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Court : Delhi

Decided On : Jul-19-2016

Judge : S. Ravindra Bhat &Amp; R.K. Gauba

Appeal No. : CS (OS) No. 411 of 2010 & I.A. No. 12186 of 2010

Appellant : Amina Bharatram

Respondent : Sumant Bharatram and Others

Advocate for Pet/Ap. : Ms. Malavika Rajkotia

Judgement :

S. Ravindra Bhat, J.

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 and 8 of the Family Courts Act, 1984?

2. This Court notices that the second question would necessarily involve a determination on the first. Accordingly, we proceed to examine as to whether this Court's original civil jurisdiction in respect of matters outlined in the Explanation to sub-section (1) of Section 7 of the Family Courts Act, 1984 (hereinafter referred to as the Act) is ousted by virtue of the provisions of Sections 7 and 8 of the Act. Having examined this issue of statutory interpretation from both a literal as well as a purposive lens, we answer the question in the affirmative. Since this reference involves a pure question of law, we do not delve into the specific facts of the case.

3. The reference to parties herein is the same as their status in the Suit.

Submissions of Parties before the Learned Single Judge:

4. The first defendant had submitted that since the Suit has arisen out of the marital relationships between the plaintiff and defendant No. 1, this Court's original civil jurisdiction is barred by virtue of the provisions of Sections 7 and 8 of the Act. For this purpose, reliance was placed upon the Full Bench decision of the Bombay High Court in Romila Jaidev Shroff v. Jaidev Rajnikant Shroff, AIR 2000 Bom. 356 and the Supreme Court's ruling in Raja Soap Factory v. S.P. Shantharaj, AIR 1965 SC 1449. Learned counsel submitted that the term 'District Court' in Sections 7 and 8 of the Act would include the High Court exercising its ordinary original civil jurisdiction, and therefore, its jurisdiction would stand transferred to the Family Courts. In support of this interpretation, reliance was placed upon Section 2(e) of the Act read with Section 2(4) of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC).

5. Contesting these submissions, the Plaintiff argued before the Learned Single Judge that there exist differences between the Delhi High Court and other Presidency High Courts. While the other Presidency Courts are the principal Civil Courts of original jurisdiction for their territory, the Delhi High Court is for the State of Delhi and has below it District Courts as the principal courts of original jurisdiction. Thus, there is no separate territory governed by the Delhi High Court as a principal civil court of original jurisdiction.

6. In Section 3(17) of the General Clauses Act, which defines District Court , High Court is excluded from that definition. On the other hand, Section 2(4) of the CPC defines only a District and then includes the High Court in exercise of its original jurisdiction as the principal Court in a District. The said expressions are used in relation to a different context and it implies a limit to territorial jurisdiction.

7. The Plaintiff relied upon a few decisions in which it was clarified that the High Court cannot be called as District Court. It was submitted that Section 4 of the Delhi High Court Act and Section 6 of CPC bar other Courts from entertaining a matter if it is above the pecuniary limits. The Plaintiff submitted that Section 21 of the Act makes a specific reference to the High Court with no qualification as to its meaning anything other than the High Court. Thus, Section 8 of the Act does not exclude jurisdiction of the High Court. Further, there was no notification or amendment to the High Court Act or Rules that release the Family Court from its pecuniary jurisdiction limit. Since the pecuniary jurisdiction limit of the present case is more than Rs. 20 lakhs, this Court has got the jurisdiction to entertain and try the present suit, which is a civil suit. Plaintiff also submitted that since the subject matter of the suit involves assets of the defendant No. 1's family, Family Courts cannot exercise jurisdiction under Section 7 of the Act.

8. Based on the aforesaid submissions, the plaintiff contended that Sections 7 and 8 of the Act do not oust this Court's ordinary original civil jurisdiction.

Findings of Learned Single Judge

9. The Learned Single Judge noted the existing precedents on the question of law referred to herein, including the decisions in Bakshi Lochan Singh v. Jathedar Santokh Singh, AIR 1971 Del 277, Raja Soap Factory (supra), Romila Jaidev Shroff (supra), Kamal V.M. Allaudin v. Raja Shaikh, AIR 1990 Bom 299, Mary Thomas v. Dr. K.E. Thomas, AIR 1990 Mad 100, Kanak Vinod Mehta v. Vinod Dulerai Mehta, AIR 1991 Bom 337, N. Kanageswary v. T. Shrikandarah Rubindranathan, 2013 (1) CTC 165. The Learned Single Judge held that in the absence of an express exclusion of jurisdiction under the Family Court Act that no High Court referred to in sub-section 7 shall exercise any jurisdiction in respect of any suit and proceeding of nature referred to in the explanation of that sub-section

, the High Court's ordinary original jurisdiction (being a civil court) cannot be inferred to have been ousted. The Learned Single Judge relied upon the Supreme Court's dictum in Dhulabhai v. State of Madhya Pradesh, AIR 1969 SC 78 in this regard. It was held that given the hierarchy of courts created under Section 3 of the CPC, this Court's ordinary original civil jurisdiction would not be included in the phrase jurisdiction exercisable by any district Court or any subordinate Civil Court in Section 7 of the Act. Further, the Learned Single Judge relied upon this Court's ruling in Manita Khurana v. Indra Khurana, AIR 2010 Del. 69 and held that the plaintiff is claiming rights in the assets of the defendants' family (HUF) and consequently, third party interests were involved. This would also render it appropriate for the High Court to exercise its ordinary original jurisdiction, instead of the Family Court. These observations, however were tentative and inconclusive because the single judge was of opinion that given the importance of the issues involved, it would be appropriate that the question of this court's jurisdiction were ruled by a Division Bench. Therefore, this reference.

