

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

% *Date of Judgment: 10.02.2014.*

+ CRL.REV.P. 75/2013 & CrI. M.A.Nos.1641-1643/2013

MAULANA SALEEM

..... Petitioner

Through Mr. Ishaan Chhaya, Adv.

versus

TAMIZAN

..... Respondent

Through Mr. M.L. Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The petitioner is aggrieved by the impugned order dated 11.05.2012 wherein while disposing off a petition under Section 125 of the Cr.PC, the Family Court Judge had directed the petitioner to pay maintenance @ Rs.3,500/- per month which would be effective from January, 2012; for earlier periods i.e. from the date of filing of the petition which was on 16.04.2007 up to 31.12.2009, the petitioner had been directed to pay maintenance @ Rs.1,500/- per month and w.e.f.

01.01.2010 up to 31.12.2011, he had been directed to pay maintenance @ Rs.3,000/- per month.

2 The allegation of the complainant-wife was that the petitioner is running a furniture showroom at D-1/B, Rana Pratap Road, New Delhi; it had been noted that this version had remained unchallenged and uncontroverted even in the cross-examination. The petitioner had in fact admitted in his cross-examination that he owns this showroom at D-1/B, Rana Pratap Road but his business is not doing well these days. It was in this background that the Court had fixed income of Rs.15,000/- per month qua the petitioner.

3 At the outset, learned counsel for the respondent has pointed out that there is a delay of 197 days in filing the present petition and there is no justifiable explanation for the same. Attention has been drawn to para 4 of the application seeking condonation of delay of 197 days. It is reproduced herein as under:-

“That it is respectfully submitted that the petitioner is an extremely poor and illiterate person who assigned the matter to his counsel for the purpose of defending him before the Learned Trial Court. It is submitted that the then counsel did not even inform the petitioner about the fate of the subject complaint and it was only in the middle of October, 2012 when the petitioner approached his counsel and asked about the status of the case, he came to know that the complaint has been disposed

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off on 11.05.2012. Moreover the then counsel did not apply for the certified copies of the order in time; rather the certified copy was applied only on 01.11.2012 and the same was received on 09.11.2012. Moreover, the file of the complaint case filed before the Family Court, was kept by the clerk of the said counsel in the category of decided cases because of which the matter could not be filed within time. Thereafter, in the circumstances explained hereinabove, the accompanying petition was filed by the counsel of the petitioner as a First Appeal against the order nomenclatured as (FAO) under Section 19 of the Family Courts Act, on 23.11.2012. However, the said appeal was filed with the Registry who raised certain objections and later on, it was returned with the direction to file a criminal revision petition under Section 397 of the Criminal Procedure Code. In these circumstances, a delay of 197 days has occurred in the filing of the petition which may kindly be condoned in the interest of justice.”

4 This is the only explanation which finds mention in the body of this application.

5 Learned counsel for the petitioner states that the petitioner is an illiterate man and he was under wrong legal advice. The petition was disposed off on 11.05.2012 and he was not informed by his counsel about the repercussions of the same. This part of the argument does not find mention in the pleading. In fact the order dated 11.05.2012 was pronounced after reserving it on 20.04.2012; on a specific query put to the learned counsel for the petitioner on this score, he admits that the petitioner was aware of this order of 11.05.2012 but he did not know its

impact. Admittedly para 4 of the application does not state that the counsel who was defending the petitioner in the trial Court was not the same person who had applied for the certified copy and in fact was also the same Advocate who had filed the first appeal. This is also not disputed even today. It is not disputed that the counsel who had finally applied for certified copy of the order dated 11.05.2012 was the same counsel who had continued to defend the petitioner.

6 Record shows that the certified copy of the order was applied much after the period of limitation i.e. on 01.11.2012; para 4 of the application again states that the file of the complainant case was then kept by the clerk of the counsel and as such it could not be filed in time; detail of the counsel and clerk has not been given. Dates do not find mention in this application. When the first appeal was filed and when it was returned has also not been detailed.

7 It is not as a matter of routine that the Courts must grant condonation of delay; unless and until, there is a justifiable and cogent explanation made out for the delay, the delay has not to be condoned; this is especially keeping in view the fact that a valuable right accrues to the opposite party when in the entire period of limitation, the impugned

order has not been assailed giving a fairly rightful reason for the opposite party to hold that the order has now attained a finality. There is no explanation much less any justifiable explanation given in the body of the application. It is bereft of all particulars and details. No date has been given. The names of the counsel nor the clerk who had kept the file of the petitioner with him has been detailed; moreover the same counsel was appearing for the petitioner at the time of disposal of the petition on 11.05.2012 and continued even thereafter; he had also applied for the certified copy of the impugned order which as noted supra was much after the period of limitation. The counsel has failed to give any reason for the same. The date when the first appeal was filed which was under mistaken advice and when it was withdrawn has also not been given. The entire delay of 197 days which is almost half a year having been remained unexplained, the petitioner is not entitled to this discretionary relief.

8 The Supreme Court in AIR 2010 SC 3043 Balwant Singh (dead) Vs. Jagdish Singh and Others in this context has held as under:-

“In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed

for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.”

9 On merits, learned counsel for the petitioner submits that under Section 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 maintenance under Section 125 of the Cr.PC could not have been ordered. Admittedly such an argument was not raised before the trial Judge. That apart since this Court is not inclined to condone the delay of 197 days in filing the petition, the merits of controversy cannot be reexamined.

10 Petition as also the applications are dismissed.

INDERMEET KAUR, J

FEBRUARY 10, 2014

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