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

+ **MAT.APP.(F.C.) 86/2017 and CM APPL. 18639/2017 (stay)**

VIKAS YADAV

..... Appellant

Through: Mr. Pramod Kumar and Mr. Akash
Kumar, Advocates with appellant in person.

versus

NEERU YADAV

..... Respondent

Through: Dr. Ashutosh, Advocate with respondent
and her father in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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24.07.2017

**CM APPL. 18640/2017 (for condonation of delay of 328 days in filing
the accompanying appeal)**

1. The appellant is aggrieved by an order dated 02.05.2016 passed by the learned Principal Judge, Family Courts, South, Saket, New Delhi, disposing of an application filed by the respondent/wife under Section 24 of the HMA Act, declining to grant any maintenance to the respondent/wife, but directing the appellant to pay a sum of Rs.7,000/- per month for the minor son aged 15 years and Rs.3,500/- per month for the minor daughter aged 7 years, with effect from the date of filing of the said application, i.e., from 31.01.2015.

2. We are informed that the divorce petition that the petitioner had filed against his wife was dismissed for non-prosecution on 24.04.2017. On the very next day, i.e., on 25.04.2017, the appellant filed the present appeal,

assailing the order dated 02.05.2016 alongwith an application seeking condonation of delay of 328 days in filing the said appeal.

3. Counsel for the respondent enters appearance and states that he has filed a reply in opposition to the condonation of delay application. He submits that there is no explanation, much less just and sufficient reason offered by the appellant for condoning the delay of almost 11 months in filing the present appeal.

4. The only explanation offered by the appellant for seeking condonation of delay of 328 days in filing the appeal is that after the impugned order came to be passed, he had instructed the counsel appearing for him before the Family Court to file an appeal, but the said counsel had adopted a lackadaisical approach and did not pursue the matter or file the appeal. At that time, the appellant could also not pursue the matter because his mother was suffering from cancer and he was busy getting her treated in various hospitals in Delhi. Finally, the appellant changed his counsel and filed the present appeal through the newly engaged counsel.

5. Counsel for the respondent opposes the application and draws our attention to the affidavit dated 13.06.2017 filed by Shri Kuldeep Singh (father of the appellant and father-in-law of the respondent) stating *inter alia* that the appellant had not extended any support for the treatment of his mother except for taking her for a medical follow-up a couple of times and that too with the intention of procuring documentary evidence, which he is now misusing.

6. As the application is bereft of any material particulars, we have asked learned counsel for the appellant to start by explaining the delay from the date of passing of the impugned order on 2.5.2016 till the date of filing the

appeal on 25.4.2017. He seeks to rely on the OPD card issued by AIIMS in favour of Smt. Tara Devi, the deceased mother of the appellant, on which the first date found endorsed is of 11.08.2016, which does not throw any light on the steps that the appellant had taken from 02.05.2016, till August, 2016 to process the appeal.

7. Next, learned counsel for the appellant refers to the air tickets of the appellant and his mother dated 09.09.2016, to state that they had to travel from Delhi to Mumbai for her treatment and the appellant had accompanied her to Mumbai. Again, there is no explanation offered for the intervening months of June, July and August, 2016. In any event, even as per the appellant, his mother had succumbed to the terminal illness in the last week of December, 2016 and that being the position, he ought to have approached the Court within a reasonable period thereafter. Instead, the appeal was filed by the appellant in the last week of April, 2017.

8. We are not at all satisfied with the explanation sought to be offered by the appellant for seeking condonation of delay of a period stretching over 328 days in filing the appeal. A litigant is expected to be vigilant when pursuing his legal remedies. He cannot simply sit back and approach the court at his own leisure. The submission of the learned counsel for the appellant that the appellant was in such deep grief on the demise of his mother that he did not pursue his legal remedy, is found to be unacceptable. Firstly, the order assailed by him before us is of 02.05.2016, when his mother was alive. As per the statement of his own father, he did not attend to his ailing mother. Secondly, the mother had expired in December, 2016, whereas the appeal came to be filed at the end of April, 2017. Thirdly, the appellant had not made any such submission before the learned Principal

Judge, Family Court on 25.04.2017, in the course of hearing of the divorce petition filed by him, which was dismissed for non-prosecution. It is not as if the appellant had stopped attending to his work and had confined himself at home in the grief of his mother's demise. Strangely, the appellant is not aware of the exact date of his mother's demise, which is 28.12.2016 whereas the submission made before us is that she had expired on 29.12.2016.

9. We may also note that the appellant has tried to mislead the Family Court by stating in February, 2017 that he had filed an appeal against the impugned order, whereas no such appeal had been filed by then. A similar submission was made on behalf of the appellant before the Family Court on 25.04.2017, when admittedly, the appeal was filed on the very same date and the same had yet to be processed by the Registry.

10. For all the aforesaid reasons, we are of the opinion that the appellant has not been able to show just and sufficient cause for seeking condonation of delay of 328 days. The appellant has not approached this Court with clean hands and his *bonafides* are suspect. The application is accordingly dismissed with costs of Rs.10,000/- to be paid to the respondent within two weeks. Resultantly, the appeal also stands dismissed.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 24, 2017

rkb/mk