Submissions Made on Behalf of Plaintiff

10. Ms. Malavika Rajkotia, learned counsel for the Plaintiff, supported the observations and tentative conclusions of the Learned Single Judge and reiterated the submissions made before him. In addition, counsel relied upon excerpts from Benion's Statutory Interpretation to contend that: (a) the High Court should not abdicate its duty to rule upon crucial family law issues; (b) the earlier specific legislation (the Delhi High Court Act) should prevail over the later general legislation (Family Courts Act); (c) powers conferred under the Delhi High Court Act and the Family Courts Act must be exercised concurrently.

11. Ms. Rajkotia submitted that the Statement of Objects and Reasons of the Act should not be used as an interpretive tool. Reliance was placed on the Supreme Court's decision in Aswini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369 for this purpose.

12. The Delhi High Court in R.P. Sachdeva v. State, AIR 1986 Del 178 has held that the High Court cannot be equated with a Court of District Judge, and that Section 5(2) of the Delhi High Court Act would not make the Delhi High Court the

principal civil court of original jurisdiction in Delhi. Reliance was also placed on the decisions in Bakshi Lochan Singh and Mary A. Trinidade v. Vincent Manuel Trinidade, 1976 Rajdhani LR 112.

13. The Plaintiff also relied upon a recent decision of this Court in Goyal MG Gases Pvt. Ltd. v. Messer Grieshim Gmbh (EFA OS 3/2014, decided on 01.07.2014)where it was held that District Court would not include the High Court for the purposes of Section 44A of the CPC. While reiterating its submission that the Family Court does not have jurisdiction as the subject matter of the suit involves claims against the assets of the defendant No. 1's family held as HUF, Plaintiff relies on the definition of 'family' in Order 32A, Rule 6 of CPC.

Submissions Made on Behalf of the first Defendant

14. Mr. Dinesh Garg, learned counsel for the first Defendant questioned the Learned Single Judge's conclusion on several grounds. Relying on the Preamble, Mr. Garg submitted that the Act is a special Act and provides for a special procedure for speedy settlement of disputes. Further, he urged that the object of the Act is to adopt an approach, which is radically different from that procedure and process of civil courts in ordinary civil proceedings. In fact, it is submitted, the Act itself envisages that the powers of civil courts can be exercised by the Family Courts so as to enable the latter to deliver justice. Reliance is placed on the decisions in K.A. Abdul Jaleel v. T.A. Shahida, AIR 2003 SC 2525 and Romila Jaidev Shroff (supra).The object of the Act could not have been to distinguish and discriminate cases on the basis of their pecuniary value and to subject the litigants to two sets of procedure - one before the High Court and the other before Family Courts, merely on the basis of the amount of claim.

15. Mr. Garg further urged that the Act has an overriding effect by virtue of Section 20 of the Act, and this has been affirmed by the Bombay High Court in Romila Jaidev Shroff (supra) and Shabana Bano v. Imran Khan, (2010) 1 SCC 666. Further, the Act does not confine or distinguish matters on the basis of their pecuniary value, rather it is on the basis of area/population. The non-inclusion of a pecuniary jurisdiction clause in the Act endeavours to promote an unlimited pecuniary jurisdiction. It was submitted that the Act seeks to provide for exclusivity

of jurisdiction to Family Courts with respect to matters provided therein. Such exclusive jurisdiction has been provided to the Family Courts under the Preamble and Sections 7 and 8 of the Act. On the interpretation of the term 'District Court' in Sections 7 and 8, it is submitted that it cannot be given a universal meaning. Since the Act does not define 'District Court'; regard may be had to the definition in CPC by virtue of Section 2(e) of the Act. Although the CPC does not define 'District Court', Section 2(4) of the CPC defines 'District' to include the local limits of the ordinary original jurisdiction of a 'High Court'.

16. Responding to the Plaintiff's reliance on the definition of 'District Judge' in Section 3(17) of the General Clauses Act, the first defendant submits that the Act does not equate a Family Court Judge with a District Judge and that the Act prescribes the retirement age of a Family Court Judge as 62 years - the same as that of a High Court Judge. Therefore, there is no anomaly in the Family Court exercising jurisdiction over matters prescribed in Section 7, which were hitherto exercised by the High Court.

