

(2016) 12 BOM CK 0010

In the Bombay High Court

Case No : Family Court Appeal No. 161 of 2013.

**Shri Shivram Dodanna Shetty Aged 54 years, Occupation : Service,
Residing at Building No. 40, Sumrite Co-Op. Society, Room No. 2,
Sector-7, New Panvel, Dist. Raigad. - Appellant @HASH Sou. Sharmila
Shivram Shetty Aged 31 years, Occupation : Service, Residi**

Date of Decision : 01-12-2016

Acts Referred:

Family Courts Act, 1984 — Section 19(1), Section 20
Hindu Marriage Act, 1955 — Section 28(4)

Citation : (2017) 172 AIC 496 : (2017) AIR(Bombay) 1 : (2017) 1 AIRBomR 221 : (2017) 1 ALLMR 48 : (2017) 1 BCR 308 : (2017) 1 CivCC 598 : (2016) 6 CTC 772 : (2017) 1 DMC 46 : (2017) 1 ESC 385 : (2017) 1 ESC 58 : (2017) 1 MhLJ 281 : (2017) 1 RCRCivil 17

Hon'ble Judges : Naresh H. Patil, R.D. Dhanuka and Sadhana S. Jadhav, JJ.

Bench : Full Bench

Advocate : Ms. Zenobia S. Irani/Nair a/w Prashant Tikare a/w Fatima Rampurwalla, Advocates, for the Appellant; Nitin P. Dalvi, Advocate, for the Respondent; Aspi Chinoy, Senior Counsel, for the Amicus Curiae; Murtaza Najmi, Advocate, for the Appeared Suo Motu

Final Decision : Disposed Off

Judgement

Naresh H. Patil, J. - A question framed by the Division Bench of this court was referred to a Larger Bench by the then Hon'ble the Acting Chief Justice of this Court. The question was framed by the Division Bench (Coram:A. S. Oka & A. S. Gadkari, JJ.) by an order dated 10/12/2014. The said question reads 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?

2. The Hindu Marriage Act, 1955 (for short "the Act of 1955) was enacted by Parliament for amending and codifying the law relating to marriage amongst Hindus. The Act of 1955 became law on 18/5/1955. The Act of 1955 was

amended by Amendment Act 68 of 1976, Amendment Act 2 of 1978 and Amendment Act 50 of 2003. The proceedings under the Act of 1955 were to be instituted in District Court. Section 3(b) defines "District Court" as under:-

"(3) Definitions.- In this Act, unless the context otherwise requires, -

(a)

(b) "district Court" means, in any area for which there is a City Civil Court, that Court, and in any other area the principal Civil Court of original jurisdiction, and includes any other Civil Court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;"

The provision for filing of appeals from decrees and orders is prescribed under Section 28 of the Act of 1955, which reads as under :-

"28. Appeals from decrees and orders.-(1) All decrees made by the Court in any proceeding under this Act 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 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 civil jurisdiction.

(2) Orders made by the Court in any proceeding under this Act under section 25 or section 26 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 exercise of its original civil 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."

In Section 28(4), the Act prescribed a period of limitation of thirty days, which came to be substituted to ninety days by way of Act 50 of 2003.

3. The Family Courts Act, 1984 (for short "the Act of 1984) was enacted to provide establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. The Act of 1984 was enacted on 14/9/1984. The said Act provides that the State Government shall, after consultation with the High Court, establish the Family Court. Section 3 of the Act of 1984 reads as under :-

"3. Establishment of Family Courts.- (1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification, -

(a) shall, as soon as may be after the commencement of this Act, establish for

every area in the State comprising a city or town whose population exceeds one million, a Family Court;

(b) may establish Family Courts for such other areas in the State as it may deem necessary.

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase reduce or alter such limits.

Section 7 of the Act of 1984 prescribed as under:

"7. Jurisdiction. - (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.

Section 8 of the Act of 1984 reads as under :-

"8. Exclusion of jurisdiction and pending proceedings. - Where a Family Court has been established for any area, -

(a) no district Court or any subordinate civil Court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) no Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), -

(i) which is pending immediately before the establishment of such Family Court before any district Court or subordinate Court referred to in that sub-section or, as the case may be, before any Magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,

shall stand transferred to such Family Court on the date on which it is established.

