
(1993) 11 OHC CK 0003
In the Orissa High Court
Case No : Misc. C. No. 2 of 1993

Rabi Kumar Chhabra

APPELLANT

Vs

Ginirani Chhabra

RESPONDENT

Date of Decision : 24-11-1993

Acts Referred:

Family Courts Act, 1984 — Section 19, 19(1), 19(2), 19(3)
Limitation Act, 1963 — Section 14

Citation : (1994) 2 DMC 420

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : U.K. Samale and A.K. Parida, for the Appellant; None, for the Respondent

Judgement

S.C. Mohapatra, J.—This application arises out of an appeal filed u/s 19 of the Family Courts Act, 1984 (hereinafter referred to as "the Act") against an order passed u/s 125 Cr.P.C.

2. Stamp Reporter has pointed out that in view of Sub-section (2) of Section 19 of the Act being amended, this appeal is not maintainable. Stamp Reporter is correct. To avoid the stamp report, an application has been filed stating that this appeal be converted to a revision. Now, the office has called upon the appellant to file a second copy of the petition. A second copy is called for when the matter is to be heard by a Division Bench. Possibly, on account of the provision u/s 19 (1) and (6) of the Act that the appeal would be heard by a Division Bench, this second copy has been called for to be filed.

3. Section 19 of the Act reads as follows :

"19. Appeal--(1) Save as provided in Sub-section (2) and notwithstanding any thing 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 and 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 :

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 before the commencement of the Family Courts (Amendment) Act, 1991; and

(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 and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 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."

4. Section 19(2) provides that no appeal shall lie from an order passed under Chapter IX of the Criminal Procedure Code, 1973. Sub-section (6) provides that an appeal under Sub-section (1) shall be heard by a Bench consisting of two or more Judges. Once before admission an application has been filed to convert it to a revision as no appeal lies against such an order, the application is not required to be heard by a Division Bench. It can be heard by a Single Judge. Mere nomenclature would not create a jurisdiction. It is true that in case this appeal is converted to a revision, the memorandum of appeal should also be converted in the form of a revision as prescribed under the Rules of the Orissa High Court. To allow correction of memorandum of appeal already presented, would make it clumsy. Accordingly, when I find that without noticing the amendment an appeal was filed u/s 19(1) as per the old provision before the amendment, it is a fit case where the application is to be allowed and the appeal is to be converted to a revision. The Misc. Case is, therefore, allowed.

5. Question of limitation would normally arise in view of Section 19(3) of the Act as the time prescribed is thirty days. Family Courts Act is not fully in vogue. Accordingly, this appeal being filed on account of mistake of a lawyer in not taking note of the amendment of Section 19 of the Act, there is a sufficient cause as a party should not suffer on account of mistake of lawyer. Principle of Section 14 of the Limitation Act would be attracted to such a case because approaching this Court by way of revision converting the appeal filed in Court not competent

to hear it shall be excluded. The time consumed from the date of filing of the petition till it is permitted to be converted to a revision by this order is, accordingly, excluded and delay, if any, on that account is condoned.

6. There is limitation in presentation of the appeal. That application be treated as an application for condonation of delay in filing the revision since on conversion and exclusion of time, revision shall be deemed to have been filed on the date the appeal was presented.

7. Petitioner is directed to file a copy of the revision petition affixing the deficit Court-fee, if any, by Tuesday (30.11.1993). Thereafter, the matter shall be placed before the Stamp Reporter for further stamp report.