

FAMILY COURTS ACT, 1984 – A CRITICAL REVIEW*By*

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Introduction :

The increase in disputes concerning the family specially between the spouses has necessitated the Legislature to pass an Act to provide for establishment of Courts with view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

Family Meaning

The concept of family is familiar and famous in the Indian Culture which is now has been accepted and followed world-wide. Union of members with relation is known as a family in the common parlance. Though, the concept of the family gained much importance and also facing problems socially and legally. The word 'family' is not defined in any enactment concerning to resolve the disputes among the members of the family.

As per Webster's new universal unabridged dictionary the 'family' mean and includes parents and their children, whether dwelling together are not, the children of one person or one couple collectively, the spouse and children of one person, any group of persons closely related by blood as parents and children, uncles, aunts and cousins. All those persons considered as descendants of a common progenitor, a group of persons who form a household under one head including parents, children, servants *etc.*

When read, the above meaning has a broad and comprehensive meaning in general and it's capable of many different meanings according to the connection, in which it is used.

Disputes Inter se of a Family

From the ages in the past, it can be observed that the disputes among the members of the family are related to the marriages, divorce, maintenance, guardianship of minors and properties. To resolve the disputes between the members of the family with regard to the properties there are the civil Courts to decide, but there is no special forum to approach to any member of the family, with exclusive jurisdiction, to protect the unity in the family and to resolve the disputes between them. The Legislature has taken a special note of the circumstances that the dispute or differences between the members of the family are bubbles in the water and will be pacified and settled on conciliation and on convincing the parties.

Family Courts Act, 1984 – Aims, Objects and Procedure

To protect the unit and concept of family in India and to avoid a prolonged dispute between the members of the family, the Parliament has enacted the Family Courts Act, 1984 which came into force on 14-9-1984 and was amended in the year 1991 by Amendment Act No.59 of 1991 and the provisions of Amended Act came into force, with effect from 28-12-1991.

The Act consist of 22 Sections which deal with the definitions, establishment of family Courts, appointment of Judges, involvement of social welfare agencies and counsellors, jurisdiction and the powers of the Courts *etc.*

The Act came into force about 2½ decades ago and has been amended about 15 years back. Though the provisions of the

Act, more particularly Section 7 of the Act, fixed the jurisdiction of the family Courts relating to the disputes mentioned in the explanation added to it, the Act is not covering all the disputes among the family members. In the year 2003 there were 87 family Courts in the country and were loaded with 2,24,838 cases and in the same year 83,437 cases were decided and 97,549 new cases were filed (Envisioning Justice in the 21st Century by Justice R.C. Lohoti Hon'ble Chief Justice of India (the then) reported in 2004 (7) SCC page 13 Journal). From the date of commencement of Act the filing of the cases before the family Court was more than before an ordinary civil Court or other Courts under the relevant enactments. Which fact suggests that the members of the family are reposing more confidence in the family Courts than that of the ordinary Courts functioning with regard to the resolution of the disputes.

Judicial Interpretations

In disposing of the matters connecting to the members of the family under the provisions of the Family Courts Act, 1984, the various Courts have been of the opinion that the jurisdiction of the family Courts is to be expanded or the explanation to Section 7 of the Act is to be widened to cover the more and more disputes.

Contention that Family Court Act is applicable only to cases arising out of an admitted and not disputed marriage was held to be not correct (*R. Durga Prasad v. Union of India* – AIR 1998 AP Page 290). The jurisdiction of the High Court on its original side is not lost by the provisions of the Family Courts Act, AIR 1994 Bom. Page 120).

The subject of succession certificate is not mentioned in the explanation to Section 7 of the Act, therefore the family Court has no jurisdiction to issue succession certificate (*Vasumathi v. Chandriyan Madhavi*, AIR 1991 Kant. Page 201).

Family Court has no jurisdiction to direct a father to pay marriage expenses to the daughter and to declare that the father is under an obligation to perform the marriage of his daughter (1995 AIHC 617 (Kerala), 1995 DMC Page 303).