17. Lastly, it is submitted that the term 'High Court' is used in the Act as a court of appeal -evident from the fact that an appeal from a decision of the Family Court lies to the High Court, comprising of a bench of two or more judges (Section 19). Thus, the procedure of appeal from the Family Court is the same as that from the High Court in exercise of its ordinary original jurisdiction; thereby meaning that the matters covered by the Act and dealt with by the High Court on its original side were meant to be included within the purview of Family Courts. To support his submissions, Mr. Garg heavily relied on the Full Bench decision of the Bombay High Court in Romila Jaidev Shroff (supra).

Analysis and Conclusions:

18. The Act was enacted by the Parliament with the objective of establishing a separate procedural mechanism for adjudication of family disputes. Section 3 of the Act provides for the setting up of Family Courts. Section 7 of the Act vests jurisdiction in respect of certain matters (enumerated in the Explanation to sub-section (1) of Section 7; and sub-section (2) of Section 7) which were hitherto exercised by a district court or any subordinate civil court in Family Courts set up

under Section 3. Crucially, Section 8(a) provides that to the extent that the jurisdiction a district court or any subordinate civil court would have exercised in respect of matters enumerated in the Explanation to Section 7 (1), stands ousted if a Family Court has been set up for the corresponding area. Similarly, Section 8(b) ousts the jurisdiction of a Magistrate in respect of matters outlined in Section 7(2). Section 8(c) provides for, inter alia, the transfer of all pending proceedings from the concerned court to the Family Court. Further, Section 5(2) of the Delhi High Court Act, 1966 provides that the High Court of Delhi shall have ordinary original civil jurisdiction in every suit where the pecuniary value exceeds Rs. 20 lakhs (which has since been amended after conclusion of hearing in this reference).It is in light of the aforesaid provisions that the issue of ouster of this Court's original civil jurisdiction arises, which we proceed to examine below. Here, it is necessary to clarify the scope of reference made in the Reference Order. Plaintiff has contended, both before the Learned Single Judge and in these proceedings that the subject matter of the suit involves claims against the assets of the first defendant's family and since third party claims cannot be adjudicated by Family Courts under Section 7 of the Act, it is this Court which would have jurisdiction. However, the questions framed in the reference do not concern this issue, and therefore, this Court is not competent to address it in these proceedings. Indeed, in the absence of a question having been framed to this effect in the reference order, this Court would be acting in its capacity as an appellate court were it to adjudicate upon this issue, without any appeal having been preferred by the defendant No. 1 on the same. Therefore, the only issue to be determined is whether this Court's ordinary original civil jurisdiction is ousted to the extent provided in Sections 7 and 8 of the Act.

19. At the outset, it would be appropriate to reproduce the relevant statutory provisions. Sections 7 and 8 read as follows:

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.

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 power 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.

20. The above provisions indicate that this Court's original civil jurisdiction would be ousted if, and only if, the phrase 'District Court' can be interpreted to include 'High Court' (to the extent that the High Court is the principal civil court of original jurisdiction). Section 2 of the Act - containing definitions of terms used in the Act - does not define 'district court'. However, Section 2(e) of the Act states that all other words and expressions used but not defined in this Act and defined in the Code of Civil Procedure, 1908 (5 of 1908) shall have the meanings respectively assigned to them in that Code . Accordingly, we resort to the definition-provision in the CPC.

21. The Code of Civil Procedure (CPC) too does not define the phrase 'District Court'. However, the word 'district' is defined in Section 2(4) as follows:

district means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a District Court), and includes the local limits of the ordinary original civil jurisdiction of a High Court.

22. Thus, Section 2(4) defines a 'district' to include the territorial limits of the ordinary original civil jurisdiction of a High Court. Learned counsel for the defendant in the suit, contesting the original civil jurisdiction of this Court, has submitted that the term 'District Court' must be interpreted in light of the definition of 'district' in Section 2(4) of the CPC and must include a High Court exercising original civil jurisdiction. Learned counsel for the plaintiff, on the other hand, contends that given the absence of a definition of 'District Court' in the CPC, the definition of 'District Judge' in Section 3(17) of the General Clauses Act, 1897 should be applicable. Section 3(17) reads as follows:

"District Judge" shall mean the Judge of a principal civil court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

23. This Court agrees with the submissions made on behalf of defendant No. 1. Section 2(4) of the CPC conclusively settles this issue. Although Section 2(4) does not expressly seek to define the term District Court , the meaning that emerges therefrom also includes the definition of District Court . This is because the term District Court is defined (in parenthesis) to mean the principal civil court of original jurisdiction that exercises such jurisdiction over a defined territory. Now, Section 5(2) of the Delhi High Court Act provides that the High Court shall exercise ordinary original civil jurisdiction in every suit where the value of the suit exceeds a certain limit (presently rupees 2 crores). Therefore, the court of ordinary original jurisdiction in Delhi for the purposes of suits exceeding such pecuniary value would be the High Court, and for all other purposes, it would be the District Court. This would be the result of a combined reading of Section 5(2) with Section 24 of the Punjab Courts Act, 1918, which provides that the court of District Judge shall be the District Court or the principal Civil Court of original jurisdiction in the District. Therefore, when it is clarified in Section 2(4) that 'district' would include the local limits of a High Court exercising original civil jurisdiction, axiomatically, such High

Court would be a 'District Court' to the limited extent that it is exercising ordinary original civil jurisdiction.

