

\$~7.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 236/2014**

SMT URVASHI AGGARWAL Petitioner

Through: Mr. S.C. Singhal, Advocate

versus

SHRI INDER PAUL AGGARWAL Respondent

Through: Mr. Digvijay Rai, Advocate with

Mr. Kustubh Singh, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

%

21.02.2019

C.M.No.7708/2018 (by the petitioner for condonation of delay of 40 days in filing the reply to the review application)

1. This application has been filed by the non-applicant/petitioner seeking condonation of delay of 40 days in filing a reply to the review petition.
2. Mr. Rai, learned counsel for the applicant/respondent states that he does not wish to file a reply to the application.
3. For the reasons stated in the application, the same is allowed. The delay of 40 days in filing the reply to the review petition is condoned.
4. The application is disposed of.

REVIEW PET. 472/2017 (by the respondent/review petitioner for review of the order dated 28.08.2017 and CM APPL. 39630/2017 (by the respondent/applicant for stay)

1. The present review petition has been filed by the respondent/review petitioner seeking review of para 5 of the order dated 28.08.2017, which reads as follows:-

“5. Having regard to the fact that the Supreme Court has not interfered in the order dated 07.04.2016 in so far as the interim arrangement has been made directing the respondent to pay a sum of Rs. 30,000/- p.m. towards the maintenance of the children on a monthly basis, there is no justification for the respondent to have defaulted in continuing to pay the said amount after December 2016.”

2. We may note that the present review petition has been filed by the respondent/review petitioner in a contempt petition filed by the petitioner against the respondent on the ground that he is in breach of the order dated 18.09.2012, passed in MAT. Appeal No.6/2012 filed by her, challenging the divorce decree dated 28.11.2011, granted by the Family Court in favour of the respondent.

3. An order dated 18.09.2012 was passed by the Division Bench in CM No.3663/2012, moved by the petitioner in the captioned appeal under Sections 24 and 26 of the Hindu Marriage Act, 1955 for seeking maintenance in respect of their two minor children, then aged 11 years and 9 years, respectively and in her custody. Noting that the Family Court had fixed the maintenance at Rs.13,000 per month, which had not been paid by the respondent ever since 28.11.2011, as a peremptory measure, vide order dated 18.9.2012, the respondent was directed to pay a sum of Rs.30,000/- per month and clear all the arrears within a period of 15 days from the date of the passing of the said order.

4. Claiming that the respondent did not make compliances and a sum of Rs.2,83,000/- was still recoverable from him, the petitioner filed a contempt petition. Notice was issued on the said petition on 15.04.2014, whereafter, several orders came to be passed from time to time.

5. On 07.07.2017, learned counsel for the petitioner stated that as in December 2016, a sum of Rs.84,000/- was still recoverable from the respondent towards the maintenance payable for the children. Payment of the said amount was disputed by learned counsel for the respondent, who took a stand that after adjusting a sum of Rs.23,000/- through a cheque handed over to the other side in Court, only a sum of Rs.61,000/- would remain outstanding.

6. While granting one last opportunity to the respondent to file an affidavit in response to the affidavit filed by learned counsel for the petitioner, furnishing therein calculations of the maintenance received from the other side, the matter was adjourned to 28.08.2017. We may note that on 28.08.2017, Mr. Singhal, learned counsel for the petitioner had also submitted that after adjusting the amounts already paid by the respondent as calculated upto 31.12.2016, towards the maintenance of the two children in the petitioner's custody, he had stopped paying the maintenance from 01.01.2017, though an application moved by the petitioner under Section 125 Cr.P.C. was pending consideration before the Family Court.

7. Noting that the aforesaid application moved by the petitioner in the year 2008 had remained pending without any interim order being passed thereon, an order was passed on 07.04.2016 by the predecessor Bench, directing the respondent to pay the petitioner a sum of Rs.30,000/- per month towards the maintenance of his two children, without prejudice to the rights and contentions of the parties.

8. In para 3 of the order dated 28.08.2017, review whereof is now sought by the respondent, it was recorded that the order dated 07.04.2016 had been challenged by the respondent before the Supreme Court by preferring an

appeal, which was disposed of on 08.08.2016, with an observation to the effect that the order dated 07.04.2016, passed by the High Court was only an interim measure and there was no reason to interfere with the same. However, liberty was granted to the respondent to approach the High Court praying for a final disposal of the appeal (MAT. Appeal No.06/2012).

9. Taking note of the fact that Supreme Court had declined to interfere with the order dated 07.04.2016 insofar as the interim arrangement was made, directing maintenance to be paid by the respondent in respect of his two children @ Rs.30,000/- per month, it was observed in the order dated 28.08.2017 that there was no justification for him to have defaulted in continuing to pay the said amount to the petitioner after December, 2016.

