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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 13th August, 2018*
+ MAT.APP.(F.C.) 194/2018
SUSHIL KUMAR Appellant
Through: Mr. Bakul Jain, Advocate.

versus

MASTER LAKSHAY Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM APPLN. No. 32374/2018 (Exemption)

Exemption allowed, subject to just exceptions.

Application stands disposed of.

MAT.APP.(F.C.) 194/2018 and CM APPLN. No. 32373/2018 (Delay)

1. The present appeal has been filed under Section 19 (1) (4) of the Family Court Act read with Section 151 CPC assailing the order dated 12.01.2018 passed by the Principal Judge, Family Court, Tis Hazari Courts, Delhi along with an application under Section 5 of the Limitation Act read with Section 151 CPC seeking 155 days delay in filing the present appeal.

2. Learned counsel for the appellant submits that delay was on account of sufficient reasons and not on account of any carelessness or inaction.

3. We have examined the application filed seeking condonation of delay. We deem it appropriate to reproduce the relevant part, which reads as under:

- “3. That the appellant has to file the appeal within the 30 days of passing the order and that expired on 12.1.2018.
4. That thereafter, the appellant has instructed his previous counsel to file the appeal but the previous counsel took a completely lenient view, per kept the complete documents i.e. trial court file with him but didn't filed the appeal. Further, the previous counsel for the appellant kept the appellant into grey that the appeal is filed and the same is pending.
5. That thereafter, the time was consumed by the appellant for taking the legal opinion from the various counsel and now he has decided to file the appeal.
6. That there is delay of 185 days approximately in filing the present appeal and the same is not intentional nor deliberate but due to abovesaid reason.”

4. Reading of this application would show that the same is vague, lacks material particulars and completely caused in nature.

5. The application does not disclose as to when the certified copy of the order was applied for and when was the copy obtained. The application is silent as to when the appellant had instructed his previous counsel to file the appeal, who was the previous counsel, why the appellant did not take steps to file the appeal knowing that the previous counsel was not taking interest in the matter. The Supreme Court in the case of **Salil Dutta v. T.M. and M.C. Private Ltd.** reported as **JT 1993 (4) SC 528**, wherein, while distinguishing the decision in **Rafiq and Anr. V. Munshilal and Anr.** reported as **AIR 1981 SC 1400**, it was observed as below:

“The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal, i.e., the party who engaged him. It is true that in certain situations, the Court

may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant, but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.”

6. In the case of **Brijesh Kumar & Ors. V. 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.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.”

7. Keeping in view the law laid down by the Apex Court, we do not find that sufficient grounds have not been made out seeking condonation of delay.

8. We have also examined the matter on merits. The appellant is aggrieved by the order dated 12.01.2018 passed by the Principal Judge, Family Court, Tis Hazari Court, Delhi by which Rs.12,500/- has been awarded as monthly maintenance for a child who was 09 years of age when the petition was filed before the Family Court. In this case, the marriage between the parties was solemnized on 11.12.2000. Parties separated on 15.06.2001. Meanwhile, a child was born on 01.11.2001. The wife of the appellant died on 08.05.2009. Prior to her demise, she had filed a suit as a indigent person under Order XXXIII of the Code of Civil Procedure, 1908 and also under Section 18 & 20 of the Hindu Adoption & Maintenance Act, 1956 seeking maintenance for herself and her child. Post her demise on 08.05.2009, the child was brought up by his maternal uncle who was substituted as next friend-cum-guardian. The application for contesting the suit as an indigent person was allowed by an order dated 15.12.2010. At the relevant time, the details were provided with regard to the amount spent on schooling, monthly tuition fee and transportation charges.

9. Taking into consideration the income of the appellant after the evidence was recorded, the Principal Judge, Family Court has fixed the monthly maintenance @ Rs.12,500/- from the date of filing the petition till the date of death of the mother and thereafter @ Rs.8,000/- per month till the child attains the age of 10 years on his completing his primary schooling. The relief granted to the minor child through his maternal uncle reads as under:

- “a) a decree is passed in favour of the plaintiff child and against the defendant father for a sum of Rs.4,50,000/- for arrears of maintenance w.e.f. 16.03.2004 to 15.03.2007 @ Rs.12,500/- per month; and

- b) a decree is passed thereby directing the defendant husband/father to pay maintenance pendent lite @ 12,500/- per month from the date of filing of the suit/petition i.e. 21.03.2007 till the death of the plaintiff wife mother on 08.05.2009; and
- c) thereafter, the defendant husband/father shall pay maintenance to the plaintiff minor child @ Rs.8,000/- per month till he attained the age of 10 years i.e. 30.10.2011; and
- d) Thereafter, a decree is further passed in favour of the plaintiff child and against the defendant father thereby directing him to pay maintenance @ 10,000/- per month to the plaintiff minor w.e.f. 01.11.2011 to 30.10.2016; and
- e) Further a decree is passed in favour of the plaintiff child and against the defendant father thereby directing him to pay Rs.12,500/- per month w.e.f. 01.11.2011 to till the date of attaining the age of majority by the minor i.e. 01.11.2019 and the maintenance from the date of this order shall be paid by depositing the same in the bank account of the plaintiff child by the 10th day of each succeeding month, and any delay or default in making the payment shall invite costs or penalty of 1,000/- per day.
- f) The plaintiff child shall also be entitled to costs of proceedings which is quantified at Rs.25,000/-.
- g) However, the defendant husband/father shall be entitled to adjust the amount of maintenance @Rs.8,000/- per month, if any, paid by him to the plaintiff deceased wife for the period 16.03.2004 to 15.03.2007, and thereafter till her death i.e. on 08.05.2009.
- h) Similarly, the defendant husband/father shall be entitled to adjust the amount of maintenance paid by him to the plaintiff child @Rs.5,000/- per month w.e.f. 01.11.2011.

- i) The arrears of maintenance shall be paid within a period of three months along with costs of proceedings qualified at Rs.25,000/- by making an FDR in the name of the minor with the direction that the same shall not be encashed till the plaintiff child attains the age of majority.
- j) In case of failure to comply with this direction, the defendant husband/father shall be liable to cost/penal interest @18% per annum.

10. On carefully examining the impugned order, we do not find any cogent reason to interfere in the order. Accordingly, the appeal is also dismissed on merits.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 13, 2018

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