

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ I.P.A. 28/2015 & I.A. 16418/2015, 11081/2016, 728/2017

RUPALI LAMBA & ANR Petitioners
Through Ms. Ankita Gupta with
Ms. Aishwariya, Proxy Counsel

versus

SUKHWANT SINGH LAMBA Respondent
Through Mr. Anirudh K. Mudgal, Advocate

% Date of Decision: 24th August, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T**MANMOHAN, J :** (Oral)

1. Present application has been filed by the defendant under Section 151 CPC seeking a direction to transfer the present suit to the appropriate Family Court.
2. At the pass over stage, the counsel for the plaintiffs seeks another pass over. Since this is not the practice of this Court, the prayer for second pass over is declined. It is pertinent to mention that even on 16th August, 2017 the matter was adjourned as the counsel for the plaintiffs was not available.
3. Learned counsel for the applicant/defendant states that a Division Bench of this Court in *Amina Bharatram Vs. Sumant Bharatram and Ors.*,

CS (OS) 411/2010 dated **19th July, 2016** has held that the High Court does not have jurisdiction to try and decide cases of causes listed under Section 7 of the Family Courts Act, 1984 (for short “Act, 1984”). He emphasis that the Division Bench has held that the Delhi High Court does not possess jurisdiction to entertain, try and decide cases and causes referred to in Sections 7 and 8 of the Act, 1984.

4. He states that the present suit falls within the scope of matters referred to in the aforesaid Division Bench’s judgment and does not fall within the Original Civil Jurisdiction of the Delhi High Court insofar as the reliefs claimed in the suit are for an award directing that the plaintiffs be maintained by the defendant, which relief, is a cause listed under Section 7(1) Explanation (f) of the Act, 1984. Section 7(1) of the Family Courts Act, 1984 reads 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 subsection are suits and proceedings of the following nature, namely:

- a. *a suit or proceeding between the parties to a marriage for decree of a nullity 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.*

5. In the opinion of this Court, as the primary relief in the present petition is for maintenance under the Hindu Adoption and Maintenance Act, 1956, the same is liable to be transferred to the Family Court in view of the Division Bench's judgment of this Court in ***Amina Bharatram*** (supra). The relevant portion of the said judgment is reproduced hereinbelow:-

"1. These proceedings emanate from an order of reference dated 09.06.2014 ("Reference Order") made by the Learned Single Judge in CS(OS) No. 411/2010 ("Suit"), formulating the following questions of law for adjudication by this Court:

"(i) Whether the High Court while exercising the Original Civil Jurisdiction is deemed to be a District Court within the meaning of Section 2(4) of CPC in the context of Section 7(1)(a) of the Family Courts Act, 1984?"

"(ii) Whether the original civil jurisdiction of the High Court excluded (sic) for any suit or petition by virtue of Sections 7

& 8 of the Family Courts Act, 1984? ”

xxxx

xxxx

xxxx

xxxx

32. This Court agrees with the plaintiff's submission that an earlier specific enactment would prevail over a subsequent legislation which is general in nature - affirmed recently by the Supreme Court in *Yakub Abdul Razak Memon v. State of Maharashtra*, (2013) 13 SCC 1. Both the Delhi High Court Act (Section 5) and the Family Courts Act (Section 20) contain non-obstante provisions. In *Yakub Memon's* case, the Court held that where two statutes provide non-obstante clauses, the principle that the later legislation would override the earlier one is subject to the principle of '*generaliaspecialibus non derogant*'. A determination as to whether a statute is a general or a specific one requires an examination of its subject matter and the purpose for which it was enacted. Plaintiff urges that the Delhi High Court Act, 1966 is a special enactment and therefore, it ought to prevail over the Family Courts Act, 1984. However, this Court is of the opinion that it is the Family Courts Act, instead, which is specific in nature, as it seeks to constitute a special mechanism for adjudication of disputes of the nature enumerated in Section 7 of the Act (details of the distinct nature of the procedure created under the Act have been discussed above). On the other hand, the Delhi High Court merely provides for original civil jurisdiction of this Court based on a prescribed pecuniary limit, which is applicable to all civil suits. The following observations of the Supreme Court in *Abdul Jaleel's* case (*supra*) support this Court's conclusion that the Family Courts Act is specific in nature:

