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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ MAT.APP.(F.C.) 52/2017, CM No. 13005/2017 (stay) & CM No. 11673/2017

SANJEEV KUMAR SHARMA Appellant

Through: Mr. Aditya Swarup Agarwal and Mr.
Vishesh Wadhwa, Advocates.

versus

SANGEETA SHARMA Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
17.07.2017

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1. The matter was passed over on the first call as none was present on behalf of the respondent, nor has any reply been filed by her to this application. Even on the second call, none is present on behalf of the respondent.
2. The appellant/petitioner is aggrieved by an order dated 13.01.2015 passed by the Learned Principal Judge, Family Court, Tis Hazari Court, whereunder, an application filed by his wife/respondent for seeking maintenance for herself and her minor child was allowed and he was directed to pay *pendente lite* maintenance from the date of filing the application, i.e. from 04.07.2013. Contemporaneously, the main divorce petition filed by the appellant/petitioner was dismissed for non-prosecution.
3. Accompanying the present appeal is an application (CM No.

11673/2017), for seeking condonation of delay of 763 days in filing the accompany appeal. As per the averments made in the said application, the previous counsel of the appellant did not apprise him about the pendency of the application filed under Section 24 of the Hindu Marriage Act, 1955 and about the passing of the impugned order which came to his knowledge only after he received summons in an execution petition filed by the respondent, bearing Ex.P. No. 3818/2016.

4. Learned counsel for the appellant states that on 21.11.2013, counsel for the appellant who was present with him in Court had stated on instructions, that the main petition should be disposed of in view of the fact that he wished to withdraw the same. We may note that on the very same date, the Court below had recorded that the application under Section 24 of Hindu Marriage Act shall have to be disposed of first, prior to dismissing the main petition.

5. On 21.11.2013, the submission of the counsel for the appellant was recorded to the effect that he had already paid a sum of Rs. 4500/- to the respondent under the Section 125 CrPC petition filed by her. Observing that the proceedings under Section 24 of the Hindu Marriage Act were still pending in the main case and was required to be disposed off, the appellant was directed to produce his bank statement on the next date of hearing and the case was adjourned to 24.01.2014.

6. On 24.01.2014, the Presiding Officer was on leave and the matter was adjourned to 14.03.2014. On 14.03.2014, learned counsels for the parties were present and the case was adjourned as the Presiding Officer was on leave. On 22.03.2014, none had appeared for the appellant. As a result, Court notice was issued to him, returnable on 04.06.2014. On 04.06.2014, at the request of the counsel for the appellant, the application for maintenance

was put up for arguments on 12.08.2014.

7. On 12.08.2014, Section 24 application was adjourned to 19.11.2014 for arguments. On the said date, learned counsel for the appellant had stated that he wished to withdraw the main petition. But, no order was passed acceding to the said request. On 19.11.2014, again, none had appeared for the appellant though, it was in the presence of his counsel that on the earlier date, an order was passed for disposal of the maintenance application on the next date. After the court waited till 2.30 pm, counsel for the appellant had turned up and sought an adjournment. At his request, the case was adjourned to 13.01.2015 on which date yet again, none appeared for the appellant and the impugned order came to be passed.

8. Having regard to the aforesaid proceedings, the argument of the learned counsel for the appellant that the previous counsel had not apprised him of the proceedings pending before the learned Family Court, is found to be devoid of merits. We have noted above that on some dates, the appellant was personally present and on several dates, the court had directed in the presence of his counsel that arguments be addressed on the maintenance application filed by the respondent. It shall have to be presumed that the appellant was well aware of passing of the said orders. Despite the same, he/his counsel elected not to appear on 13.01.2015, the date when impugned order came to be finally passed.

9. We are, therefore, not persuaded by the explanation sought to be offered on behalf of the appellant for his absence and that of his counsel on 13.01.2015, for condoning an inordinate delay of 763 days in filing the accompanying appeal.

10. Even on merits, we are not inclined to interfere with the impugned

order whereunder the appellant has been directed to pay a sum of Rs. 10,000/- per month to the respondent and the minor child in her custody w.e.f. 04.07.2013, keeping in mind the fact that the appellant was earning a sum of Rs. 18,000/-(approx) per month in the year 2013-2014, as reflected from the extract of his Bank passbook filed for the period between 01.01.2013 to 03.07.2013. In fact, a perusal of the relevant extract of his passbook reveals that the credit entries in his account in respect of the salaries received, were in the range of Rs. 18,000 to Rs. 20,000/-. Pertinently, the appellant does not appear to have filed the extract of his Bank passbook after July 2013 which would have thrown further light on his monthly salary as deposited in his Bank account, for the years 2013-2014 and 2014-2015.

11. Given the aforesaid facts and circumstances, counsel for the appellant cannot be permitted to urge that the salary of the appellant was far below Rs. 18,000/- per month in the year 2013-2014. He is still not in a position to inform us as to what was the actual salary of the appellant in the subsequent years.

12. Consequently, the present appeal is dismissed *in limine* as being devoid of merits and the condonation of delay application is rejected as being hopelessly time barred.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 17, 2017

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