24. This is supported by this Court's ruling in Bakshi Lochan Singh (supra). In Bakshi Lochan Singh, a Division Bench of this Court had to decide whether for the purposes of Section 92 of the CPC, the High Court would be the principal civil court of original jurisdiction where the value of the suit exceeded Rs. 50,000/- (the pecuniary limit of this Court's ordinary original jurisdiction at the relevant time was Rs. 50,000/-). The Court noted:

If only Section 24 of the Punjab Courts Act were to be taken into consideration then there will be no doubt that the principal Civil Court of original jurisdiction to try this suit would be the Court of the District Judge, Delhi. But a change was brought about by the Delhi High Court Act, 1966, as amended, by sub-section (2) of Section 5 which provides that notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the territory of Delhi ordinary original civil jurisdiction in every suit the value of which exceeds fifty thousand rupees. This sub-section starts with a non-obstante clause and is applicable to "every" suit the value of which exceeds fifty thousand rupees. This being a suit the value of which exceeds fifty thousand rupees would be covered by this sub-section. The argument of Mr. Vohra is that there could be two principal Civil Courts of original jurisdiction within the meaning of Section 92 of the Code of Civil Procedure. It is difficult to accept this contention. After the coming into force of the Delhi High Court Act, 1966, as amended, this Court has become the principal Civil Court of original jurisdiction with respect to every suit the value of which exceeds fifty thousand rupees. In view of the non obstante clause contained in sub-section (2) of Section 5 of the Delhi High Court Act, 1966, the Court of the District Judge, Delhi, has ceased to remain the principal Civil Court of original jurisdiction with respect to any suit value of which exceeds fifty thousand rupees. Full effect has to be given to the language employed in sub-section (2) of Section 5 "notwithstanding anything contained in any law for the time being in force" and that can be done only by saying that for purposes of Section 92 of the Code of Civil Procedure, the Court of the District Judge, Delhi, will be the principal Civil Court of original jurisdiction in every suit the value of which does not exceed

fifty thousand rupees but in other suits the value of which exceeds fifty thousand rupees, this High Court will be the principal Civil Court of original jurisdiction. It cannot be disputed that if original jurisdiction had been completely taken away from the Court of the District Judge, Delhi and conferred upon this High Court, then notwithstanding Section 24 of the Punjab Courts Act, this High Court will be the principal Civil Court of original jurisdiction irrespective of the valuation of the suit as in the case of what are called the Presidency High Courts. Reference in this connection may be made to AIR 1955 Bom 55 in re: Fazlehussein Haiderbhoy Buxamusa v. Yusufally Adamji, where it has been held that the Bombay High Court in the City of Bombay is the principal Civil Court of original jurisdiction. The original jurisdiction value of this High Court is in every suit the value of which exceeds fifty thousand rupees and therefore, this High Court is the principal Court of original civil jurisdiction in every such suit. A jurisdiction of the Court of the District Judge, Delhi has been conferred upon this High Court and, Therefore, with respect to such part, this High Court will be the principal Court of ordinary original civil jurisdiction notwithstanding Section 24 of the Punjab Courts Act. We, Therefore, agree with the learned Single Judge that for the purpose of this suit the value of which exceeds fifty thousand rupees, the High Court is the principal Civil Court of original jurisdiction as contemplated by Section 92 of the Code of Civil Procedure.

25. Therefore, the Court expressly recognised that the principal civil court of original jurisdiction would be either the High Court (if the pecuniary value exceeded Rs. 50,000/-) or the District Court (where such value was below Rs. 50,000/-). The Plaintiff's reliance on the decision in R.P. Sachdeva (supra) and Mary Trinidade to contend that the Delhi High Court is not the principal civil court of original jurisdiction is misplaced. In both R.P. Sachdeva and Mary Trinidade, this Court was dealing with testamentary proceedings, and not civil suits, and it is in this context that the Court refused to recognise itself as the principal civil court of original jurisdiction. In Mary Trinidade, this Court expressly recognised that Section 5(2) of the Delhi High Court Act confers ordinary original jurisdiction upon the High Court in every suit exceeding the prescribed pecuniary limit. Therefore, as held in Bakshi Lochan Singh, this Court to that limited extent becomes the principal civil court of original jurisdiction.

