



\$~3

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

% ***Date of decision: 04th October, 2023***

+ **MAT.APP.(F.C.) 276/2019 & CM APPLs. 46546/2019, 46547/2019**

ANIL KUMAR Appellant

Through: Ms. Monica Kapoor, Advocate.

versus

NEETU Respondent

Through: Ms. Dipika Saxena, Advocate.

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. 46546/2019 (Condonation of delay)

1. The present Application under Section 5 of the Limitation Act, 1963 has been filed on behalf of the applicant/appellant seeking condonation of 99 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 99 days in filing the present appeal is hereby condoned.
3. Accordingly, the present application is disposed of.

MAT. APP. (F.C.) 276/2019

4. The present Appeal has been preferred under Section 19 of the Family Courts Act, 1984 by the appellant/husband challenging the Order dated 13.05.2019 of the learned Principal Judge, Family Court, granting interim



maintenance in the sum of Rs. 8,000/- per month to the respondent/wife and her three children under Section 24 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*).

5. Briefly stated, parties got married on 24.12.2005 and three children were born from the said wedlock on 06.12.2006, 18.07.2012 and 03.03.2015 respectively. Differences developed between the parties and they separated in January, 2018.

6. A petition for Divorce bearing HMA No. 524/2018 was filed by the appellant/husband under section 13(1)(ia) of the Act, 1956 and during the pendency of the petition, the application under Section 24 of the Act, 1956 was filed by the respondent/wife seeking *interim maintenance* of Rs 40,000/- per month and litigation costs amounting to Rs 35,000/-.

7. It was claimed by the respondent/wife that she does not own any movable or immovable property and does not have any source of income to maintain herself and her three children. On the other hand, the appellant/husband is a man of means, earning more than Rs.50,000/- per month from his job at State Bank of India and Rs. 10,000/- from other sources. Therefore, she claimed Rs 40,000/- per month for herself and her three children.

8. **The appellant/husband refuted the claims** of the respondent/wife and claimed that the respondent/wife was working at a General Store and earning Rs. 25,000/- per month and was also maintaining her mother. It was denied that he earned more than Rs.50,000/- per month from his job. He explained that he was working on contract basis with the SBI and getting a daily wage of Rs. 400/- per day. However, he was removed from his job as a wage worker on 16.04.2018, when his contract expired. Thereafter, he has



been working as a sweeper on daily wages in Union Bank of India and earns Rs.400/- per day. It was further claimed that he was living alone after the separation and his earnings were not sufficient to meet his requirements of food, washing clothes, mobile charges and use of bus. Thus, the respondent/wife is not entitled to any maintenance.

9. **Learned Judge, Family Court** observed that it is the legal and moral duty of the husband to maintain his wife and children. From the material on record it was not established by the appellant/husband that the respondent/wife had any independent source of income. Considering the admitted stance of the husband that he is a daily wage worker, his income was assessed at Rs.12000/- per month as per the minimum wages for unskilled workers. The husband was directed to pay Rs.8000 per month as maintenance to the respondent/wife for herself and the three children from the date of the application till the date of the disposal of the petition (which was disposed of on 13.05.2019).

10. **Aggrieved, the appellant/husband has filed the present appeal seeking setting aside of the Order dated 13.05.2019.**

11. *The appellant/husband has contended* that that he is daily wage worker and gets Rs. 400/- per day on working days i.e. days on which he actually works. He does not get money/pay for the days which are holidays or on which he takes leave. Thus, on an average he earns Rs. 8,000/- per month. The learned Judge *vide* Order dated 13.05.2019, has awarded an amount of Rs. 8,000/- p.m. towards the maintenance of the respondents which is his entire monthly earning and the appellant/husband is left with no money to maintain himself. He thus, has sought setting aside of the impugned order of maintenance.



12. **Submissions heard from learned Counsels for both the parties and record perused.**

13. At the outset, we observe that the appellant/husband is a casual worker and there is no documentary proof of his monthly income, except what is being claimed by him and stated in his Affidavit of Income. As per the submissions of the appellant/husband, he being a daily wage, is entitled to his wage only on the working days which comes to about Rs. 8,000/- per month which is not even sufficient for him to meet his requirements.

14. The appellant/husband has claimed that the respondent/wife is working in a grocery shop and is earning, but the respondent/wife in her Affidavit of Income and in her Application under Section 24 of HMA, 1955 has denied that she has any independent source of income.

15. During the course of the arguments, it was admitted on behalf respondent/wife that though she is also a daily wager, but she does not get any regular work. She is earning much less than the appellant/husband. Furthermore, she is maintaining two children while the eldest child is with the appellant/husband.

16. Though the monthly income of the appellant/husband may not be sufficient even to meet his own day-to-day expenses, but it has been rightly observed by the learned Principal Judge, Family Court that it is the legal and moral obligation of the appellant/husband to maintain his wife.

17. In the present case, the respondent/wife is also trying to make ends meet and works as and when she gets the work, as per her submissions.

18. In these circumstances, taking note of the income of both the appellant/husband and intermittent earnings of the respondent/wife and also considering that the appellant/husband is shouldering the responsibility of



one child though the other two younger children are in the custody of the respondent/wife, this Court is constrained, in view of the financial status of the parties, to reduce the quantum of maintenance from Rs. 8,000/- per month to Rs. 3,500/- per month towards the maintenance of the respondent/wife and the two children. It is made clear that the amount already paid in excess by the appellant/husband to the respondent/wife shall be adjusted in future.

19. The present Appeal is accordingly disposed of with these directions and modification.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 04, 2023
va