

\$~15

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

% *Date of Judgment: 19th November, 2018*

+ **MAT.APP(F.C.) 49/2018 & CM Nos. 8427/2018, 8429/2018**

MANDEEP SINGH

..... Appellant

Through: Mr. Puneet Singh, Advocate along
with appellant in person

versus

SANTOSH SHARMA

..... Respondent

Through: Mr. Pankaj Jaiswal, Advocate along
with respondent in person

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM APPLS. No. 8429/2018 (delay of 651 days) & MAT.APP(F.C.) 49/2018

1. This is an application under Section 5 of the Limitation Act read with Section 151 of CPC seeking condonation of 651 days delay in filing the present appeal. The reasons for the delay find mentioned in para 3 of the application which we reproduce below:-

“3. That after passing of the impugned order dated 01.04.2016 the appellant filed a Review Petition titled as “Mandeep Singh Versus Santosh Sharma” before the Ld. Principal Judge wherein the pleadings were complete however the same dismissed as withdrawn vide order dated 17.01.2018 in order to approach before the Hon’ble Court, Although there is no delay in filing the appeal as the appellant has opted the remedy to file the Review Petition and after its withdrawal on 17.01.2018, the instant appeal is filed within the period of 30 days, however, from the date of impugned order, the delay caused, is of 651

days in filing the above appeal, which may kindly be condoned in view of the above facts and cause and hence the application.”

2. Learned counsel for the appellant submits that the appeal could not be filed within the period of limitation as after the impugned order was passed on 01.04.2016, the appellant had sought review of the aforesaid order by filing a review petition which was dismissed as withdrawn on 17.01.2018 and thereafter, the present appeal was filed within 30 days. He further submits that he is not aware as to on which date the petition for review was filed.
3. The Hon’ble Supreme Court in the case of **Ram Nath Sao v. Gobardhan Sao** reported at (2002) 3 SCC 195, while dealing with the expression “sufficient cause” within the meaning of Section 5 of the Limitation Act held that the explanation furnished would constitute “sufficient cause” or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. It was further held that *‘While considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner’*.
4. In the case of **Brijesh Kumar & Ors. vs. State of Haryana & Ors.**, reported at **AIR 2014 SC 1612**, the Apex Court has held as under:-

“11. 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.”

5. The present application seeking condonation of delay of 651 days is to be decided on the touch stone of the law laid down by the Apex Court. The only ground urged seeking condonation of 651 days delay in filing the appeal is that the appellant had filed a review petition which was dismissed as withdrawn on 17.01.2018. Although, no date has been disclosed as to when the review petition was filed, we find it hard to believe that the review petition was pending for 2 years. No order sheets have been placed before us and thus to simply seek condonation of 651 days delay on the ground that a review was filed cannot be considered as sufficient ground. It may also be noted that as per the appellant the Review Petition was withdrawn on 17.01.2018, it has not been disclosed as to why the same was withdrawn knowing the period of appeal was long over. We see no reason to defeat the valuable right which has accrued in favour of the respondent. We find that the application is completely vague and the cause shown in the application is not sufficient to condone the delay. The application is accordingly dismissed.
6. To satisfy our conscience, we have also examined the impugned order dated 01.04.2016 passed by the learned Family Court whereby maintenance of Rs.15,000/- per month alongwith Rs.30,000/- as litigation expenses were awarded to the respondent/wife in an

application under Section 24 of Hindu Marriage Act (hereinafter referred to as 'HMA') moved by the respondent/wife in a divorce petition filed by the appellant/husband on the ground of cruelty and desertion.

7. The marriage between the parties was solemnized on 08.04.2006 at New Delhi as per Sikh rites. In this case, the appellant/husband had been blessed with a son from his first marriage who stays with the natural mother and the respondent/wife has two children out of her first marriage. The parties were blessed with a girl child out of their wedlock who is 7 years of age and is residing with the appellant-father. The parties were separated on 26.06.2014.
8. Learned counsel for the appellant submits that on account of extreme medical condition, the appellant is unemployed. The appellant relied upon a medical certificate issued from Dr. Rajender Prasad Centre for Ophthalmic Sciences to show that he has 50% disability in one eye. Additionally, it was contended that he is suffering from kidney problem and thus, he cannot stand for more than two hours due to water retention. In this background, the counsel for the appellant/husband has strongly urged before us that having regard to the fact that the appellant is unemployed, the amount of maintenance should be reduced to Rs.3000/- to Rs.4000/- per month.
9. *Per contra*, learned counsel for the respondent has urged before us that the appellant/husband is a man of means. He has movable and immovable properties, the details of which have been provided in para 17 of the reply to the appeal. Learned counsel for the respondent/wife

further submits that as per the copy of the income tax assessment, a reading of which shows that the appellant/husband is getting rent from two properties.

10. In reply to the aforementioned argument, learned counsel for the appellant/husband submits that most of the properties belong to his father and sister and he has only one shop and at the moment he is getting rent of Rs.13,500/- per month from shop No. 106, Aggarwal Complex, Plot No.09, Pocket-07, Sector-12 Dwarka. Learned counsel for the appellant also submits that as far as 500 sq. ft. commercial area in Amrapali, IT Park in Greater Noida is concerned, the same is locked in litigation and the appellant is not getting any return neither he is in possession nor assured return is being received.
11. We have heard learned counsel for both the parties.
12. It is common in proceedings arising out of Section 24 of HMA that parties conceal their true income. An interested party often tries to conceal his/her true income in order to ensure that maintenance is fixed at a lower rate to defeat the claim of the opposite party. In most of the cases, it is often stated that the husband is unemployed and wife is working and earning money either by tuitions or as a beautician. This case is no different. According to the appellant, the respondent has a de-mat account and thus, she has sufficient means to maintain herself and he is un-employed.
13. In the case of *Chaturbhuj v. Sita Bai* reported at (2008) 2 SCC 316, the Hon'ble Supreme Court discussed the object of the maintenance proceedings and also duty of a man to maintain his wife, children and

parents when they are unable to maintain themselves. The Apex Court further interpreted the phrase “*unable to maintain herself*”. The relevant para 6 reads as under:

“6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase “**unable to maintain herself**” in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow....” (Emphasis Supplied)

14. After considering the material available on record alongwith the admitted facts that the appellant owns atleast two properties show that the allegation of the respondent/wife that the appellant is a man of means cannot be disbelieved. Thus, we cannot deprive the legal right of the respondent/wife. Accordingly, we do not find any reason to condone the delay and to interfere with the order passed by the family court.
15. We find no infirmity in the order passed by the Family court. No ground is made out on merits and hence, the appeal is dismissed. The pending application is also dismissed as infructuous.

G.S.SISTANI, J

JYOTI SINGH, J

NOVEMBER 19, 2018///b