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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 19.02.2019*

+ **MAT.APP.(F.C.) 47/2019**

G M

..... Appellant

Through: Mr. Sumit Kumar, Mr. Ranjan &
Mr. Rabindra Nanda, Advocates

versus

P K M

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM APPL. 7817/2019

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

MAT.APP.(F.C.) 47/2019 & CM APPL. 7816/2019 (delay of 916 days)

3. The appellant/husband is aggrieved by the order dated 15.07.2016 passed by the Family Court on an application filed by the respondent/wife under Section 24 of the Hindu Marriage Act (hereinafter referred to as 'HMA') seeking maintenance for herself and two minor school going children. The appeal is accompanied with an application seeking condonation of 916 days delay in filing the present appeal. The condonation of delay is sought on the ground that after passing of the impugned order, the appellant/husband had decided to challenge the same and asked his counsel appearing before the Family Court to proceed with filing the appeal. However, the

counsel kept on providing false updates and only after two long years, the appellant/husband learnt that no appeal had been filed. Thereafter, the appellant/husband changed the counsel appearing before Family Court and appointed a new counsel and also started searching for a counsel in the High Court. Thereafter, he engaged the present counsel who in turn asked for the certified copies of the entire case. The certified copy of the entire case was applied by the current counsel before the Family Court in the middle of November, 2018 and procured the same in January, 2019. Thereafter, some time was taken in studying the file and drafting the present appeal and thus delay of 914 days is sought to be condoned. Counsel submits that the delay caused in filing the appeal was for bonafide reasons and not deliberate or intentional.

4. We have heard learned counsel for the appellant/husband and examined the application seeking condonation of delay. In our view, the application is not bonafide. It lacks material particulars. It does not give any dates as to when the appellant learnt about the impugned order; who was the counsel; as to whether he signed the affidavit or the memorandum of appeal. The application does not disclose any timelines as to when and if he contacted his earlier counsel or made any attempts to ascertain as to whether the impugned order had been assailed or not. The application does not disclose as to whether any action has been initiated by the appellant/husband against the counsel against whom allegations have been made. The grounds seeking condonation of delay are routine and stereotyped. The law is well settled that while deciding an application seeking condonation of

delay, Courts must take a liberal approach, provided, it is established that the application is bonafide and the delay has occasioned not on account of any carelessness, negligence or inaction. It is also settled law that the court at the first instance must record its satisfaction regarding the grounds seeking condonation of delay. In the case of ***P.K. Ramachandran versus State of Kerala*** reported at (1997) 7 SCC 556, the Hon'ble Supreme Court has held that an essential prerequisite of exercising discretion to condone the delay is that the Court must record its satisfaction that the explanation for delay was either reasonable or satisfactory.

5. It is also well settled that it is not the length of delay which is to be considered as even a large period of delay can be condoned provided sufficient grounds are shown for the reasons of delay. In the case of ***Balvant Singh (Dead) v. Jagdish Singh & Ors***, reported at 2010 (6) SCALE 749, while deciding an application under Order 22 Rule 9 of CPC and Section 5 of the Limitation Act, it was held as under:

“The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued

to it in law as a result of his acting vigilantly. The application filed by the applicants lack in details. Even the averments made are not correct and ex facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed.”

(Emphasis Supplied)

6. Applying the settled law to the facts of the present case, we are of the view that the application does not repose confidence that the delay has occurred on account of bonafide reasons, the application lacks material particulars. Accordingly, we find no grounds to condone the delay of 916 days.
7. To satisfy our conscience, we have also examined the impugned order dated 15.07.2016 passed by the learned Family Court. In this case, the marriage between the appellant/husband and the respondent/wife was solemnized on 15.02.2002 as per Hindu rites and ceremonies. Two children were born out of their wedlock on 18.11.2002 and 20.09.2009. The petition seeking divorce was filed by the appellant/husband under Section 13 (1)(ia) and (ib) of the HMA on 27.07.2015, which is pending.
8. 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 paras 6 to 8 read 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)

9. Reading of the impugned order shows that the Family Court has correctly applied the settled law to the facts of the given case. Although, it is alleged that the respondent/wife is a Homeopathic Doctor but she has stated in her reply that she has no place to practice and cannot bring up her two school going children in the absence of support of the appellant/husband. We may note that one of the children was studying in the same school to which he was got admitted by the appellant prior to the separation of the parties, and the other child who is studying in the school of the similar standard, thus, they are entitled to live in the same standard and conditions which they did prior to the separation. Even on merits, we find that there is no infirmity in the order passed by the Family Court.
10. Accordingly, the appeal alongwith pending application stand dismissed.

G.S.SISTANI, J

JYOTI SINGH, J

FEBRUARY 19, 2019//rd