“The Family Courts Act was enacted to provide for the 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. From a perusal of the Statement of Object and Reasons, it appears that the said Act, inter alia, seeks to exclusively provide within the jurisdiction of the Family Courts the matters relating to the property of the

spouses or either of them...

XXX

XXX

XXX

The Family Court was set up for settlement of family disputes. The reason for enactment of the said Act was to set up a court which would deal with disputes concerning the family by adopting an approach radically different from that adopted in ordinary civil proceedings...”

xxxx

xxxx

xxxx

xxxx

35. Learned counsel for the plaintiff had submitted that there is nothing to indicate that Family Courts in Delhi have been released from the pecuniary jurisdiction limit. However, this Court is of the opinion that no such formal notification extending the Family Courts’ pecuniary jurisdiction is required. Once it has been held that ‘District Court’ includes the High Court exercising its original civil jurisdiction, and in the absence of a bar limiting the pecuniary jurisdiction of Family Courts to any pecuniary limit, they would assume jurisdiction exclusively regardless of pecuniary values.

xxxx

xxxx

xxxx

xxxx

42. Therefore, the reference is answered as follows:

Point No.1: It is held that the Delhi High Court is a “district court” under Section 8 in respect of all matters enumerated in Explanation to Section 7 (1) of the Act;

Point No.2: The Delhi High Court does not possess jurisdiction to entertain, try and decide cases and causes referred to in Sections 7 and 8 of the Family Courts Act.”

(emphasis supplied)

6. In pursuance to the said judgment, the Registry of this Court has issued a Practice Direction dated 23rd December, 2016. The said Practice Direction is reproduced hereinbelow:-

“HIGH COURT OF DELHI AT NEW DELHI

No. 45/Rules/DHC

Dated : 23.12.2016

PRACTICE DIRECTIONS

Hon’ble the Chief Justice, on the recommendations of the Hon’ble Judges of the Original Side, has been pleased to issue following practice directions for information and compliance by all concerned :-

1. In view of the Judgment dated 19.07.2016 passed by the Hon’ble Division Bench of this Court on reference in CS (OS) No. 411/2010 & I.A. No. 12186/2010 titled “Amina Bharatram Vs. Sumant Bharatram and Others”, all matters enumerated in Explanation to Sub-Section (i) of Section 7 and Section 8 of the Family Courts Act, 1984 shall be exclusively triable by the Family Courts and the jurisdiction of the High Court to the extent it exercises Ordinary Original Civil Jurisdiction in respect of such matters stands excluded by virtue of Section 8 (c)(ii) of the said Act. Such matters listed before this Court shall be transferred to the Family Courts by passing the necessary Orders in this respect on their dates of listing.
2. The Registry, henceforth, is directed not to accept such matters as enumerated in Explanation to Sub Section (i) of Section 7 and Section 8 of the Family Courts Act, 1984.

These Practice Directions shall come into force with immediate effect.

By Order
Sd/-
(GIRISH KATHPALIA)
REGISTRAR GENERAL”

(emphasis supplied)

7. Keeping in view the aforesaid mandate of law as well as the Division Bench's judgment in *Amina Bharatram* (supra) and the Practice Direction No. 45/Rules/DHC dated 23rd December, 2016 issued by the Registrar General of this Court, present suit along with pending applications is transferred to the Family Court. For the aforesaid purpose, parties are directed to appear before the Principal Judge (HQs), Family Courts, Dwarka on 16th October, 2017, who in turn is directed to transfer the case to the appropriate Family Court.

AUGUST 24, 2017

rn

MANMOHAN, J