

Court No. - 9

Case :- FIRST APPEAL DEFECTIVE No. - 160 of 2016

Appellant :- Smt. Mamta

Respondent :- Vikram Singh

Counsel for Appellant :- Vipin Chandra Dixit

Hon'ble Pankaj Mithal,J.

Hon'ble Shashi Kant,J.

The suit for divorce filed by the husband under Section 13 of the Hindu Marriage Act, 1955 has been decreed by the Family Court.

The aforesaid decree is under challenge in the appeal.

The Office has reported that the appeal is beyond time by 16 days.

The aforesaid report has been submitted by taking the limitation of filing the appeal to be 30 days as provided under Section 19 of the Family Courts Act, 1984.

The decree of divorce passed under Section 13 of the Hindu Marriage Act used to be appealable under Section 28 of the said Act, which by Sub-section 4 provided for the limitation of 90 days for filing the appeal.

The aforesaid provision of appeal is a substantive provision of law.

Subsequently, with the enforcement of the Family Courts Act, the orders and decrees passed under the Hindu Marriage Act also came to be challenged before the Division Bench of the High Court by virtue of Section 19 of the Family Courts Act, whose Sub-section 3 provided for limitation of 30 days for filing an appeal.

The above provision of the Family Courts Act is procedural one and is not substantive in nature.

The appeal against the decree of divorce or any other decree or order passed by the Family Court under the provisions of the Hindu Marriage Act as such are appealable under Section 28 of the Hindu Marriage Act read with Section 19 of the Family Courts Act.

Both the above provisions provide for a different period of limitation for filing appeal. However, as it is well settled & recognized in law that procedural law is subservient to the substantive law, the limitation provided under Section 19(3) of the Family Courts Act has to give way to the limitation for filing appeal provided under Section 28(4) of the Hindu Marriage Act.

This also is the view of the Full Bench of the Bombay High Court in Family Court Appeal No.161 of 2013, Shri Shivram Dodanna Shetty Vs. Sou. Sharmila Shivram Shetty, decided on 01.12.2016.

This Division Bench in First Appeal Defective No.374 of 2016, Smt. Gunjan Vs. Praveen, decided on 08.02.2017, following the Full Bench of the Bombay High Court, has also held that the limitation for filing an appeal against the decree of divorce passed by the Family Courts Act shall be 90 days and not 30 days.

It may not be out of context to mention that ordinarily limitation for filing most of the appeals in the High Court is 90 days. Therefore, to adopt an uniform pattern, endeavour should also be made to stick to the same limitation of 90 days as far as possible in all matters.

Accordingly, treating the limitation for filing the appeal against the decree of divorce passed by the Family Court to be 90 days, we are of the opinion that there is virtually no delay in filing of

this appeal and as such, there is no need for any application seeking condonation of the delay or to condone the delay in filing the appeal. The appeal is held to be within time.

Office to proceed so as to allot the regular number to the appeal, if there is no other defect in its presentation, which apparently do not exist.

Admit.

Issue notice to the respondent by registered /speed post.

Order Date :- 9.2.2017