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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 12th October, 2023*

+ **MAT.APP.(F.C.)68/2018 & CM APPL. 38179/2018**

ARVIND SINGH Appellant
Through: Mr. Madhu Bhushan and Mr. Gurmeet Singh, Advocates.

versus

RAJNI AND ANR. Respondents
Through: Ms. Pallavi Garg, Mr. K.P. Jayanam and Mr. Sagar Sharma, Advocates.

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+ **MAT.APP.(F.C.)159/2018 & CM APPL. 27745/2018**

RAJNI Appellant
Through: Ms. Pallavi Garg, Mr. K.P. Jayanam and Mr. Sagar Sharma, Advocates.

versus

ARVIND SINGH & ANR. Respondents
Through: Mr. Madhu Bhushan and Mr. Gurmeet Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 27747/2018 (Condonation of delay) in MAT.APP.(F.C.) 159/2018

1. The present Application under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1973 has been filed on behalf of the applicant/appellant seeking condonation of 118 days' delay in filing the present appeal.



2. For the reasons and grounds stated in the present application, the application is allowed, the delay of 118 days in filing the present appeal is hereby condoned.

3. Accordingly, the present application is disposed of.

MAT.APP.(F.C.) 68/2018 & MAT.APP.(F.C.) 159/2018

4. An Appeal bearing No. MAT APP (F.C.) 159/2018 under Section 19 of the Family Courts Act, 1984 has been filed against the Order dated 18.12.2017 whereby the appellant/ wife has sought enhancement of pendente lite maintenance as granted by the Principal Judge, Family Courts under Section 24 of the Hindu Marriage Act, (hereinafter referred to as “*the Act*”), 1955. A cross appeal bearing No. MAT APP (F.C.) 68/2018 under Section 19 of the Family Courts Act, 1984, has been filed by the appellant/husband who has sought reduction of pendente lite maintenance and setting aside of penalty imposed by the Principal Judge, Family Courts.

5. **Briefly stated**, the parties got married on 28.01.1999 and one son Shaurya was born from the said wedlock on 15.04.2000. The differences cropped up between the parties and the husband filed a petition for Divorce on the ground of cruelty and desertion in September 2013.

6. The wife filed an **application under Section 24 of the Act** seeking pendente lite maintenance. She is holding a degree of B.Sc. but has not been working. She had asserted that her husband had been neglecting her and their son and she is finding it difficult to meet the day to day requirements of life including the medical treatment and the maintenance of the son. The husband had been depositing Rs.10,000/- per month in her bank account with State Bank of India since September, 2013, but the said amount is too meagre for her to meet her expenses.



7. The wife stated that the monthly expenditure of herself and the son is about Rs.70,000/- per month aside from medical expenditure and educational expenditure of the child etc. She, therefore, sought maintenance in the sum of Rs.1,25,000/- per month aside from litigation expenses in the sum of Rs.55,000/-.

8. The wife has asserted that the husband is a practicing lawyer in Supreme Court and has a Chamber in Saket. He has lucrative practice aside from income from other sources. He has a share in 60 bighas of agricultural land in village Bisaria, Dadri, Greater Noida, Gautam Budh Nagar from where he is having an agricultural income. He also owns a plot of land measuring 150 Sq. Mtrs. in Greater Noida, U.P. He has several credit and debit cards, bank accounts and is supporting a luxurious lifestyle. He also has an earning of Rs.25,000/- being the owner of Dharam Kanta. His annual income is asserted to be around Rs.50 lakhs.

9. The husband while admitting that he is an practicing Advocate having a Chamber in Saket, asserted that he has various day to day expenses. He is paying home loan @ Rs.5,000/- per month for a flat No.B-25B, Vijay Nagar, Second Floor, near University area, Delhi, which is owned by him, but in which the appellat is residing. He has been regularly paying the school fee of his son and also fulfilling all his duties towards the appellat and the son. He denied that he has a lucrative practice or income from several sources as claimed by the appellat. He has asserted that because of the repeated acts of cruelty committed by the wife, his psychological health has deteriorated adversely affecting his legal practice and standing at Bar. While he admitted that his late father owned 24 bighas of land in village Bisara and that he has 1/4th share in the land, but explained that it is given on



batai (on lease) and there is hardly any agricultural income from the land. He denied having income from other sources as asserted by the wife. He claimed that his income is about Rs.25,000/- per month and he is hand to mouth and is meeting his expenditure by borrowing money from his mother, friends and relatives.

