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

% *Date of Judgment: 10th October, 2018*

+ **MAT.APP.(F.C.) 263/2018 & CM No.42331/2018 (stay), 42332/2018 (delay)**

PREM PRAKASH

..... Appellant

Through: **Ms.Shantha Devi Raman and Mr.Arihant Jain, Advocates.**

versus

NIRMALA KUMARI

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM 42333/2018 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

MAT.APP.(F.C.) 263/2018 & CM No.42331/2018 (stay), 42332/2018 (delay)

1. Challenge in this appeal is to the order dated 01.05.2017 passed by the learned Family Court on an application filed by the respondent/wife under Section 24 of the Hindu Marriage Act. The Court has fixed maintenance @ Rs.25,000/- per month for the wife after assessing the income of the appellant to be Rs.88,145/-. It may be noted that the marriage between the parties was solemnized in the year 1983 and a son was born out of the wedlock in the year 1986. The parties have been living separately since 11.11.1985.

2. We may also note that in the year 2013 parties had entered into an amicable settlement, where the appellant had agreed to pay Rs.5,10,000/- to the respondent out of which Rs.4,10,000/- was already paid. The parties had agreed to seek divorce by mutual consent but the settlement did not go through, although the first motion was allowed.

3. The present application for seeking condonation of 480 days delay has been filed by the appellant.

4. The cause for delay is that the appellant is a bank employee and was posted at the distance of 100 kilometers from Kota and while he was commuting he damaged his cell phone and could not contact the counsel till the time he visited Delhi in July 2017. Counsel for the appellant submits that on account of this reason he could not even contact his counsel to pursue his divorce case effectively since January, 2017. The appellant also states that he has been defending various frivolous and false litigations filed by the respondent since 1983. He further submits that he has been maintaining his mother post the demise of his father and as he has been posted in a difficult place in Rajasthan. Therefore, he could not file the present appeal within the period of limitation.

5. Heard.

6. While dealing with the application seeking condonation of delay, the Court must at the outset, record its satisfaction that the delay has occurred on account of sufficient cause.

7. Reading of this application does not satisfy this Court that the appellant was prevented in assailing the impugned order on account of sufficient cause. In the present day and age, it is not possible that after the cell phone was broken the appellant was unable to either retrieve his contact

list or did not have any means to contact his counsel or he was prevented from travelling from Kota or any other place of posting to Delhi.

8. The law is well settled with regard to the condonation of delay in filing the appeal and has also been reiterated in the judgment of the Supreme Court in the case of ***“Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and Ors.”*** reported in (2014) 2 SCC (LS) 595. Paragraph 15 is produced herein below wherein it has been observed as under:-

“15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant

so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

9. In the case of “**Basawaraj and Anr. v. The Special Land Acquisition Officer**”, reported at (2013) 14 SCC 81, more particularly para 15, it has held that:

“15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it amounts to showing utter disregard to the legislature.”

10. Applying the law to the facts of the present case, we find no ground to condone the delay. Accordingly, the application for condonation of delay is dismissed.

11. At this stage, learned counsel for the appellant submits that the amount of claim does not reflect the correct position as the appellant has been paying @ Rs.3,000/- per month to the respondent in compliance with the order passed in proceedings arising out of section 125 Cr.P.C. Counsel for the

appellant submits that the appellant may not be able to pay the arrears of maintenance in one go and also Rs.4,10,000/- which has already been paid to the respondent under the settlement needs to be adjusted in the present appeal.

12. We make it clear that any amount paid under Section 125 Cr.P.C. would be adjusted out of the amount directed to be paid.

13. With these observations, the appeal is dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 10, 2018

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