



2026:AHC:34801-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 1137 of 2025

Ishita Agarwal

.....Appellant(s)

Versus

Gopal Krishan Mittal

.....Respondent(s)

Counsel for Appellant(s)	:	Rakesh Kumar Garg, Yash Garg
Counsel for Respondent(s)	:	Jai Raj

Court No. - 29

**HON'BLE ARINDAM SINHA, J.
HON'BLE SATYA VEER SINGH, J.**

(Per Arindam Sinha, J.)

1. Appellant is mother of the boy, who has just completed 5 years of age. Respondent is the father, in whose favour impugned judgment/order dated 20th February, 2025 has been made by the Family Court. English translation of operative direction in impugned judgment/order is reproduced below.

"Therefore, on the above grounds, the applicant's application is accepted. The respondent is directed to ensure that the applicant meets the minor child Saaranish every month on the third Saturday in the premises of the District Legal Services Authority between 3:00 PM to 4:00 PM."

On query we have ascertained from the Bar, main divorce proceeding is still pending before the Family Court.

2. Mr. Yash Garg, learned advocate appears on behalf of appellant. Mr. Jai Raj, learned advocate appears on behalf of respondent and raises preliminary objection on maintainability of the appeal. He submits, impugned judgment/order is interim in nature. There is no right to appeal provided therefrom under section 19 in Family Courts Act, 1984. He relies on view taken by a Division Bench of this Court on **judgment dated 25th January, 2011 in First Appeal no. 495 of 2010 (Isma Alam vs. Sri Irshad Alam)**, *inter alia*, the paragraphs reproduced below.

"Applying the principles laid down in the facts and circumstances of the present case, we find that the learned Judge had not decided the case

finally between the parties as the petition filed under section 25 of the Act numbered as 50/70/2009 is still pending. He has only decided the applications filed under section 12 and 26 of the Act and had directed for granting interim custody of the minor child to the opposite party herein pending final decision on the application filed under section 25 of the Act. Thus, the order impugned in the present appeal is an interlocutory order and an appeal under section 19 of the Act would not lie. The submission of Sri V.M. Zaidi, learned senior counsel that by the impugned order, the learned Judge had in fact decided the entire controversy is misplaced.

While arriving at a conclusion as to whether the interim custody of the minor child has to be given to the opposite party herein on an application in this behalf before the learned Judge, the learned learned Judge has necessarily to record a finding as to why such an order granting interim custody is required to be passed. However, the findings recorded therein is only a tentative finding and would not in any way effect the disposal of case No. 50/70/2009 which has to be decided by the learned Judge on the basis of the material and evidence on record and in accordance with law."

(emphasis supplied)

3. Mr. Garg refers us to paragraph 9 in the affidavit supporting the stay application. The paragraph is reproduced below.

"9. That thereafter the opposite party/husband filed one application u/s 26 of the Act, 1955 on 31.08.2024 against the appellant in the pending proceedings u/s 13 of the Act, 1955 seeking a direction upon the appellant to bring their minor son at Mediation Centre of the District Court, Agra for the purpose of meeting him and also sought further direction to talk with their minor son through video call. By the means of this application the opposite party also sought an interim custody of their minor son. The copy of the application filed by the opposite party u/s 26 of the Act, 1955 on 31.08.2024 at Principal Judge Family Court, Agra is being filed herewith as Annexure no.3 to this affidavit."

(emphasis supplied)

He submits further, contact by video conferencing has already been directed by the Family Court in the domestic violence case. His client's appeal is maintainable. He relies on sections 26 and 28(2) in Hindu Marriage Act, 1955.

4. It will be useful for us to first reproduce below sub-sections (1), (5) and (6) in section 19 of Family Courts Act, 1984, which are relevant.

"19. - (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)

(3)

(4)

(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."

Also necessary is reproduction of sections 26 and 28 in Hindu Marriage Act, 1955.

"26. Custody of children.- In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:

Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

27.

28. Appeal 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 decision of the court given in

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 decree or order."

(emphasis supplied)

5. We have taken note of view taken by co-ordinate Bench in **Isma Alam** (supra). View was also taken on **judgment dated 17th July, 2025** by another co-ordinate Bench, to which one of us (Arindam Sinha, J) was party. It was in **First Appeal no. 285 of 2025 (Dr. Prakhar Kumar vs. Dr. Aditi Dhaundiya)**. Paragraph 10 from the view is reproduced below.

*"10. Guardians and Wards Act, 1890, as aforesaid, has section 12 providing for power to make 'interlocutory order'. Then came legislation by the Act of 1984. **Parliament in the 35th year of the Republic of India acted upon the bill bearing statement of objects and reasons saying, inter alia, the need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes. By clause 2(i) in the statement of objects and reasons it was said, the bill sought to, inter alia, provide for only one right of appeal, which shall lie to the High Court.** It was one of the objects of the bill, enacted by Parliament. Section 19 as amended stands in the statute by the Act of 1984. To say section 12 in the Act of 1890 cannot control section 19 in the Act of 1984 would lead to presumption that the Legislature attached different meanings for word 'interlocutory' as appearing in the Act of 1890, the Code of 1908 and the Act of 1984."*

(emphasis supplied)

6. In light of above views, we need to consider section 26 and sub-section (2) in section 28, relied upon by appellant. We do not find sub-section (2) in section 28 to be contrary to the position of law created by enactment of Family Courts Act, 1984, subsequent also to Hindu Marriage Act, 1955. We have laid emphasis on above reproduction of the provision to demonstrate

that an order or direction made under section 26 can be appealable if they are not interim orders. Such is also the mandate of section 19 in Family Courts Act, 1984.

7. Section 26 in the Act of 1955 empowers the Court, while dealing with any proceeding under the Act, to from time to time pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to, *inter alia*, custody of children. Impugned judgment/order is but an interim order/direction. It is not a provision made in the decree because such decree is yet to come on adjudication of the matrimonial dispute, still pending. Where the Court passes a judgment and there is a decree, for example, directing dissolution of the marriage and also providing directions for custody, a party to the proceeding can choose to appeal only against the directions for custody by virtue of section 26 and section 28(2). Such appeal would be maintainable under section 19 in Family Courts Act, 1984.

8. Impugned judgment/order being interlocutory in nature, the appeal is not maintainable. It is accordingly dismissed.

February 17, 2026

Salim

(Arindam Sinha,J.)

(Satya Veer Singh,J.)