26. Although this Court in its recent decision in Goyal MG Gases Pvt. Ltd. (supra), did not follow the decision in Bakshi Lochan Singh (supra) and held that the term 'District Court' does not include the High Court exercising ordinary original jurisdiction notwithstanding the mandate of Section 5(2) of the Delhi High Court Act, 1996, it was on the ground that execution of a foreign decree under Section 44A (with which the Court in Goyal MG Gases was concerned) is different from trial of civil suits, and the reasoning in Bakshi Lochan Singh cannot be followed for the former. Since in the present case, this Court is concerned with the question of the High Court exercising its ordinary original jurisdiction in the context of trial of civil suits, the decision in Bakshi Lochan Singh would continue to be good law. The Court in Goyal MG Gases expressly noted that the non-obstante clause comprised under Section 5(2) of the Delhi High Court Act, 1966 applies only to suits and not any other proceedings such as execution of foreign decrees in terms of Section 44A of the Code of Civil Procedure, 1908 .This Court is of the opinion that the decision in Goyal MG Gases affects interpretation of the term 'District Court' for the further reason that the Supreme Court in M.V. Al Quamar v. Tsavliris Salvage (International) Ltd., (2000) 8 SCC 278, held that the High Court, when acting as the principal court of original admiralty jurisdiction, would be considered to be a 'District Court' for the purposes of Section 44A read with Section 2(4) of the CPC, since it does not exercise appellate or revisional powers in such cases.

27. Of particular relevance and significance is the Supreme Court's decision in Raja Soap Factory (supra). The Supreme Court held - in that judgment-that a High Court exercising original civil jurisdiction would be District Court within the meaning of Section 2(4). In that case, the issue was whether a suit for infringement of trade-marks could be instituted in the High Court of Mysore under Section 105 of the Trade and Merchandise Marks Act, 1958. Section 105 of the said Act provided that such a suit could be instituted only in a court not inferior to the District Court. Further, Section 2(e) of the said Act provided that the term 'District Court' in that Act had the same meaning as under the CPC. The Supreme Court held that a suit under Section 105 could be instituted in the High Court if the High Court was vested with ordinary original civil jurisdiction as in such circumstances, the High Court would be the 'District Court' under the CPC. Admittedly, the aforesaid ruling of the Supreme Court was not in the context of the

Family Courts Act. However, we do not see any justification in departing from the said interpretation in the context of the Act.

28. This Court also holds that the Plaintiff's reliance on Section 3(17) of the General Clauses Act, 1897 - which defines 'District Judge' - is flawed for two reasons. First, when the Act specifically provides for resort to the definitions in CPC for the undefined terms in the Act, it would not be appropriate to ignore the definition of 'district' and 'District Court' in Section 2(4) of the CPC and adopt the definition of 'District Judge' given in Section 3(17) of the General Clauses Act. Secondly, Section 3 of the General Clauses Act itself provides that the definitions given there would not apply if they are repugnant to the subject and context of the concerned legislation, i.e. the Family Courts Act herein (reiterated by the Supreme Court in Karnataka Bank Ltd. v. State of Andhra Pradesh, (2008) 2 SCC 254). In the context of the Act, it would be inappropriate to restrict the jurisdiction of Family Courts on pecuniary limits basis, as it is not visualised in the Act. The only limitation on jurisdiction is based on subject matter and territorial grounds. Therefore, the definition of 'District Judge' in Section 3(17) of the General Clauses Act is inapplicable. Similarly, Plaintiff's reliance on the definition of 'District Court' in other legislations on family law is also immaterial, as the legislative mandate is to examine the definition of 'District Court' under the CPC.

29. This Court fully endorses the reasoning of the Full Bench of the Bombay High Court in Romila Jaidev Shroff (supra), where that Court has sufficiently explained as to why the term 'District Court' used in Sections 7 and 8 of the Act includes a High Court exercising ordinary original civil jurisdiction. The Court in Romila Jaidev Shroff (supra) noted:

14. Whether it comes to include the expression 'District Court' or not is the crux of the dispute. If that definition is closely read, it appears that what has been defined is not only the concept of a District but what is the area of operation of the Principal Civil Court of Original Jurisdiction of that District. In parenthesis, there is also an indication to the said Principal Civil Court of the Original Jurisdiction herein called a 'District Court'. Once this explanation in the parenthesis is understood in its proper perspective, the entire area over which the Principal Civil Court of

Original Jurisdiction of a District exercises its jurisdiction is the District Court for that District. Understood in that light section 2(4) of the Code of Civil Procedure can well be taken to define concept of a District Court itself. Apart from the jurisdiction in a Court either vested or divested by operation of a Statute, once a jurisdiction given to the Court, it has to be with reference to a territory and most of the time it also has to hold a reference to a pecuniary limits. There may be a Court with unlimited pecuniary jurisdiction but its territorial jurisdiction will always be confined to the clearly demarcated distinct identity which will have to be referred to as a District. Understood in that light, the aforesaid sub-section (4) of section 2 of the Code of Civil Procedure clearly indicates that the Principal Civil Court of Original Jurisdiction is to be confined to the area of operation to District for which it is a Court viz. District Court. If it is not understood in that light, the words appearing in the parenthesis would become redundant.

