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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAT.APP.(F.C.) 81/2015 & CM Nos.11122-23/2015

% Date of decision : 27th January, 2016

RATTAN DEEP

..... Appellant

Through : Mr. Brijesh Sharma and
Mr. Jaskaran Singh, Advs.

versus

SUSHMA

..... Respondent

Through : Mr. B.S. Rana, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

Judgment (Oral)

Gita Mittal, J

CM No.11123/2015

1. By way of this application, the appellant seeks condonation of delay of 31 days in filing the appeal.
2. Learned counsel for the respondent opposes this application contending that no justification at all has been disclosed in the application for not filing the appeal within the statutory period.
3. Given the nature of challenge, we are inclined to accept this application. The delay in filing the appeal is condoned.

The application is disposed of.

MAT.APP.(F.C.) 81/2015

1. This appeal has been filed assailing the impugned order dated

27th March, 2015 passed by the Principal Judge, Family Court in an application filed by the respondent herein under Section 24 of the Hindu Marriage Act, 1955 in HMA No.547/2013 whereby the court has awarded a sum of ₹10,000/- as maintenance (₹6,000/- to minor child and ₹4,000/- to the respondent) and ₹15,000/- towards litigation expenses.

2. It is an admitted position before us that the parties have cohabited as husband and wife and from such cohabitation, they have been blessed with a son as well. The primary objection of the appellant is that the marriage between the parties was not valid. Learned counsel for the appellant submits that the appellant has no objection to making the payment of maintenance for the son but inasmuch as the marriage of the parties is not valid, he has no liability to pay maintenance expenses of the respondent.

3. This objection has been raised only after disputes arose between the parties. The appellant has filed the main proceedings under Section 11 read with Section 5(i) of the Hindu Marriage Act, 1955 seeking decree of nullity/annulment of the marriage between the parties.

4. From the submissions of the appellant, we find that even if it were to be held that the marriage between the parties was not valid, they have admittedly lived together as if husband and wife having undergone all ceremonies relating to a marriage and their relationship was in the nature of a marriage.

5. Such relationship and cohabitation is covered within the definition of “*domestic relationship*” as defined under Section 2(f)

of The Protection of Women from Domestic Violence Act, 2005 ('PWDV Act' hereafter).

The parties cohabitation is covered within the meaning of the expression "*shared household*" as defined under Section 2(s) of this enactment.

6. The respondent and her son have been ousted from the shared household and is cohabiting in the care of her father at Sonapat. As such, prima facie, the respondent would be entitled to order of residence under Section 19 of the PWDV Act, 2005 as well as monetary relief of maintenance and other expenses envisaged under Section 20 of the said Act.

7. Learned counsel for the appellant makes an objection that the respondent had sought relief under Section 24 of the Hindu Marriage Act, 1955 and not under The Protection of Women from Domestic Violence Act, 2005.

8. To our mind, this is inconsequential. Under Section 26 of the PWDV Act, 2005, it was open to the respondent to seek any relief available under Sections 18 to 22 of the enactment in "*any legal proceeding before a Civil Court, Family Court or a Criminal Court*" affecting the aggrieved person and the respondent. The respondent is covered under the definition of the '*aggrieved person*' under sub-section (a) of Section 2 while the present appellant falls under the definition of respondent so far as the application for maintenance is concerned.

9. The appellant had filed a petition under Section 11 of the Hindu Marriage Act, 1955 seeking dissolution of marriage of the

parties which was pending before the Family Court. In view of Section 26 of the PWDA Act, the present respondent was entitled to seek the said reliefs before the Family Court, irrespective of the validity of the marriage.

10. It is trite that if the court is substantially empowered to grant relief, the provision of law under which the application is captioned, will not come in the way of the court granting such relief on the application.

11. We are informed that the respondent has also initiated proceedings under the Domestic Violence Act at the courts in Sonapat wherein the appellant has not cared to put in appearance.

12. In view of the above, challenge to the impugned order on the ground that the same was without jurisdiction on the objection noted above, is completely untenable.

13. This appeal is devoid of any legal merit and is dismissed with costs quantified at ₹10,000/- which shall be paid before the Family Court on the next date.

14. It is made clear that nothing herein contained is an expression of opinion on merits of the appellant's objection.

CM No.11122/2015

This application is dismissed.

GITA MITTAL, J

I.S.MEHTA, J

JANUARY 27, 2016/aj