10. While arguing the present review petition, Mr. Rai, learned counsel for the respondent seeks to draw our attention to the order dated 10.11.2016, passed by the Division Bench in MAT. Appeal No.6/2012 which reads as follows:-

“CM Nos.1649/2012, 3663/2012, 10964/2013, 10965/2013 and 13576/2013

1. The learned counsel for the parties state that all civil miscellaneous applications filed by the respective party be dismissed as withdrawn provided the appeal is heard expeditiously. Accordingly all pending civil miscellaneous applications are dismissed as withdrawn, except CM No.1649/2012. As regards the said application, the appellant had prayed for a stay of the impugned decree but as per the respondent he has already remarried. Since we are listing the appeal for final hearing on November 15, 2016, we dispose of the application noting the factum of respondent's remarriage.

MAT.APP. 6/2012

2. List the appeal for arguments on November 15, 2016.”

11. Mr. Rai, learned counsel points out that one of the applications mentioned in the captioned order dated 10.11.2016, is CM No.3663/2012 that was moved by the petitioner under Sections 24 and 26 of the Hindu Marriage Act for grant of interim maintenance on which, the Division Bench had earlier passed the order dated 07.04.2016, directing his client to pay the petitioner a sum of Rs.30,000/- towards the maintenance of the two children on or before the 7th day of each English Calendar month, without prejudice to the rights and contentions of the parties. His argument is that once the counsel for the parties had agreed that all the miscellaneous applications filed by both sides may be dismissed as withdrawn on the condition that the appeal be heard expeditiously and based on the said statement, all the applications were dismissed as withdrawn except for CM No.1649/2012 moved by the petitioner, the respondent's liability to comply with the earlier order dated 07.04.2016, passed in C.M. 3663/2012, had automatically seized.

12. We have specifically enquired from learned counsel for the respondent/review petitioner as to whether the order dated 10.11.2016 was brought to the notice of the Court on 28.08.2017. Mr. Rai, learned counsel for the respondent states that he cannot clarify the position as he was not engaged by the respondent at that time. Mr. Singhal, learned counsel for the petitioner states that the said order was not referred to by the other side.

13. As is clear from the tone and tenor of the order dated 10.11.2016, the only reason for the parties not to have pressed the miscellaneous applications filed by them in MAT Appeal No. 6/2012 was to ensure expeditious disposal of the main appeal. It is noteworthy that MAT. Appeal No.6/2012 was listed thereafter, on several dates, but for one reason or the

other, it has remained pending and now listed on 25.02.2019, for arguments.

14. We are of the opinion that the present application is nothing but an attempt on the part of the respondent to wriggle out of paying the maintenance for his two children, Ms. Radhika Aggarwal, who is still a minor and is 16 years old and Jayan Aggarwal, who had attained majority in August, 2018. Even if all the miscellaneous applications filed in MAT. Appeal No.6/2012, barring CM No.1649/2012, were dismissed as withdrawn, there can be no assumption that the previous orders passed in the appeal including the order dated 07.04.2016, passed in C.M. No.3663/2012, would stand automatically nullified, unless and until it was specifically so ordered. The respondent is clearly trying to read the order dated 10.11.2016 to his own advantage and has on his own stopped paying the maintenance for his two children, as was directed on 7.4.2016, without making any effort to seek vacation/clarification/modification of the said order.

15. Assuming for a moment that the order dated 10.11.2016 was not referred to on 28.08.2017, having perused the same today, we are still not persuaded to review the said order. The present application is patently misconceived and an attempt on the part of the respondent to evade compliance of the order passed on 07.04.2016, by misinterpreting the earlier order dated 10.11.2016, when nowhere in the said order was it observed that on disposal of the pending applications, the earlier orders passed would stand automatically vacated. There is no ground to review the order dated 28.08.2017, as we do not find any error apparent on the face of the said order.

16. The review petition is accordingly dismissed alongwith the pending application with costs quantified at Rs.10,000/-, to be paid by the

respondent to the petitioner through counsel within one week.

CONT.CAS(C) 236/2014

By a separate order passed above, the review petition filed by the respondent has been dismissed. The outstanding amount payable by the respondent to the petitioner towards maintenance in terms of the order dated 07.04.2016, reiterated on 28.08.2017, shall be paid within two weeks from today. The said amount shall carry simple interest @ 9% per annum from the date the amounts became due and payable, on a month to month basis, till the same is actually paid to the petitioner.

HIMA KOHLI, J

MANOJ KUMAR OHRI, J

FEBRUARY 21, 2019

na