30. The submission that interpreting 'District Court' to include a High Court exercising original civil jurisdiction, would be contrary to the other provisions of the CPC which subordinate District Courts to High Court, is fallacious and has no merit. Such construction does not in any manner disturb the hierarchy of courts insofar as the High Court's appellate/extraordinary jurisdiction over District Courts is concerned. Indeed, subordination of District Courts to High Courts over a class of matters is possible only if the District Courts had jurisdiction to adjudicate upon such class of matters to begin with. In instances where the High Court exercises original civil jurisdiction, the District Court's jurisdiction to that effect is ousted and the question of subordination does not arise at all. The reasoning of the Bombay High Court in Romila Jaidev Shroff in this regard is also instructive:

16. ... As per the aforesaid section 3, no doubt, District Court is subordinate to the High Court. This provision of section 3 had prompted the learned Judges of the Division Bench of this Court in Kanak Mehta's case, which is one of the reasons, to hold that the High Court cannot be considered as District Court for the purpose of Family Courts Act. The Family Court does not contemplate the High Court to be considered as such. It refers to the District Court or any subordinate Civil Court, both, in section 7 as well as section 8. Sections 7 and 8 show that the jurisdiction of the District Court as well as subordinate Court is ousted in respect of the

matters which can be entertained by the Family Court. If therefore in exercise of its Ordinary Original Civil Jurisdiction within the local limits, this High Court is taking up those very matters which are covered by the Family Court Cases, and if it is acting as a District Court, it certainty would lose the jurisdiction. It is nobody's case that it is a subordinate Court. All that has been urged on behalf of the defendant is that whenever it exercises Ordinary Original Civil Jurisdiction as per Clause 12 for the purposes of Code of Civil Procedure, it is a District Court for the District of Mumbai which is the local limits. If that be so, it would lose the jurisdiction.

31. The Plaintiff's reliance on Dhulabhai (supra) to hold that 'High Court' is excluded from the purview of 'District Courts' in Sections 7 and 8 of the Act is erroneous. The Act, specifically in Section 8, expressly excludes the jurisdiction of civil courts ('District Courts' and all courts subordinate thereto) to the extent provided in Section 7 of the Act. Therefore, the intention of the Parliament is clear - to provide for a separate mechanism for adjudication of family disputes. Further, the Supreme Court in Abdul Jaleel (supra) has held that a restrictive interpretation of Section 7 of the Act would defeat the objective behind its enactment. A restrictive interpretation in the instant case, excluding the exercise of this Court's ordinary original civil jurisdiction, would mean that the jurisdiction of a given class of civil courts is ousted - based solely on the pecuniary value of the claim. This peculiarity, in the opinion of this Court, does not follow from Dhulabhaior any subsequent decision on this aspect.

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...

33. The distinction made out by the Plaintiff between the Delhi High Court's ordinary original jurisdiction and that of High Courts of Bombay, Madras and Calcutta is inconsequential. The Plaintiff contends that the Delhi High Court has eleven District Courts subordinate to it, which are the principal civil courts of original jurisdiction for the concerned districts, whereas the High Courts of Bombay, Madras and Calcutta are principal civil courts of original jurisdiction for a defined territory. However, this Court does not have to address itself to the issue whether this Court, exercising its jurisdiction under Section 5(2) of the Delhi High Court Act, acts as the principal civil court of original jurisdiction. Indeed, given the phraseology of Section 5(2) (the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which

exceeds rupees two crores), it cannot be disputed that this Court exercises 'ordinary original civil jurisdiction'. Section 2(4) of the CPC, while defining a 'district' and also 'District Court', only requires the High Court to be exercising 'ordinary original civil jurisdiction' for it to be included in the definition of 'district' and 'District Court', and does not impose any additional condition for the High Court to be acting as the 'principal civil court of original jurisdiction'. In other words, the pecuniary limits of jurisdictions of courts in the NCT of Delhi-structured through the provisions of the Punjab Civil Courts Act, the Delhi High Court Act and the CPC, is such that this court has jurisdiction to entertain and try civil causes which are in excess of the prescribed pecuniary limits, not otherwise. The inescapable inference therefore, is that this court is not the principal civil court of original jurisdiction; it is a civil court of original jurisdiction for all matters above Rs. 2 crores (after the amendment to the Delhi High Court Act, effective from October, 2015) and for all commercial matters (so defined by the Commercial Courts Act, again effective October 2015) above Rs. 1 crore. The Plaintiff's submission in this regard is rejected.

34. Counsel for the Plaintiff had argued that the absence of any qualification in the usage of the term 'High Court' in the Act, specifically Section 21, implies that it is used in contradistinction to the term 'District Court' and therefore, the High Court's ordinary original civil jurisdiction cannot be ousted. The omission to qualify the term 'High Court' used in Section 21 does not imply that the phrase 'District Court' necessarily excludes the High Court exercising its ordinary original civil jurisdiction. Courts, while construing statutory provisions strictly, can, and rightly so, read the provisions of a statute contextually (Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354). Therefore, the term 'High Court' as used in Section 21 cannot include the High Court exercising its ordinary original civil jurisdiction. On the other hand, Section 21 provides for the power of the High Court to make rules in its administrative capacity. To that extent, 'High Court' in Section 21 cannot even be interpreted to include instances where it is exercising its appellate jurisdiction. On the other hand, 'High Court' in Section 4(3)(b) of the Act would include instances where it is exercising its ordinary original civil jurisdiction, because there is no material difference as far as the practise of law by advocates in the original side and appellate side of the High Court is concerned.

