IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36085-2016 (O&M)
Date of Decision : 09.12.2016

Chhinder Singh

.....Petitioner

Versus

Simarpal Kaur

.....respondent

Present : Mr. A.S.Manaise, Advocate,
for the petitioner.

None for the respondent.

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JAISHREE THAKUR, J.

1. The instant petition under Section 482 Cr.P.C. has been filed seeking quashing of impugned order dated 18.05.2016 (Annexure P-5) passed by learned Addl. Sessions Judge, Fazilka allowing an application filed under Section 5 of the Limitation Act for condonation of delay in filing of the revision petition.

2. In brief, the facts are that the respondent herein filed an application under Section 125 Cr.P.C. before the learned Judicial Magistrate Ist Class, Fazilka against the petitioner for grant of interim maintenance. The petitioner filed his reply to the said application denying the factum of marriage stating that the respondent and her daughter were not entitled to maintenance. Initially interim maintenance was granted which was assessed at ₹ 1500/- per month to the minor daughter while declining to award any maintenance to respondent Simarpal Kaur by holding that she was not legally wedded wife of the petitioner herein. The matter was decided wherein the Magistrate allowed the maintenance application by granting a sum of ₹ 2,000/- to be paid per month to the minor daughter but declined to

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grant maintenance to Simarpal Kaur holding her not to be a wife of the petitioner. Simarpal Kaur filed a revision petition against the order dated 05.09.2011 while moving an application under Section 5 of the Limitation Act seeking condonation of delay of 610 days in filing the revision. The said application was allowed by the Revisional Court and the delay of 610 days in filing the revision petition was condoned. Aggrieved against the said order condoning of 610 days in filing of the revision petition, the instant petition has been preferred.

3. Learned counsel for the petitioner contends that the delay has wrongly been condoned because there are no specific details given therein as to when certified copy was applied, when the respondent approached her Advocate at Chandigarh and, therefore, once there is no detailed explanation given in the application as to how the delay was caused, the learned Revisional Court erred in condoning the delay.

4. Notices were issued of the said petition, however, there is no representation on behalf of the respondent.

5. I have heard learned counsel for the petitioner .

6. The Addl. Sessions Judge noticed that the petitioner has stepped into the witness box and tendered into evidence her affidavit that she had initially approached her Advocate at Chandigarh to challenge the impugned order declining to grant her maintenance and thereafter the counsel at Chandigarh advised her that appeal would lie before the Court of Sessions. The learned Addl. Sessions Judge after considering the evidence and the judgments relied upon by the counsels for the parties held that the petitioner had come forward to seek maintenance under Section 125 Cr.P.C. since her claim had been declined by the trial Court and she could not be

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denied fair hearing merely on the hyper technical ground of limitation. Learned Sessions Judge also held that the right of maintenance is a continuous cause of action and, therefore, would be entitled to the application being allowed.

7. I have perused the order passed and found no infirmity in the same. Admittedly, there is delay of 610 days in filing of the revision against the order passed by the trial Court. A perusal of the application filed shows that she had sent the papers to Chandigarh for filing of an appeal. In the grounds of revision, it was specifically stated that she was an illiterate woman and she sent the papers to Sh. Amrik Singh, Advocate but her counsel did not file the said appeal and, therefore, the delay, if any, was not on her part. Even otherwise, in the judgment as rendered in **Brijesh Kumar & Ors. V State of Haryana** Special Leave Petition (Civil) Nos.6609-6613 of 2014 it has been held :

> " *The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone."*

8. In the instant case, the respondent stepped into the witness box

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and explained the reason for the delay which was a sufficient to allow the application filed under Section 5 of the Limitation Act. Most litigants would not want to sleep over their rights, especially when there is a destitute person seeking maintenance. It would be travesty of justice, if in the instant case, adjudication of the respondent right to maintenance is denied only on account of delay in filing her appeal.

9. Therefore, finding no merit in this petition, the same is dismissed.

(JAISHREE THAKUR)
JUDGE

09.12.2016
SP

Whether speaking/reasoned *Yes*

Whether reportable *No*

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