required to be made in this regard. We direct the Registry that the copy of this judgment may be forwarded to the Ministry of Law and Justice for such action as it may deem fit to take in this behalf.

13. Parliament thereafter enacted the Marriage Law (Amendment) Act, 2003 to amend certain provisions in the Special Marriage Act, 1954 and Hindu Marriage Act, 1955. The statement of objects and reasons recorded therein indicates that it proposed to amend Section 39 of the Special Marriage Act, 1954 and Section 28 of the Hindu Marriage Act, 1955 to provide respectively that the parties to a matrimonial suit can prefer appeal within a period of 90 days instead of 30 days. The amendment was based upon the observations made by the Supreme Court in a judgment delivered i.e in the case of **Savitri Pandey (supra)**. These amendments

were made so that unscrupulous litigant spouses are not facilitated to frustrate the marriages, taking advantage of the inadequate period provided in law. Learned counsel for the appellant submits that the Parliament being conscious of the period of limitation of 30 days prescribed under section 19(3) of the Family Courts' Act, however consciously chose to enlarge the period of limitation under section 28 of the Hindu Marriage Act, 1955 to 90 days and similar amendment was also made in the Special Marriage Act, 1954 which is a secular law applicable to all religions.

14. Learned counsel for the appellant has also referred to the provisions of section 55 of the Divorce Act, 1869. He submitted that though, no period of limitation has been provided to prefer an appeal, but under Article 116 of the Limitation Act, 1963, a period of 90 days for preferring an appeal from decrees and orders of the Court made in exercise of its original civil jurisdiction to the High Court has been provided, which applies for an appeal under the Divorce Act, 1869. Under section 47 of the Parsi Marriage and Divorce Act, 1936 also, a period of limitation of three months has been provided to prefer an appeal to the High Court from the decision of any court established under the said Act. Learned counsel for the appellant has also fairly placed the decision of a Coordinate Bench of this Court in the case of **Vinod Kumar Mishra** versus **Mamta Devi,[(2008) 4 JLJR 277 (HC**)], which though took note of the discrepancy and inconsistency between the two provisions i.e. Section 28(4) of the Hindu Marriage Act, 1955 and Section 19(3) of the Family Courts' Act, 1984, but did not lay down a law as to what should be the period of limitation in preferring such an appeal. Instead, it directed a copy of the judgment to be sent to the Ministry of Law and Justice for such action as it may deem fit in the matter of prescribing limitation for preferring an appeal of such nature. Learned counsel for the appellant submits that since this issue was left unanswered, in the face of an inconsistency between the two provisions of the law applicable to the remedy of appeal against an order of a Family Court and under the Hindu Marriage Act, the question is *res-integra*.

15. Learned counsel for the appellant has placed copious reliance upon the Full Bench decision of Bombay High Court in the case of **Shivram Dodanna** v. **Sharmila Shivram Shetty** [**2017 (1) Mh.L.J. 281**], wherein a similar question was posed for answer, as under:

> "Whether an appeal under sub-section (1) of section 19 of the Family Courts Act, 1984 will be governed by the period of limitation under sub-section (3) of section 19 or whether the period of limitation provided under sub-section (4) of section 28 of the Hindu Marriage Act, 1955 will apply to such Appeal?"

16. Learned counsel for the appellant submits that the judgment of the Full Bench

of High Court of Bombay has been followed by a Division Bench of the High Court of Judicature at Allahabad in the case of **Smt. Gunjan v. Praveen** vide order dated 08.02.2017 passed in First Appeal Defective No. 374 of 2016 and also by High Court of Rajasthan in the case of **Kuldeep Yadav versus Anita Yadav [2019 SCC On-Line Raj 4016]**. He submits that the High Court of Delhi has also followed the decision in the cases of **R.R.D. v. R.S. [2019 SCC On-Line Del 7446]** and **DC v. BC [2019 SCC On-Line Del 7032]**.

