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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR(F) No.127 of 2013(O&M)

Date of Decision:12.08.2015

SANGEETA MADHELEY AND ORS

.....Petitioners

Vs.

SANTOSH KUMAR MADHELEY

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Neeru Bansal, Advocate along with
Ms. Sangeeta Madheley-petitioner No.1.

Mr. Hitesh Ghai, Advocate along with
Mr. Santosh Kumar Madheley-respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J. (Oral)

CRM-39991-2013

1) This application is under Section 5 of Limitation Act, seeking condonation of delay of 925 days in filing the appeal. Applicant-Sangeeta Madheley is wife of respondent-Santosh Kumar Madheley. She along with minors, Master Jayant Kumar and Master Karan Kumar have come to this Court for enhancement of maintenance granted to them by the Family Court under Section 125 Cr.P.C. in favour of petitioner No.1.

2) Applicant-petitioner No.1 claims herself to be a poor lady without any source of income to meet day to day expenses. She has

responsibility of two minor children aged 11 and 8 years. Trial Court granted only an amount of Rs.3,000/- per month as maintenance. This meagre amount is totally insufficient for day to day expenses for growing minor kids and for herself. Applicant also pleaded that in FAO No.2219 of 2013, High Court directed the respondent to pay Rs.25,000/- as litigation expenses to the petitioners and now after getting encashment of said demand draft, deponent has acquired resources to challenge the order and in this process, delay of 295 days has occurred which is neither intentional nor deliberate and is liable to be condoned.

3) Respondent has challenged the aforesaid application by projecting a case of deliberate delay.

4) After hearing the application as well as the main case, this Court finds that the applicant has successfully demonstrated before this Court, the sufficiency of reasons for condonation of delay. Even otherwise, merits of the case cannot be thrown at the threshold of technicality. Looking to the composition of family of the petitioner and status of minor as on date, this Court is convinced that delay in filing the revision petition is liable to be condoned.

5) Accordingly, application is allowed. Delay in filing the revision petition is hereby condoned.

CRR(F)-127-2013

1) Prayer is for enhancement of maintenance amount on the ground that petitioner was married with respondent on 21.11.1999. Two sons namely Jayant Kumar and Karan Kumar took birth from this wedlock

who are now aged about 11 years and 8 years respectively. Both the children are in custody of petitioner-wife. Matrimonial discord took place between the couple and according to petitioner-wife, she was ultimately turned out of the matrimonial house on 25.07.2002, when she was having 9 months pregnancy. Petitioner filed application for maintenance under Section 125 Cr.P.C. claiming that respondent is a salaried person having salary of Rs.16,000/- per month and various fixed deposits in the bank along with moveable and immoveable properties.

2) Respondent-Santosh Kumar has appeared as RW-1 and has admitted that he is getting salary of Rs.11,000/- per month but on account of certain deductions, carry on salary was Rs.5594/-, out of which he is paying Rs.2300/- per month to the petitioner as maintenance in view of order passed in proceedings of Domestic Violence Act. Respondent has admitted that he has two sons and both the sons are living with the petitioner. Respondent has taken loans from the bank and accordingly, deductions are being made from the salary. Respondent has also admitted that quarterly fee of the elder son is Rs.900/- per quarter of a year but he pleaded ignorance about the fee which is being paid by the petitioner for education of his younger son. Though he admitted that both the children are attending tuition classes but he is not aware about the tuition fee being paid by the petitioner-wife. Respondent also admitted that Rs.45,000/- would be spent on education and upbringing of the children. However, he pleaded that petitioner-wife is working with her brother and requires Rs.2500-3000/- for herself towards her personal expenses. Parents of the respondent are not alive. He has no other responsibility except his family.

The watch on the wrist of the respondent was found to be of Tommy Hilfiger make. Though effort was made by him to show that it was of Rs.100/- only. Respondent is serving as Peon in Ministry of Indian Audit and Accounts.

3) The salary structure of the respondent is Rs.10,000/- plus per month. Learned counsel for the respondent has admitted that respondent is working as Peon in the office of Comptroller and Auditor General of India and his gross salary is Rs.12,862/-. On deductions, the carry on salary comes out to be Rs.5108/-. District Judge-cum-Family Court by taking note of gross pay to be Rs.12,162/- per month and by considering the loan advances taken by the husband-respondent, enhanced the amount of Rs.2300/- to Rs.3,000/- per month to the petitioner as well as for her two children from the date of filing of petition. Besides this, an amount of Rs.5500/- was also awarded towards litigation expenses.

4) Learned counsel for the petitioner states that the loan advances taken by the respondent-husband and their deductions are meant for the husband only as these are beneficial transactions to husband. The entitlement of the petitioner and minor children cannot be curtailed on that premise because ultimate beneficiary of those transactions is the husband only and he cannot deny the maintenance on that score. The award of Rs.3,000/- is totally on the lower side and is not sufficient to meet day to day expenses of minor child and the petitioner-wife. According to learned counsel for the petitioner, an amount of Rs.12,862/- per month has to be divided into four parts. Three parts should be given to the petitioners towards maintenance of herself as well as for

two minor children. Learned counsel for the petitioner also highlighted that in divorce proceedings, amount of Rs.5,000/- was fixed as maintenance by the Court for all the three claimants. Learned counsel for the respondent has submitted that arrears of maintenance to the tune of Rs.35,000/- has been cleared by him. An amount of Rs.15,000/- was paid towards arrears of maintenance on 09.07.2015 during proceedings of the case which was accepted by the petitioner under protest on the ground that total arrears of maintenance comes out to be Rs.50,000/-. Although subsequently, both the parties exchanged their notes and ultimately it was found that arrears of maintenance on calculations comes out to be Rs.35,000/- as on that date. On the adjourned date, an amount of Rs.15,000/- in cash and cheque of Rs.5,000/- was handed over to the learned counsel for the petitioner and parties were ad idem that there is no arrear of maintenance left till August, 2015. Apparently, an amount of Rs.5,000/- was fixed during the proceedings of divorce petition and this fact was admitted by the respondent on 16.01.2015. This Court recorded the aforesaid fact in the order. Keeping in view the status of the respondent, his salary structure and other attending circumstances of the case it will be just and expedient to fix half of the salary of the respondent to be maintenance for petitioner-wife as well as for two minor children. Amount of Rs.6,000/- per month in lumpsum would suffice to meet day to day expenses of the petitioner-wife and minor children according to status of the respondent. The deductions, if any, allowed by the respondent cannot come in the way of entitlement of the petitioner and minor children.

5) Resultantly, the impugned order dated 20.12.2010 passed by District Judge, Family Court, Faridabad is modified thereby fixing an amount of Rs.6,000/- per month as maintenance to the petitioner wife and two minor sons namely Jayant Kumar and Karan Kumar. Petitioner No.1 is also entitled to an amount of Rs.11,000/- towards litigation expenses. In view of order dated 03.08.2015, parties were ad idem that the arrears of maintenance up to August, 2015 has been cleared by the respondent.

6) In view of attending circumstances of the case, the order of enhancement of maintenance of this Court would take effect from month of September, 2015, subject to adjustment of any other maintenance paid by the respondent to petitioner-wife or the minor children.

7) With this modification, this revision petition is disposed of.

August 12, 2015

SwarnjitS

**RAJ MOHAN SINGH
JUDGE**