The provision of appeal is prescribed under Section 19, which reads as under :-

"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 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 (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 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 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of 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(3) of the Act of 1984 prescribed a period of thirty days for filing appeal from every judgment or order not being an interlocutory order by Family Court to the High Court, both on facts and on law.

Section 20 of the Act of 1984 reads as under :-

"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."

5. The provisions of Section 28(4) of the Act of 1955 came to be amended by substituting the period of limitation from thirty days to ninety days consequent to the judgment of the Apex Court delivered in the case of Savitri Pandey v. Prem Chandra Pandey, : AIR 2002 SC 591. The Family Courts were established at some places in the State of Maharashtra. At places where the Family Courts could not be established, proceedings are being initiated in the regular civil courts.

6. An issue was framed by the Division Bench that whether an appeal under sub-section (1) of Section 19 of the Act of 1984 will be governed by the period of limitation under sub-section (3) of Section 19 of the Act of 1984 or under sub-section (4) of Section 28 of the Act of 1955?

7. Mr. Aspi Chinoy, learned Senior Counsel, assisted the court as an Amicus Curiae. We have heard the learned Senior Counsel at length. It was submitted by the learned Senior Counsel that if the two statutes are so construed and understood, there is no conflict between the two laws, both of which are enacted by Parliament. In his submission, no question arises of invoking non obstante provision under Section 20 of the Act of 1984. The Act of 1984 and the non obstante provision is not intended to and cannot have the result of impliedly repealing provisions made in the substantive law i.e. the Hindu Marriage Act, 1955. The Act of 1984 provides for a special forum/court to decide such matrimonial disputes and it also provides for special rules or procedure in such cases. In this context, the non obstante provision prescribed in Section 20 of the Act of 1984 is required to be construed, according to the learned Senior Counsel.

On the principle of interpretation of statutes, learned Senior Counsel submitted that both the statutes are to be construed and read harmoniously. The Act of 1984 does not expressly repeal Section 28 of the Act of 1955. When there is no express repeal, courts have not favoured such repeal by implication. On the other hand, it is indicated by the courts that if earlier and later statutes can reasonably be construed in such a way that both can be effective, the same may be done. The legislature, while enacting a law, is presumed to have complete knowledge of law on the same subject matter and, therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation.

Learned Senior Counsel further submitted that the Act of 1955 is a special law vis-a-vis the Act of 1984, which is a general law, which provides a forum for the adjudication of matrimonial disputes arising under all the diverse substantive laws. It was submitted that it is well settled principle of interpretation of law that general law does not abrogate earlier special law by mere implication. The Act of 1984 is essentially a procedural law. It is a settled principle of interpretation of law that the legislature while enacting a law in the year 2003 was presumed to be aware of the provisions of the existing legislation, including Section 19(3) of the Act of 1984. Therefore, it would be contrary to the purpose and object of the scheme of law to read the amendment of Section 28(4) as operating only where the proceedings are brought in the ordinary civil court and as not applying/operating when proceedings under the Act of 1955 are brought in the Family Court. Learned Senior Counsel referred to the following judgments :-

- (a) Savitri Pandey v. Prem Chandra Pandey [AIR 2002 SC 591].
- (b) R.S. Raghunath v. State of Karnataka and anr. [(1992) 1 SCC 335].
- (c) Viswanathan P.K. v. Sindhu M.K. [2009 SCC OnLine Ker 4124].
- (d) Sonia Kunwar Singh Bedi v. Kunwar Singh Bedi [2015 (1) Mh. L. J. 954].

8. Learned counsel Mr. Murtaza Najmi, who appeared suo motu, submitted that the Act of 1984 is a later law and it has a overriding effect in respect of the provisions relating to the limitation prescribed for filing an appeal. Learned counsel submitted that the appeals arising out of the proceedings initiated in Family Court shall be governed by the provisions of Section 19(3) of the Act of 1984 and the appeals arising out of the ordinary civil court under the Act of 1955 shall be governed by the provisions of Section 28(4) of the Act of 1984. The counsel submitted that in a way, in respect of provisions of limitation, both the Acts have certain inconsistencies, but considering the scheme of the provisions of the Act of 1984, Section 19(3) of the said Act will have to be given precedence over the provisions of Section 28(4) of the Act of 1955. Learned counsel submitted that the later general law can repeal prior special law.