17. Learned counsel for the appellant has further submitted that while Hindu Marriage Act is a special Act and the substantive law governing the field, the Act of 1984 providing forum of appeal is procedural in nature. Therefore, the period of limitation as provided under the substantive law for filing appeal, should prevail upon the limitation prescribed under the procedural law. It is further submitted that amendment to section 28 (4) of the Hindu Marriage Act was subsequent to enactment of the Family Courts' Act, 1984 and therefore, the same should prevail over the provisions of limitation prescribed under section 19(3) of the Act of 1984. According to him, the opinion of the Hon'ble Full Bench of Bombay High Court is the correct view which has decided the issue authoritatively and followed by other courts.

18. Learned counsel for the appellant has, in support of the proposition that a special law will prevail over the general law, placed reliance on the decision of the Apex Court rendered in the case of **Pharmacy Council of India Versus Dr. S.K.Toshniwal Education Trust**, **[2020 SCC Online SC 296]**, wherein the Hon'ble Supreme Court was called upon to resolve the conflict between two Parliamentary Statutes i.e. the Pharmacy Act, 1948 and the All India Council For Technical Education Act, 1987. It was held that the Pharmacy Act, 1947 being a special legislation will prevail over the provisions of the AICTE Act, 1987. Para-26 to 31 of the Report has been placed in support of the proposition.

Learned counsel further submits that the same reason which propelled the Hon'ble Supreme Court in the case of **Savitri Pandey (supra)** should provide the rationale for answer to this legal conundrum. If limitation period of 30 days as prescribed under section 19(3) of the Family Courts' Act, 1984 is adhered to, it would be completely inadequate for preferring an appeal for the aggrieved parties considering the geographical conditions, financial position of the parties and time required for filing a regular appeal. The purpose behind enlargement of limitation period under section 28(4) of Hindu Marriage Act by the Amendment Act, 2003, Marriage Laws (Amendment) Act, 2003 would be defeated. This Court should therefore not shirk from laying down the law in this regard. He submits that in those circumstances, it is the duty of the Court to resolve the impasse by applying

the principles of interpretation, one of them being harmonious construction. In this regard, reliance has been placed in the case of **Gujarat Urja Vikas Nigam Ltd**. **versus**. **Essar Power Ltd**, [(**2008) 4 SCC 755]**; **Talchar Municipality Versus Talchar Regulated Market Committee & another**, [(**2004) 6 SCC 178]**; **Iridium India telecom Ltd. Versus Motorola Inc**, [(**2005) 2 SCC 145]** and also a decision of the House of Lords in the case of **Eastbourne Corporation versus Fortes Ltd**., [**(1959) 2 All E R 102],** at page 107.

19. Learned counsel for the Respondent has supported the legal proposition advanced on this issue as well by the learned counsel for the appellant.

20. We have given considerable thought to this lingering issue being faced before this Court on account of different periods of limitation prescribed i.e. 90 days under section 28 of the Hindu Marriage Act, as amended by the Marriage Laws (Amendment) Act, 2003 and 30 days under section 19(3) of the Act of 1984. It is true that this issue had cropped up before the Coordinate Bench of this Court in the case of **Vinod Kumar Mishra (Supra).** However, the learned Division Bench chose to refer the matter to the Legislature to make appropriate amendments in the law. The issue was left unanswered. The legal issue is still left open for decision. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it. In this regard, we may profitably rely upon the opinion of the Court of Appeals rendered in the case of **QUINN Versus LEATHEM [1901] AC 495]** followed in the case of **Ambica Quarry Works Versus State of Gujarat and others [(1987) 1 SCC 213].** Para-18 is quoted hereunder:

> **"18.** The aforesaid observations have been set out in detail in order to understand the true ratio of the said decision in the background of the facts of that case. It is true that this Court held that if the permission had been granted before the coming into operation of the 1980 Act and the forest land has been broken up or cleared, clause (*ii*) of Section 2 of 1980 Act would not apply in such a case. But that decision was rendered in the background of the facts of that case. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (*See* Lord Halsbury in *Quinn* v. *Leathem*). But in view of the mandate of Article 141 that the ratio of the decision of this Court is a law of the land, Shri Gobind Das submitted that the ratio of a decision must be found out from finding out if the converse was not correct. But this Court, however, was cautious in expressing the reasons for the said decision in *State of Bihar* v. *Banshi Ram Modi*. This Court observed in that decision that the result of taking the contrary view would be (SCC p. 648, para 10) that while the digging for purposes of winning mica can go on, the lessee would be deprived of collecting felspar or quartz which he may come across while he is carrying on mining operations for winning mica. That would lead to an unreasonable result which would not in any way subserve the object of the Act. There was an existing lease where mining operation was being carried on

> and what was due by incorporation of a new term was that while mining operations were being carried on some other minerals were available, he was giving right to collect those. The new lease only permitted utilisation or collection of the said other minerals."