10. **The learned Principal Judge, Family Court** considered the stated monthly expenditure of the husband which as per his own showing was about Rs.25,000/- to Rs.30,000/- aside from the expenditure that he was incurring on maintaining the wife and his son. The Income Tax Returns also reflected an annual income of about Rs.2.7 lakhs to 3.2 lakhs over a period of three years. It was also noted that the wife along with the son was residing in a flat which was owned by the husband and for which monthly EMIs were still being paid by him. The learned Principal Judge, thus observed the disparity in the projected income and the monthly expenditure and observed that the husband was not truthful in disclosing his actual income. A moderate assumption of the income of the husband was made as Rs.1 lakh per month and having regard to the expenditure of the child and the wife, interim maintenance was granted as under :

*“19. Therefore, in the totality of the facts and circumstances of the case, the application under Section 24 of HMA moved on behalf of the applicant-respondent wife is allowed thereby directing the non-applicant-petitioner-husband to pay pendente-lite maintenance @ Rs.25,000/- per month i.e. Rs.15,000/- per month to the applicant-respondent-wife and Rs.10,000/- per month to their minor son. It is directed that the current maintenance charges be deposited in the bank account of the applicant-petitioner-wife by 10 of each succeeding month. **This maintenance shall be payable w.e.f.***



date of filing of the application i.e. 26.11.2013. default or delay in the payment of maintenance shall invite penal costs/ compensation of Rs. 1,000/- per day.

20. However, as the petitioner-husband has been admittedly depositing Rs.10,000/- per month in the bank account of the respondent wife w.e.f. September, 2013, the said amount shall be adjusted and the arrears shall be calculated from the date of filing of the application i.e. 26.11.2013 and the arrears shall be payable @ Rs.7,500/- per month to the applicant-respondent-wife along with the current maintenance charges of Rs.25,000/- i.e., Rs. 32,500/- per month till such time the arrears/outstanding dues are completely realised. The respondent-wife shall also be entitled to litigation costs of Rs.33,000/-. which is to be paid forthwith on or before 31.01.2018, failing which the respondent-husband shall be liable to pay penalty/cost of Rs.550/- per day.”

11. **Aggrieved by the said Order**, the appeal has been preferred by the wife seeking further enhancement of interim maintenance to Rs.1,25,000/- per month.

12. **The husband has filed cross Appeal** challenging the imposition of penalty of Rs.1,000/- per day on the interim maintenance and Rs.550/- per day on litigation cost vide Order dated 18.12.2017 while granting interim maintenance to the respondent/wife. The appellant has also sought a reduction of interim maintenance granted to the respondent from Rs.25,000/- per month to Rs.15,000/- per month.

13. **Submissions heard and record perused.**

14. In the present case, the wife despite having a degree of B.Sc. has not been working while the respondent is admittedly a practicing Advocate.



The appellant/ wife has essentially based her claim for enhancement on the ground that the monthly income of the respondent is Rs.4 to 5 lakhs but has not been able to establish the same by any documentary evidence. The Principal Judge, Family court has taken into consideration the expenditure of the husband and has reasonably assessed his income as Rs.1 lakh per month.

15. The wife has neither been able to show that the estimation of the income of the husband is incorrect or that he has a much higher monthly income; thus, we do not find any reason to question this assessment of monthly income of the husband, made in the impugned Order. The learned Principal Judge has considered reasonably the expenditure of the wife and the son and has directed payment of interim maintenance @ Rs.25,000/- per month. There is no ground made out by the wife for enhancement of the maintenance.

16. On the other hand, the sole ground on which the husband has sought reduction of maintenance is that the respondent/wife has a degree of B.Sc. There is no denial that the wife is a graduate having a degree, but she has never been gainfully employed. No inference can be drawn that merely because the wife is holding a degree of graduation, she must be compelled to work. It can also not be presumed that she is intentionally not working solely with an intent to claim interim maintenance from the husband.

17. The interim maintenance has been granted reasonable by taking the circumstances of both the parties. We do not find any ground to interfere in the findings of the learned Principal Judge, Family Courts or grant reduction of interim maintenance.

18. The appellant/husband has also challenged the imposition of penalty @ 1,000/- per day on default or delay in payment of maintenance amount



and penalty of Rs.550/- per day on delay in paying the litigation cost. The grievance of the husband is that the penalty imposed is highly exorbitant and may be set aside.

19. We find that the penalty imposed for delay in payment of interim maintenance of Rs.25,000/- per month to the wife has been fixed at Rs.1,000/- per day which comes to Rs.30,000/- per month i.e. more than the interim maintenance which has been allowed to the respondent. It is not justiciable that the penalty surpasses the substantial relief granted by way of pendente lite maintenance. For the same reason, the imposition of penalty of Rs.550/- per day for the day for the delay in payment of litigation cost of Rs.33,000/- is not justiciable.

20. We do not find any reason to reduce the maintenance; however, we modify the Order dated 18.12.2017 and set aside the penalty of Rs.1,000/- per day on the delayed payment of interim maintenance and direct that interest @ 6% per annum be paid to the respondent /wife for the delayed payment of interim maintenance. We also set aside the penalty of Rs.550/- per day imposed on delay in payment of litigation cost.

21. The Appeals are accordingly disposed of along with the pending application.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 12, 2023

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