Indeed, the Supreme Court in Kolkata Metropolitan Development Authority v. Gobinda Chandra Makal, (2011) 9 SCC 207 has held that the same words can carry different meanings in different parts of the same statute, depending upon the context. The Court noted:

36. The same words used in different parts of a statute should normally bear the same meaning. But depending upon the context, the same words used in different places of a statue may also have different meaning. [See: Justice G.P. Singh's Principles of Statutory Interpretation - 12th Edition Pages 356-358]. The use of the words 'publication of the notification' in Sections 4(1) and 6 on the one hand and in Section 23(1) on the other, in the LA Act, is a classic example, where the same words have different meanings in different provisions of the same enactment. The words 'publication of the notification under Section 4 Sub-section (1), are used in Section 23(1) for fixing the relevant date for determination of market value. The words "the last of the date of such publication and giving of such public notice being hereinafter referred to as the publication of the date of notification" in Section 4(1) and the words 'one year from the date of the publication of the notification" in the first proviso to Section 6, refer to the special deeming definition of the said words, for determining the period of one year for issuing the declaration under Section 6, which is counted from the date of 'publication of the notification'. Therefore the context in which the words are used in Sections 4(1) and 6, and the context in which the same words are used in Section 23(1) are completely different. In Section 23(1), the words "the date of publication of the notification under Section 4(1) "would refer to the date of publication of the notification in the gazette. Therefore, '13.9.2000' will be the relevant date for the purpose of determination of compensation and not 16.11.2000.

Therefore, the plaintiff's submission that the unqualified usage of the term 'High Court' in the Act must imply that the original civil jurisdiction of the High Court is not ousted under Sections 7 and 8 of the Act is rejected.

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.

36. This Court does not agree with the decision of the Full Bench of Madras High Court in Mary Thomas (supra) in light of the reasons given by us for the interpretation of 'District Court' in Sections 7 and 8 of the Act. Additionally, it appears that the Madras High Court's decision was based on the apprehension (if we may term it so) that a High Court exercising its ordinary original civil jurisdiction cannot be equated with a District Court. However, in our opinion, the following observations of the Bombay High Court in Romila Jaidev Shroff adequately address this concern:

22. ...Everyone accepts the fact that the Original Civil Jurisdiction of the High Court is confined to a limit and, therefore, that would be a District Court for the purpose of High Court in exercise of that jurisdiction. However, at the same time with equal striking uniformity, everywhere the learned Judges balk at an idea of treating the High Court as a District Court for all purposes of the Civil Procedure Code. In our opinion, this hesitation is uncalled for. The submission is not and could not be that once the High Court is understood to be a District Court, it would become a District Court for all purposes of the Code. It just cannot be. Apart from the Constitutional Scheme, even during pre-constitution days, the High Court is at the Apex and predominates Three Tier System operating in any States of the Country during Pre-independent Era and Post-independent Era. After onset of constitution, it is clearly enshrined in it as such. There can therefore be no doubt that the High Court is the Higher Court. It can never be a District Court.

23. At the same time when of the several High Courts of this Country some of them happen to have Original Civil Jurisdiction by very compulsion of logic as and when it exercises its jurisdiction, the High Court has to be a District Court for that limited purpose and if as a result of its inclusion in that concept if the High Court on its Original Side lose its jurisdiction, it does. It needs to be clarified that the loss

of the jurisdiction will be confined only to that part of the Original Civil Jurisdiction as, like in the instant case, is relating to the matters to be dealt with under the Family Courts Act

37. This Court's interpretation is also in consonance with the object and purpose of the Act, as gauged from the 'Statement of Objects and Reasons' and the provisions of the Act. Before we proceed to discuss this aspect, it would be appropriate to deal with the Plaintiff's submission that the Statement of Objects and Reasons may not be relied upon to construe the Act. In support of this submission, Plaintiff has relied upon the decision in Aswini Kumar Ghose (supra). However, subsequently the Supreme Court in a plethora of decisions has relied upon the statement of objects and reasons of statutes for the purposes of interpretation. Pertinently, in Utkal Contractors and Joinery Pvt. Ltd. v. State of Orissa, (1987) 3 SCC 279, Chinnappa Reddy J. noted:

A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are statement of Objects and Reasons when the Bill is presented to Parliament, the reports of committees which preceded the Bill and the reports of Parliamentary Committees.