9. Ms. Zenobia Irani, learned counsel appearing for the appellant submitted that it is a matter of record that the Parliament did not amend the provisions relating

to limitation as prescribed under the Act of 1984. The Act of 1984 is partly procedural and partly substantial. A discriminatory type of provisions are prescribed relating to two different forums considering the subject matter of appeals prescribed. Keeping in view the purpose of enactment of both the statutes, the provisions of these statutes will have to be construed. Learned counsel differs in respect of the interpretation placed by the learned Senior Counsel Mr. Aspi Chinoy, as stated above.

10. Mr. Nitin Dalvi, learned counsel appearing for respondent, supported the submissions made by the learned Senior Counsel Mr. Aspi Chinoy. Learned counsel submitted that both the provisions prescribed under both the Acts must be considered and construed harmoniously and be held that a period prescribed under the Act of 1955 under Section 28(4) shall be applicable to the appeals preferred in the High Court arising out of the judgments and orders passed by the Family Court or the Civil Court. Learned counsel submitted that with a view to secure speedy settlement of disputes relating to marriage and family affairs, separate Family Courts were established pursuant to the Act 66 of 1984. The Act of 1984 is a procedural law prescribing procedure to be adopted in the Family Courts. Prior to the enactment of the Act of 1984, all the family matters were adjudicated under Order XXXIIA of Civil Procedure Code, 1908 before the concerned District Courts.

11. We have considered the submissions advanced before us, perused the provisions of the relevant statutes and the judgments cited. We have also gone through some of the Parliamentary debates in respect of passing of both the enactments.

12. In the case of *Seaford Court Estates, Ltd. v. Asher*, 1949 (2) All England Report 155 Lord Denning stated as under :-

".....Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity....."

13. The provisions of Section 28 (4) of the Act of 1955 came to be amended consequent to the suggestion given by the Apex Court in *Savitri Pandey's* case (Supra). In its letter and spirit, the views of the Apex Court in the case of *Savitri Pandey* are required to be considered. The Apex Court observed that period of limitation prescribed for filing appeal under Section 28(4) was apparently inadequate which facilitates frustration of the marriages by unscrupulous litigant spouses. It is necessary to refer to the observations of the Apex Court in para 18

of the said judgment here itself:-

"18. 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 & Justice for such action as it may deem fit to take in this behalf."

(Emphasis supplied)

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.

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.

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.

17. Considering the provisions of the Act of 1984 and the Act of 1955, we do not

find that there is an express repeal of the provisions of Section 28(4).

18. The Apex Court, in para 11, in the case of R.S. Raghunath v. State of Karnataka and anr., (1992) 1 SCC 335 by referring to earlier judgment in the case of Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447], observed as under:-

"..... In Chandavarkar Sita Ratna Rao v. Ashalata S. Guram the scope of non-obstante clause is explained in the following words: (SCCp.477-78, para 67)

" A clause beginning with the expression `notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment."

On a conspectus of the above authorities it emerges that the non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of conflict. But the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules."

In the above case, in para 7, the Apex Court referred to the Maxwell on The Interpretation of Statutes (11th Edition, page 168). The principle of law was stated as under :

" A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, `where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act."

19. Learned Senior Counsel, Mr. Aspi Chinoy, referred to the observations made by the Division Bench of Kerala High Court in paras 17 and 20 of the judgment in the case of Viswanathan P.K. v. Sindhu M.K., 2009 SCC OnLine Ker 4124, which read as under :

"17. In this case, there is no specific non-obstante clause available in either statute. But both stipulations occupy the same field. The dictum above can hence be relied on safely. The learned counsel contend that the purpose and object of Marriage Laws Amendment Act 2003 must be taken into consideration and evidently the Marriage Laws Amendment Act was enacted in the light of the observations in paragraph 19 of Savitri Pandey (supra) which we have already extracted above. The purpose of amending Section 28(4) obviously was the inconvenience and hardship noted by the Supreme Court in Savitri Pandey (AIR 2002 SC 591). The Supreme Court observed that to prefer an appeal before the High Court against an order passed by the District Court, a period of 30 days may not be sufficient and that such a stipulation is working out injustice as was revealed in the facts of that case. The purpose of the Marriage Laws Amendment Act, by which Section 28(4) of the Hindu Marriage Act was amended, was obviously to give a larger period of limitation for the parties aggrieved by the orders passed in matrimonial cases under the Hindu Marriage Act and the Special Marriage Act. In this view of the matter, considering the purpose and object of the Act it is evident that the period of limitation under Section 28(4) of the Hindu Marriage Act which amendment was brought in with effect from 23-12-2003 must be given prominence and predominance.

