

Court No. - 39

Case :- FIRST APPEAL DEFECTIVE No. - 452 of 2023

Appellant :- Vipin Kumar

Respondent :- Smt. Geeta Rani

Counsel for Appellant :- Reena Pal, Adarsh Srivastava

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

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

1. Heard Sri Adarsh Srivastava alongwith Ms. Reena Pal, learned counsel for the appellant and perused the record.

2. Present appeal has been filed with a short delay of 19 days. In the context of short delay and 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, arising from the order dated 11.08.2023 passed by the learned Additional Principal Judge, Family Court, Court No. 2, Bulandshahr, in Matrimonial Case No. 1420 of 2019, whereby the learned court below has passed an order referable to Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act'), providing for interim maintenance @ Rs. 2,000/- per month to the respondent from the date of her application being 20.05.2022. Also, the learned court below has awarded Rs. 10,000/- towards one time legal expense.

4. On merits, we find, no good ground to offer any interference in the present appeal. In the first place, certain minimum amounts are necessary to be provided to such an estranged spouse at the cost of earning spouse to ensure preservation of

life with minimum dignity. Second, in the present facts, though the respondent led evidence to establish the financial status of the appellant and his earning by filing a proper affidavit, making disclosure of rental and other income of the appellant which the respondent estimated at about Rs. 80,000/- per month, the appellant failed to lead any cogent evidence to rebut the same.

5. As to the submission, the respondent is gainfully employed as a teacher, we find, that plea has been first raised in these proceedings that too only by way of oral submission. Unless material facts are pleaded and evidence led, the appeal court may not act on such a plea.

6. As to the further submission of learned counsel for the appellant, the appellant is not a doctor but only working at a medical establishment, even if that be true, it has not been proved, the appellant has no means of earning either by working at such medical establishment or from rental accommodation. Further, the fact, the appellant may have suffered physical injuries in a road accident in the year 2017 may not itself establish that the appellant is bedridden. That plea is not found supported by the medical certificates now relied upon. Merely because the appellant has been advised not to lift heavy weight and not to physically exert beyond a point, it may not lead to the conclusion that he is bedridden.

7. In any case, the learned court below appears to have made allowance on the ground of injuries suffered by the appellant and provided for interim maintenance @ Rs. 2,000/- per month though an able bodied citizen may be assumed to work hard enough to earn not less than Rs. 12,000/- per month.

8. The fact that three children born to the parties are living with the appellant, may not be a ground to deprive the respondent

interim maintenance to sustain her life. Seen in that light, one time legal expense is also wholly reasoned.

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

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

(i) Subject to the appellant furnishing adequate security to the tune of Rs. 50,000/- to the satisfaction of the learned court below in the shape of other than cash or bank guarantee on or before 31.12.2023, no coercive measure shall be adopted against the appellant, subject to other conditions provided herein.

(ii) As to the amount of Rs. 50,000/- being arrears of interim maintenance (from May, 2022 to December, 2023) and legal expense, the appellant shall deposit a sum of Rs. 10,000/- (towards legal expense) on or before 31.12.2023 and the balance amount Rs. 40,000/-, be deposited in four installments of Rs. 10,000/- each, such installments being payable on or before 31.03.2024, 31.05.2024, 31.07.2024 and 30.09.2024 respectively.

(iii) The appellant shall continue to pay to the respondent or deposit before the learned court below, monthly maintenance allowance from the period January, 2024 onwards as and when it becomes due under the terms of impugned order.

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

12. 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.

13. 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.

Order Date :- 6.12.2023

Abhilash

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