21. We, therefore, proceed to answer this question as this issue has not yet been decided by this Court. We may not have to labour hard in this regard since the Full Bench of Bombay High Court has squarely dealt with the same issue concerning applicability of section 19(3) of the Family Courts' Act, 1984 and section 28(4) of the Hindu Marriage Ac, 1955 on the period of limitation governing the filing of an appeal before the High Court from the suits instituted under Hindu Marriage Act concerning the rights of the parties such as, dissolution of marriage, restitution of conjugal right, declaration of a marriage as null and void, judicial separation, etc. The illuminating opinion of the Bombay High Court on this issue contained at Para 14 to 28 is extracted hereunder:

> ***"14.*** *Consequent to the observations and suggestions given by the Apex Court, quoted above, the Parliament amended the provisions of section 28(4) of the Act of 1955. Therefore, the purpose and object behind amending the said Act in the year 2003 is required to be considered. While amending the provisions, the Parliament was aware of the existence of the Act of 1984. It is presumed that the Parliament was conscious of the existence of another statute relating to the subject, prescribing forum and procedure and period of limitation. Therefore, a harmonious interpretation which would advance the object and purpose of the legislation will have to be adopted.*
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> ***15.*** *As the Act of 1955 was amended by the Parliament in the year 2003, in that sense, the period of limitation of ninety days was prescribed by a later law which would override the provisions relating to period of limitation prescribed in the earlier enactment i.e. Act of 1984. The substantive provision of law was amended at a later stage and the same shall prevail being later in point of time.*
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> ***16.*** *Even if both the Acts are considered on certain subjects and situations to be special and general, even then, as a matter of sound interpretation and keeping in view the purpose for providing a larger period of limitation, it must be construed that the appeals arising out of the judgment and orders passed by the Family Court shall be governed by a larger period of limitation prescribed under section 28(4) of the Act of 1955. Any contrary interpretation would frustrate the very object of the enactment which was made on the suggestion of the Apex Court in the case of Savitri Pandey.*
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> ***21.*** *Considering the scheme of the enactments of the Act of 1955 and the Act of 1984, more precisely the provisions of limitation and non-obstante provision provided in the Act of 1984, we do not find a clear inconsistency between the two enactments. It is principle of law that for giving a overriding effect to a non-obstante provision, there should be clear inconsistency between the two enactments.*
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> ***22.*** *The principle of law of interpretation further lays down that in a given case both the enactments could be special statutes dealing with different situations and there could be non-obstante provision in both the special statutes. In such a*