The disputes between the brothers and sisters cannot be decided by the family Courts as there is lack of jurisdiction (*P. Srihari v. P. Sukunda* 2001 (1) ALT 739).

Partition matters, other than those between husband and wife, are beyond the jurisdiction of the family Court (1998 DMC Kant. 120).

A suit filed for declaration as to validity of a marriage was decreed by family Court (*Gattam Israil v. Gattam Shiromani*, 2002 (2) ALT 212).

The family Court has no jurisdiction to grant injunction in favour of an unmarried daughter against the father and the brothers, on the ground that she has a right to reside in ancestral property (2004 (6) ALT 21.1 DNOHC Rajasthan).

The Family Courts Act should be amended to provide a special chapter dealing with parentage testing and adequate provisions should be made thereunder, to ensure that parentage testing meets the highest technical and ethical standards, particularly in relation to consent to testing, protecting the integrity of genetic samples and providing counselling (2004 (5) SCC Journal page 6).

The above decisions and the observation of the jurists on different occasions, clearly says that the jurisdiction of a Family Court established under Family Courts, Act, has not given jurisdiction to decide all the disputes concerning the 'family'.

Conclusion

In view of the importance of resolution of the disputes in a particular way among the family members, and in view of the

provisions of the Family Courts Act, 1984, as on today, the Act is to be amended further making it mandatory that the Family Court's Judge shall attend the family Court work only, fix time frame for disposal of maintenance and matrimonial cases, cognizance of offences under Sections 498-A, 499 I.P.C. and the Dowry Prohibition Act, cases of S.Ts and S.Cs to be tried by family

Court, to decide the status of a woman appointment of woman Judges, payment of honoraria to the counsellors, in camera trial of the matrimonial disputes, training to Judges of the Family Courts in the true letter and spirit of the Act, to make effective reconciliation and also time frame for execution proceedings in the matter concerning the family disputes.

**M/S. BHAGWATI PRASAD PAWAN KUMAR V. UNION OF INDIA, AIR
2006 SC 2331 = (2006) 5 SCC 311 – A CRITIQUE**

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The facts are stated in Paragraphs 2, 3 and 4 of the judgment (see also Paragraph II.3 *infra*).

The Apex Court relying upon Section 8 of the Contract Act held, "that the offer (made by the respondent by its letter dated 7-4-1993) stood unequivocally accepted. An 'offeree' cannot be permitted to change his mind after the unequivocal acceptance of the offer."

In my humble opinion it is submitted that Section 8 of the Contract Act is not applicable to the facts of this case, nor the appellant was precluded from claiming the balance amount of his claim for the following reasons—

I. Nature of the claim—

1. Section 8 is in Chapter I of the Contract Act, which deals with "Of the Communication, Acceptance and Revocation of Proposals"; in other words Chapter I deals mainly with 'formation of contract'. Chapter II deals with "Of Contracts, Voidable Contracts and Void Agreements"; Chapter III,

which deals with "Of Contingent Contracts", is not relevant to the issues involved in this case; Chapter IV deals with "Of the Performance of the Contracts"; Chapter V, which deals with "Of certain relations resembling those created by Contract", is also not relevant to the issues involved in this case; and Chapter VI deals with "Of the Consequences of Breach of Contract."

2. The instant the respondent-Railways accepted the consignment of the goods for delivering them to the appellant a "contract of carriage of goods" came into existence. By its failure to deliver the said goods to the appellant, the respondent failed to perform the said "contract of carriage" and admittedly became liable to compensate the appellant for the loss caused to him on account of non-delivery of the said goods, though the appellant claimed the value of the goods from the respondents, it is, in fact, a claim for compensation for breach of contract.

3. Hence, the payment of compensation for loss suffered on account of breach of contract is governed by Section 73 of the Contract Act. The fact that the respondent