20. Fifthly, the learned counsel contends that the principle of law is well settled that when a later enactment prescribes a different period of limitation, such later enactment must be preferred. Of course, the Hindu Marriage Act was enacted in 1955. The Family Courts Act was enacted in 1984. But the crucial amendment to Section 28 (4) was enacted later in 2003. The parliament must be presumed to have known the relevant stipulations of general nature in Section 19(3) while bringing in the amendment to Section 28(4). In support of this proposition, the learned counsel relies on the following observations of the Supreme Court in paragraph 21 of Sarwan Singh (AIR 1977 SC 265) (Supra):"

20. We may refer to the observations made by the Division Bench of this Court in paras 20, 21, 24 and 25 of the judgment in the case of Sonia Kunwar Singh Bedi v. Kunwar Singh Bedi, 2015 (1) Mh.L.J. 954 which read as under:-

"20. Thus, later enactment must prevail over the former. The same test was approved by the Supreme Court in Shri Ram Narain v. Simla Banking and Industrial Co. Ltd., 1956 SCR 603 : AIR 1956 SC 614. On the principle that the later enactment i.e. Marriage Laws Amendment Act, 2003 must prevail over the earlier enactment i.e. Family Courts Act, the larger period of limitation prescribed under section 28(4) of the Hindu Marriage Act must prevail. On the principle of equality under Article 14 of the Constitution of India also an identical period of limitation must be held to be applicable against all orders appealable under

section 28 of the Hindu Marriage Act. Merely because the order is passed by a District Court, a larger period of limitation i.e. 90 days and merely because the order is passed by the Family Court, a lesser period of limitation of 30 days would be unreasonable and will not stand the test of equality. The interpretation must be such that an identical period of limitation would be available for orders appealable under section 28 of the Hindu Marriage Act - whether such order is passed by the District Court or the Family Court.

21. Thereafter the learned counsel for the applicant also raised the contention that in view of section 20 of the Family Courts Act in which there is non-obstante clause, the Family Court Act would prevail over the Hindu Marriage Act.

The short question that remains to be considered is whether the non-obstante clauses in section 19 and 20 can override the applicability of the period of limitation prescribed for an appeal under section 28. A non-obstante clause cannot be read mechanically. The totality of the circumstances have to be taken into account. The precise intention of the legislature will have to be ascertained. Vague and general non-obstante clauses cannot operate to militate against specific stipulations made in enactments to meet specific situations. We have already discussed above why section 28 (4) of Hindu Marriage Act was amended, this circumstance has to be given due weightage.

24. The first two decisions relied upon by Mr. Jaisinghani are not applicable to the facts of the present case. The remaining three decisions which are pressed into service by Mr. Jaisinghani were rendered by Allahabad High Court, Madras High Court and Karnataka High Court, whereas the last two decisions in the case of Milan Tandel and Surekha Sawant (*supra*) are by Division Benches of this Court. We have already observed that the decisions by the Allahabad, Madras and Karnataka High Courts can at the most only have persuasive value.

25. We do not find any reason to take a different view from the one taken by the Division Bench of our Court in Milan Laxman Tandel's and Surekha Savant's cases. In view thereof, we reject the preliminary objection and hold that there is no delay in filing the appeal. In other words, we hold that the appeal having been filed within 90 days, as contemplated by section 28(4) of the Hindu Marriage Act, is within limitation. Hence, there is no merit in this application and the same is rejected."

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.

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.

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.

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.

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.

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.

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.

29. For the reasons stated above, we hold that for an appeal filed under sub-

section (1) of Section 19 of the Family Courts Act, 1984, period of limitation prescribed under sub-section (4) of Section 28 of the Hindu Marriage Act, 1955 shall apply.

30. Reference is answered accordingly.

31. We record our appreciation for valuable assistance rendered to us by the Amicus Curiae, learned Senior Counsel Shri Aspi Chinoy. We also appreciate the assistance rendered to us by learned counsel Shri Murtaza Najmi.

32. We direct the Registry to place the matter before the appropriate court.