

NOTE: COURT OF APPEAL ORDER PERMITTING THE PUBLICATION OF REPORTS OF FAMILY COURT PROCEEDINGS INsofar AS THEY ARE DISCUSSED IN THE COURT OF APPEAL JUDGMENT PROVIDED THAT NO REPORT MAY INCLUDE THE NAME OR IDENTIFYING PARTICULARS OF THE PARTIES' SON P, EXCEPT FOR THE NAMES OF THE PARTIES, PURSUANT TO S 11B OF THE FAMILY COURT ACT 1980 REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 37/2026
[2026] NZSC 75**

BETWEEN VIN TOMAR
 Applicant

AND MONIKA KHATRI
 Respondent

Court: Ellen France, Kós and Cooke JJ

Counsel: Applicant in person
 Respondent in person

Judgment: 10 June 2026

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

Introduction

[1] Mr Tomar seeks leave to appeal from the judgment of the Court of Appeal making an extended order under s 166 of the Senior Courts Act 2016.¹

¹ *Tomar v Khatri* [2026] NZCA 21 (Courtney, Mallon and Thomas JJ) [CA judgment].

Background

[2] The background to this application is as follows. Mr Tomar and Ms Khatri have been engaged in litigation since they separated in 2016. Mr Tomar has, “almost entirely” unsuccessfully, the Court of Appeal said, maintained challenges to decisions made in various Courts.² The litigation has concerned a range of matters, including a protection order obtained by Ms Khatri, and a parenting order in relation to their son in Ms Khatri’s favour.

Present proceedings

[3] In 2021, Ms Khatri sought an order under s 166 of the Senior Courts Act to restrain Mr Tomar from bringing or continuing civil proceedings against her. Mr Tomar sought to strike out this application and filed his own application under s 166, seeking to prevent Ms Khatri from taking steps against him.

[4] These applications were dealt with by Downs J.³ He declined to make the s 166 order sought by Ms Khatri, but instead made the following order under the inherent powers of the High Court:

[63] Mr Tomar is prohibited from:

- (a) Continuing all existing litigation in the High Court;
- (b) Bringing new proceedings in this Court in which Ms Khatri is a party or the proceeding is about or in any way related to Ms Khatri;
- (c) Filing applications of any sort in relation to (a) or (b);

Unless he first pays Ms Khatri, in full, \$98,998.15 in outstanding costs.

[5] Mr Tomar’s existing High Court litigation was stayed pending payment of the outstanding costs. The High Court dismissed Mr Tomar’s strike-out application. The Judge did not deal expressly with Mr Tomar’s s 166 application, but the Court of Appeal took the view it was implicit in the judgment that this application failed.

² At [2].

³ *Khatri v Tomar* [2021] NZHC 3091.

[6] Mr Tomar appealed to the Court of Appeal. The Court heard from counsel assisting as well as from Mr Tomar and Ms Khatri in person. The Court of Appeal set aside the High Court order. The Court considered the threshold for making a s 166 order was met, and that the order the High Court made had the effect of cutting across the statutory regime. That was because the duration of the order was not fixed, and it might have continued indefinitely if costs were not paid. There was no provision, as there would have been under a s 166 order, for Mr Tomar to seek leave of the High Court to continue or commence proceedings. The Court said its conclusion about the order made in the High Court necessitated a re-examination of Ms Khatri's application. Having undertaken that re-examination, the Court made a s 166 order.

The proposed appeal

[7] Mr Tomar raises a number of proposed grounds of appeal. The key point Mr Tomar wishes to argue is that the Court of Appeal had no power to reassess Ms Khatri's application for a s 166 order in the absence of a cross-appeal. The focus of the appeal in the Court of Appeal was on the extent of the High Court's inherent jurisdiction, as the list of issues prepared by counsel assisting the Court demonstrated. Against this background, Mr Tomar submits that it was procedurally unfair for the Court to proceed nonetheless to address the question of the availability of a s 166 order. He submits that this has led to a breach of natural justice. Mr Tomar is also critical of the delay in delivery of the judgment and of what he sees as inconsistent enforcement of the orders made by the High Court.

[8] Mr Tomar also challenges the Court of Appeal's approach to suppression. Some of the earlier judgments in the Courts below recognised the restrictions on publication of Family Court proceedings in certain circumstances as provided for in ss 11B–11D of the Family Court Act 1980, but the Court of Appeal granted leave for the publication of reports of the Family Court proceedings to the extent discussed in the Court of Appeal judgment.⁴

⁴ The prohibition on publication of the parties' child's name and identifying particulars was maintained.

Our assessment

[9] The Court of Appeal addressed the making of the s 166 order in this way. First, the Court said if it was an error to invoke the inherent jurisdiction then, “the inevitable question” arises as to whether the High Court should have made a s 166 order as sought by Ms Khatri.⁵ Second, the Court noted that the parties had not addressed the question. Third, the Court stated that:⁶

It may have been desirable for [this question] to have been raised directly on a cross-appeal by Ms Khatri, but we consider r 48 of the Court of Appeal (Civil) Rules 2005 nonetheless allows us to determine the matter. Rule 48 relevantly provides:

(4) The Court may give any judgment and make any order which ought to have been given or made, and make any further or other orders that the case may require.

(5) The powers of the Court may be exercised—

...

(b) in favour of all or any respondents or parties although they may not have appealed from the decision or contended that it should be varied; and

...

[10] We agree with the Court’s assessment that the question of whether a s 166 order should have been made was an inevitable one in the circumstances, and that it was open to the Court to apply r 48, which permits substantive justice. In terms of the substantive merits in this case, the Court of Appeal recorded Ms Khatri’s description that “Mr Tomar’s indefatigable and obsessive conduct” had “taken an immense financial and crippling emotional toll on her”.⁷

[11] It is, however, arguable that the Court of Appeal should not have made the s 166 order without expressly giving Mr Tomar the opportunity to be heard on that question. That said, we do not consider there is an appearance of a miscarriage of justice, as that term is understood in the civil context, on the facts of this case.⁸ This is

⁵ CA judgment, above n 1, at [10].

⁶ At [11] (footnote omitted).

⁷ At [2].

⁸ Senior Courts Act 2016, s 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

so given the inevitability of the outcome, which had been fully canvassed in the High Court, and the less rights-intrusive nature of the outcome adopted. As the Court of Appeal said, the lack of any express provision in the High Court order to seek leave to continue or bring a proceeding was a “significant disadvantage”, which has now been removed.⁹

[12] The other proposed grounds of appeal have insufficient prospects of success to warrant the grant of leave.

Result

[13] The application for leave to appeal is dismissed.

[14] There is no order as to costs.¹⁰

⁹ CA judgment, above n 1, at [69].

¹⁰ Ms Khatri did not make any submissions on the application for leave to appeal.