Subsequently, the Supreme Court itself noted that the rule laid down in Aswini Kumar Ghosehas not been followed. The Court observed:

...Although in Aswini Kumar Ghose v. Arabinda Bose [1953] 4 SCR 1, it was held that the statement of objects and reasons contained in the Bill cannot be used or relied upon for the purpose of construction of the statute, this rule has not been strictly followed in the subsequent judgments. In A. Thangal Kunju Musaliar v. M. Venkatachalam Potti [1956] 29 ITR 349 (SC), the statement of objects and reasons were used for judging reasonableness of the classification made in an enactment to see if it infringed or was contrary to the Constitution. In Central Bank of India v. Workmen [1960] 1 SCR 200, it was held that the statement of objects and reasons can be used for the limited purpose of understanding the background and antecedent state of affairs leading up to the legislation. The same view was

reiterated in large number of other judgments including Bhaiji v. Sub-Divisional Officer, Thandla [2002] SUPP 5 SCR 116...

Justice Chinnappa Reddy's observations in Utkal Contractors were affirmed by the Supreme Court in Novartis AG v. Union of India, (2013) 6 SCC 1 and Rajesh Awasthi v. Nand Lal Jaiswal, (2013) 1 SCC 501.

Therefore, this Court rejects the Plaintiff's contention that the Statement of Objects and Reasons of the Act cannot be relied upon in the instant case.

38. Now, the relevant portion of Statement of Objects and Reasons with respect to the Act reads as follows:

The Bill, inter alia, seeks to:-

(a) provide for establishment of Family Courts by the State Governments:

(b) make it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million;

(c) enable the State Governments to set up such courts in areas other than those specified in (b) above;

(d) exclusively provide within the jurisdiction of the Family Courts the matters relating to:-

(i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage or as to the matrimonial status of any person.

(ii) the property of the spouses or of either of them;

(iii) declaration as to the legitimacy of any person;

(iv) guardianship of a person or the custody of any minor;

(v) maintenance, including proceedings under Chapter IX of the Code of Criminal Procedure;

(e) make it obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and rigid rules of procedure shall not apply;

(f) provide for the association of social welfare agencies, counsellors, etc., during conciliations stage and also to secure the service of medical and welfare experts;

(g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by legal practitioner. However, the Court may, in the interests of justice, seek assistance of a legal expert as amicus curiae;

(h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute;

(i) provide for only one right of appeal which shall lie to the High Court.

(emphasis supplied)

39. It is evident from the above excerpt that the Act was intended to create a separate procedure for resolution of disputes of the nature provided therein, such that ordinary rules of procedure would not always apply to such proceedings. The rationale behind this is the endeavour to amicable resolve disputes concerning family. Accordingly, the procedure prescribed under the Act, specifically Chapter IV, applies to the exclusion of any contrary provision in the CPC (Section 10). In the event that the term 'District Court' in Sections 7 and 8 was to be interpreted to exclude this Court's exercise of ordinary original civil jurisdiction, the benefits of the procedure prescribed under the Act would not be available to parties contesting the suit for the sole reason that the pecuniary value of the suit exceeds Rs. 20 lakhs (or now, in excess of Rs. 2 crores). Indeed, this would be contrary to the object and purpose of the Act.

40. Another important circumstance, which this court has to keep in mind, is the provision for appeals and revisions, in Section 19 of the Family Courts Act. It reads as follows:

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 2[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 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 with in 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.

Section 19 clearly establishes the role of the High Court as an appellate and revisional forum. Unlike provisions of the Delhi High Court Act, which specifically provide for intra court appeals, Section 19 casts the High Courts - in relation to family matters-as an exclusive court of appeal. Furthermore, the creation of a

revisional power and its vesting it in the High Court - from proceedings and orders of the Family Court-rules out the possibility of certain High Courts exercising intra court appellate jurisdictions. The appellate jurisdiction is cast in decisive terms, and conferred upon the High Court-evidenced by clear and unambiguous language i.e. against every order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. Lastly, revisional and appellate power is conferred in respect of both criminal jurisdiction exercised by the Family Court (i.e. under Section 125 Code of Criminal Procedure) and civil matters. Here, it is noteworthy that the Family Court under Section 7 (2) exercises jurisdiction that is conferred upon a Magistrate:

(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.

It is inconceivable that the Parliament intended that in respect of the categories of matters enumerated in Section 7 (1), especially maintenance, the powers of a Magistrate were to be vested in High Courts, depriving them of normal appellate and revisional remedies.

41. In light of the aforesaid reasons, we hold that the term 'District Court' in Sections 7 and 8 of the Act includes the High Court to the extent that it exercises ordinary original civil jurisdiction. Accordingly, its ordinary original civil jurisdiction in respect of matters enumerated in Explanation to sub-section (1) of Section 7 of the Act stands excluded.

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.

43. In the light of the above conclusions, this judgment on reference shall be placed before the Hon'ble Chief Justice, to take necessary and consequential steps to transfer all matters covered under Sections 7 and 8 -by virtue of Section 8 (c) (ii) of the Family Courts Act. No costs.

Ordered accordingly.

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