

Court No. - 39

Case :- FIRST APPEAL DEFECTIVE No. - 435 of 2023

Appellant :- Santosh Kumar @ Ram Bharos

Respondent :- Prema @ Gudiya

Counsel for Appellant :- Kamlesh Kumar Singh

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

Civil Misc. Delay Condonation Application No. 01 of 2023

1. Heard Sri Kamlesh Kumar Singh learned counsel for the appellant and perused the record.
2. Cause shown is sufficient. Delay condonation application is **allowed.**
3. Delay in filing the appeal is condoned.

Order on Appeal

3. Challenge has been raised to the order dated 06.7.2023 passed by the Principal Judge Family Court, Chandauli under Section 24 of the Hindu Marriage Act, 1955 in Case No. 77 of 2020 (Santosh Kumar @ Ram Bharos Vs. Prema @ Gudiya). By that order, the learned court below has awarded interim maintenance @ 2500/- per month to the respondent, during pendency of the divorce proceedings, instituted by the present appellant.
4. Solitary submission being advanced is, impugned order cannot be enforced against the appellant in face of the order dated 17.3.2021 passed by the learned Principal Judge Family Court, Chandauli providing for higher maintenance @ 3000/- per month under Section 125 Cr.P.C..

5. Thus, it has been submitted, while two orders may exist, at the same time subject to continued compliance of the order providing for higher maintenance, the other order providing for lesser maintenance may not be enforced.

6. On principle, submission advanced by learned counsel for the appellant is true. Thus, though there is no need to set aside the impugned order dated 06.7.2023, at the same time subject to the appellant complying with the order dated 17.3.2021 passed under Section 125 Cr.P.C. subject to his paying the amount of monthly maintenance @ 3000/- per month under that order, the order dated 06.7.2023 may not be independently enforced against the appellant.

7. As to the correct fact situation, it is left open to the appellant to apply before the learned court below and establish the correct facts.

8. Appeal is **disposed of**.

Order Date :- 28.11.2023

Faraz

(Shiv Shanker Prasad, J.) (S. D. Singh, J.)