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

+ **MAT.APP.(F.C.) 9/2018**

VARSHA GUPTA

..... Appellant

Through Mr. Yogesh Bhardwaj and Ms. Anuja
Saxena, Advocates

versus

DR RK GUPTA

..... Respondent

Through Mr. Yogesh Pachaura, Advocate for the
respondent along with the respondent in
person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% **23.08.2018**

CM.APPL 2110/2018(delay in re-filing)

1. This is an application filed by the applicant/appellant seeking condonation of 10 days delay in re-filing the appeal. Counsel for the respondent fairly does not oppose the prayer made in this application.
2. For the reasons stated in the application, the application is allowed. Delay of 10 days in re-filing the appeal is condoned.
3. The application stands disposed of.

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4. The present appeal is directed against the impugned order dated 30.10.2017 passed by the Family Court, wherein an application seeking restoration of the petition filed under Section 125 Cr.P.C. has been dismissed.
5. Some necessary facts required to be noticed for the disposal of the present appeal are that the application of the appellant herein was adjourned on 08.02.2017 to 04.08.2017, when the appellant nor her counsel appeared. Resultantly, the petition under Section 125 Cr.P.C. pending before the Family

Court was dismissed for non-prosecution. On an application filed, it was pointed out that the appellant, who is also a practising lawyer, had noted a wrong date in her diary as 09.08.2017 instead of 04.08.2017.

6. The Family Court was not convinced with the reasons for non-appearance, firstly, on the ground that photocopy of the diary was produced, the original diary was not produced and, secondly, it was not brought to the notice of the Family Court that some proceedings were pending in the Court at Jabalpur. The Family Court also took into account that after the passing of the order by the Supreme Court of India, the appellant had not appeared on any date of hearing.

7. Although, the appellant has not filed the ordersheets to show as to whether the appellant had been appearing diligently in the matter or not, but on an enquiry by this Court from the learned counsel for the respondent, it is pointed out that barring 04.08.2017, the appellant had been appearing throughout though not regularly. The learned counsel for the appellant has urged before this Court that a harsh view has been taken by the Family Court and it is, accordingly, prayed that the order of dismissal in default be recalled. Counsel for the appellant also submits that the appellant would appear or shall be represented on every date of hearing and no unnecessary adjournment would be sought. It is also complained that appellant is not being paid the interim maintenance, which is disputed by the counsel for the respondent.

8. We have heard the learned counsels for the parties and perused the orders passed by the Family Court. We have also perused the original case diary of the appellant which shows that on 08.02.2017, she had noted the next date of hearing as 09.08.2017, the page of the diary of 04.08.2017 is blank. We have no reason to disbelieve the stand taken by the appellant, which is duly supported by her affidavit.

9. Resultantly, the order dated 30.10.2017 passed by the Family Court is

recalled. The parties shall appear before the Family Court on 10.09.2018. Both the parties agree not to seek unnecessary adjournment in the matter. The appellant will also ensure that she appears in person or is represented by a counsel. The Family Court will dispose of the petition as expeditiously as possible.

10. The appeal stands disposed of.

G.S.SISTANI, J

C. HARI SHANKAR, J

AUGUST 23, 2018

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