

**Court No. - 2**

**Case :-** FIRST APPEAL No. - 129 of 2024

**Appellant :-** Abhinav Shukla

**Respondent :-** Neha Dixit

**Counsel for Appellant :-** Uttam Kumar Srivastava, Pankaj Singh Yadav

**Counsel for Respondent :-** Raj Kumar Singh

**Hon'ble Rajan Roy, J.**

**Hon'ble Om Prakash Shukla, J.**

1. Heard learned counsel for the appellant and Sri Raj Kumar Singh, learned counsel for the respondent.
2. By means of this first appeal filed under Section 19(1) of the Family Courts Act, 1984 (hereinafter referred to as "**Act, 1984**"), a challenge has been made to the judgement and decree dated 24.05.2024 passed in Regular Case No.640 of 2021 by Additional Principal Judge, Family Court No.2, Lucknow.
3. As per the Reporting Section, limitation for filing such appeal against the order dated 24.05.2024 is 90 days and it would be within time till 22.08.2024, therefore, as it has been filed on 05.07.2024, as per the Reporting Section, it is within time.
4. However, learned counsel for the respondent has raised a preliminary objection on this count, relying upon a judgment of Hon'ble the Supreme Court rendered on **12.09.2023** passed in **Special Leave Petition (C) No.10751 of 2021 : Arunoday Singh vs. Lee Anne Elton**, wherein Hon'ble the Supreme Court taking into consideration the *non-obstante* clause contained in Section 20 of the Act, 1984, it has been held that limitation for filing an appeal under Section 19 (1) of the Act, 1984 is 30 days and not 90 days.
5. We called the officers of the Reporting Section as to on what

basis limitation has been taken as 90 days. We were apprised of a Division Bench judgment of this Court dated 08.02.2017 passed in First Appeal Defective No.374 of 2016 : *Smt. Gunjan vs. Praveen* wherein relying upon a Full Bench decision of Bombay High Court dated 01.12.2016 rendered in Family Court Appeal No.161 of 2013 : *Shri Shivram Dodanna Shetty Vs. Sou. Sharmila Shivram Shetty* wherein it was held that for the purposes of calculating limitation for filing an appeal under Section 19(1) of the Act, 1984, period of limitation prescribed under Section 28(4) of the Hindu Marriage Act, 1955 (hereinafter referred to as "**Act, 1955**") shall apply, it, accordingly, concluded that limitation for filing appeal against decree of divorce or any other decree passed under the Act, 1955 which is a reference to the Hindu Marriage Act, 1955 is 90 days as provided under Section 28(4) of the Act, 1955 and not 30 days as per Section 19(3) of the Act, 1984. It is based on this Division Bench judgment of this Court that the Reporting Section at Lucknow is treating the limitation for filing such appeal as 90 days.

**6.** However, it appears that the Co-ordinate Bench while passing the order on 08.02.2017 did not notice Section 20 of the Act, 1984 which 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."*

**7.** It is this provision which has been taken into consideration by Hon'ble the Supreme Court in **Arunoday Singh (supra)** and it has then expressed its opinion as under :-

*"18. By reason of the non-obstante provision of Section 20 of the Family Courts Act giving overriding effect to the Family Courts Act, the period of limitation for filing an appeal from a judgment and order of a Family Court constituted under the Family Courts Act would be 30 days and not*

*90 days. The High Court thus found that the Appeal was delayed, even though the Appeal was filed well within 90 days."*

**8.** In view of the law declared by Hon'ble the Supreme Court in **Arunoday Singh (supra)**, limitation for filing such appeals under the Act, 1984 is 30 days and not 90 days.

**9.** This appeal is, therefore, barred by time but considering the provision of Section 5 of the Limitation Act, 1963 and the facts noticed above, we grant liberty to the appellant to file an application for condonation of delay in filing the appeal.

**10.** A copy of this order shall be sent to the Registry of this Court at Lucknow and at Allahabad so that law declared by Hon'ble the Supreme Court on the issue of limitation for filing an appeal under Section 19 (1) of the Act, 1984 is adhered as the said law prevails over the Division Bench judgment dated 08.02.2017 referred hereinabove.

**11.** The appeal shall now come up in the **1<sup>st</sup> week of August, 2024.**

**[Om Prakash Shukla, J.] [Rajan Roy, J.]**

**Order Date :- 11.7.2024**  
Shubhankar