> *situation, the conflict between two enactments need to be resolved, considering the purpose and object of the Act.*
>
> ***23.*** *It is settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed, then the later must be adopted. On such interpretation, the objects of both the enactments would be fulfilled and there would be no conflict.*
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> ***24.*** *While interpreting the provisions of the said two enactments, it needs to be considered that we are a country of vast population, millions of people face financial hardship for litigating a matter, people have to spend considerable amount of time, money and energy. The geographical conditions further make easy access to justice difficult and taking into consideration all these circumstances, coupled with the peculiar situation faced by the parties while litigating matrimonial, family related issues, the Apex Court made certain observations in the case of Savitri Pandey which suggestion was accepted by the Parliament and accordingly the law was amended.*
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> ***25.*** *We are convinced of the interpretation put up by the learned Senior Counsel that if the two statutes are construed and understood in its proper sense, then there is no conflict between the two laws and, therefore, no question arises of invoking non-obstante provision in section 20 of the Act of 1984. The enactment of the Act of 1984 or non-obstante provision in section 20 is not intended to impliedly repeal provisions made in the Act of 1955. The Act of 1984 provides for a special forum relating to matrimonial disputes and with that view, special procedure was devised for expeditious adjudication of the cases. It is in that context the non-obstante provision of section 20 is required to be construed.*
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> ***26.*** *A non-obstante clause must be given effect to the extent Parliament intended and not beyond the same. It may be used as a legislative device to modify the scope of provision or law mentioned in the said clause. The non-obstante clause would throw some light as to the scope and ambit of the enacting part in case of its ambiguity. But if the enacting part is clear, its scope cannot be cut down or enlarge by resorting to non-obstante clause.*
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> ***27.*** *In our view, considering the scheme of the Act of 1984 and the object and purpose for its enactment, largely the Act is procedural in nature. The Act of 1984 provides for special forum to decide matrimonial related disputes and prescribes for special rules and procedure. In this context, the non-obstante provision in section 20 is required to be construed.*
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> ***28.*** *We are of the view that considering the scheme of both the enactments and the purpose behind amending the provisions of section 28(4) of the Act of 1955, it would not be appropriate to apply different period of limitation, one in case of orders passed by the Family Courts and in another by the regular Civil Courts. Such an approach would frustrate very purpose of legislation.*

This view has been further followed by the Allahabad High Court in the case of **Smt. Gunjan** v. **Praveen (Supra)**, Rajasthan High Court in the case of **Kuldeep Yadav** v. **Anita Yadav (Supra)** and Delhi High Court in the cases of **R.R.D. (Supra)** and **DC** (Supra) cited by the learned counsel for the appellant. The rationale behind taking such a view is that the Act of 1984 provides for a special

forum relating to matrimonial dispute and for that, special procedure was devised for expeditious adjudication of the case. Provisions of section 20 thereof containing the obstante clause has to be construed in that context, whereas Parliament being conscious of the period of limitation of 30 days prescribed under section 19(3) of Family Courts' Act, 1984 chose to make suitable amendment in section 39(4) of the Special Marriage Act, 1954 and section 28(4) of the Hindu Marriage Act, 1955 by enlarging the period of limitation from 30 days to 90 days keeping into account the observations made by the Apex Court in the case of **Savitri Pandey (supra)** and the rationale behind it. It is true that in a country like us where millions of people face financial hardship for litigating a matter and considerable time, money and energy have to be spent in pursuing the appeal given the difficult geographical condition, access to justice may become illusory in approaching the Court of Appeal within a small period of 30 day and amendment to section 28(4) introduced in 2003 to the Hindu Marriage Act, 1955 being the later enactment in point of time compared to the provisions of section 19(3) under the Family Courts' Act, 1984, the intention of the Legislature to provide a larger time period for preferring an appeal needs to be furthered in order to resolve this inconsistency by adopting the principles of harmonious construction. We are, therefore, inclined to follow the principles laid down by the Full Bench decision of Bombay High Court in this regard. The Hindu Marriage Act being a special legislation, the provisions governing the period of limitation for preferring an appeal arising out of the decisions of the Family Court under the Hindu Marriage Act, 1955 should be governed by larger period of limitation of 90 days prescribed under section 28(4) thereof. The second question posed for determination at the outset is also answered in the aforesaid manner in the affirmative. Having held so, the instant appeal does not suffer from any delay since the original petition was filed within a period of 90 days from the date of the impugned order i.e. 05.08.2015. As such, there is no delay in preferring the instant appeal. I.A. No. 539/2020 is disposed of.

22. Registry is directed to compute the period of limitation in such appeal, as per the law declared by this court. Let the judgment be translated in to the vernacular language like Hindi and if possible, in other regional language spoken in the State. Registry to undertake the exercise. Copy of the order be also transmitted to the Jharkhand State Legal Services Authority, High Court Legal Services Committee, Judicial Academy, Jharkhand and the District Legal Services Authorities for wide dissemination through its website and other modes for the benefit of larger section of the society in the State. Let the copy of the order be also circulated to the Family Courts in the State. Let the appeal be listed under the heading for admission.

23. Before parting, we must record our appreciation to the valuable assistance

rendered by the learned counsel for the appellant Mr. Indrajit Sinha to this Court.

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)

Ranjeet/