

Court No. - 39

Case :- FIRST APPEAL DEFECTIVE No. - 401 of 2023

Appellant :- Ishant Kumar Vishvakarma

Respondent :- Smt. Haritima Sharma

Counsel for Appellant :- Dheeraj Kumar Dwivedi

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Arun Kumar Singh Deshwal,J.

Re: Civil Misc. Delay Condonation Application No. 01 of 2023

1. Heard Sri Dheeraj Kumar Dwivedi, learned counsel for the appellant and perused the record.

2. The present appeal has been filed with a delay of 175 days. In view of the explanation furnished and the order proposed to be passed, delay in filing the present appeal is condoned. Delay condonation application is **allowed**.

Order on Appeal

3. Present appeal has been filed under Section 19 of the Family Courts Act, 1984 against the order dated 03.02.2023 passed by the learned Additional Principal Judge, Family Court No.1, Kanpur Nagar in Case No. 2500 of 2021 (Ishant Kumar Vishwakarma Vs. Smt. Haritima Sharma) under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act'). By that order, the learned court below has awarded interim maintenance @ Rs. 6,000/- per month to the respondent from the date of filing her application i.e. from September 2022. Also, one time legal expense Rs. 5,000/- has been provided to the respondent. As on date, Rs. 95,000/- would be due from the appellant upto the month of November 2023.

4. Having heard learned counsel for the appellant and having perused the record, we find no good ground to offer any interference in the present appeal. In the first place, by way of

principle, minimum amounts have to be provided by the earning spouse to the non-earning spouse where the parties are involved in a matrimonial discord. Seen in that light, it is undisputed, the present appellant is the earning spouse. At the same time, the respondent is disclosed to be a home maker with no independent source of income. Therefore, the liability to pay interim maintenance exists on the appellant.

5. As to the quantum of interim maintenance, it is also undisputed, the appellant is an able bodied citizen holding a B.Tech degree. As to his engagement, undisputedly, the appellant works as a Manager at a private corporation at NOIDA. With respect to his income, the respondent claims, the appellant is earning Rs. 80,000/- per month. Though the appellant denied that fact assertion, he neither filed his pay-slip nor produced copy of his bank accounts nor produced copy of his income tax return.

6. In such circumstances, the learned court below has nor erred in providing for interim maintenance @ Rs. 6,000/- per month, keeping in mind the educational qualification and the post designation of manager in a private corporation namely Guangzhou Mingser Technologies Company Limited.

7. Once the status of his employment was not disputed by the appellant, the onus remained on him to establish his correct income. Being a special fact known to the appellant, it was for the appellant to have disclosed his correct income by placing on record copy of pay-slip and also copies of bank accounts and income tax return. That onus was never discharged.

8. In the context of summary proceeding, to provide interim maintenance, the learned court below has made no error in making rough and estimation of the income of the appellant to the extent, it has provided for interim maintenance @ Rs.

6,000/- per month. The contention of the appellant that his monthly income was only Rs. 12,000/- per month was wholly unsubstantiated. In absence of any material to establish that fact, the same remained a bald allegation.

9. Seen in that light, the learned court below has not erred in providing for interim maintenance @ Rs. 6,000/- per month. Similarly, the learned court below has not erred in providing for one time legal expense Rs. 5,000/- to the respondent. Again, by way of principle, the learned court below has not erred in providing for interim maintenance from the date of the application filed under Section 24 of the Act. Principally such amounts are awarded from the date of the application unless facts commend otherwise.

10. In absence of any special fact alleged or proven by the appellant to justify the award of interim maintenance from the date of the order, no error is seen to have committed by the learned court below in providing for interim maintenance from the date of application.

11. Last, it has been submitted, some time may be granted to the appellant to clear the entire default. That prayer we find acceptable.

12. Accordingly, the present appeal is **disposed of** with the following directions :

(i) Subject to the appellant furnishing adequate security to the tune of Rs. 1,00,000/- to the satisfaction of the learned court below in the shape of other than cash or bank guarantee on or before 30.11.2023, no coercive measure shall be adopted against the appellant, subject to other conditions provided herein.

(ii) As to the amount of Rs. 95,000/- being arrears of maintenance and legal expense from September 2022 to

November 2023, the appellant shall deposit Rs. 35,000/- on or before 30.11.2023 and the balance amount Rs. 60,000/-, be deposited in three equal quarterly installments of Rs. 20,000/- each, such installments being payable on or before 31.01.2024, 31.03.2024 and 30.06.2024 respectively.

(iii) The appellant shall continue to pay to the respondent or deposit before the learned court below, monthly maintenance allowance from the period December 2023 onwards as and when it becomes due under the terms of impugned order.

13. Any amount already deposited by the appellant may be adjusted towards payment/s to be made by the appellant towards the last installment/s.

14. All amounts may either be paid to the respondent, directly or be deposited by the appellant with the Court below within time indicated above. In the latter case the amount/s shall be released to the respondent, forthwith.

15. However, it is made clear, in the event of failure on part of the appellant to comply with any part of the order, coercive measures be revived from that stage without any further reference to this Court.

16. Subject to such compliances being made, the learned court below may make best efforts to conclude the proceedings, as expeditiously as possible.

Order Date :- 6.11.2023
Abhilash

(Arun Kumar Singh Deshwal, J.) (S. D. Singh, J.)