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

% *Date of Judgment: 07.02.2019*

\+ **MAT.APP.(F.C.) 147/2017 & CM APPL. 30031/2017 (Stay)**

D C ..... Appellant

Through Ms. Tania Singh, Advocate alongwith appellant in person

Versus

B C ..... Respondent

Through Mr. Anirudh K. Mudgal and Mr. B. Venkatraman, Advocates

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. ***(ORAL)***

CM. No.30033/2017 (delay of 53 days)

1. This is an application filed by the appellant/husband seeking condonation of 53 days delay in filing the present appeal. In view of the judgment rendered by the Full bench of High Court of Bombay in the case of ***Shivram Dodanna Shetty vs. Sou. Sharmila Shivram Shetty*** reported at ***2016 SCC OnLine Bom 9844*** passed on 01.12.2016, the period of limitation prescribed under sub-section (4) of Section 28 of Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') for an appeal under sub-section (1) of Section 19 of the Family Courts Act, 1984 is 90 days.

2. For the reasons stated in the application and the judgment rendered by the High Court of Bombay, delay of 53 days in filing the appeal is condoned.

3. The application stands disposed of.

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4. The appellant/husband is aggrieved by the order dated 21.04.2017 passed by the Family Court on an application filed by the respondent/wife under Section 24 of HMA. By virtue of the said order, interim maintenance of Rs. 20,000/- per month has been fixed for the respondent/wife for the period between 21.01.2009 to 20.01.2013 in addition to the maintenance for daughter. Challenge is also made to the litigation expenses which are awarded to the respondent/wife to the tune of Rs.75,000/-.

5. The necessary facts to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 25.01.2003 at Bhubaneswar as per Hindu rites and ceremonies. A girl child was born out of their wedlock on 09.02.2006, who is in the care and custody of the respondent/wife and she is looking after the child. The parties are living separately since February-March, 2009.

6. Counsel for the appellant submits that the Family Court has failed to take into account that the appellant/husband is without a job for the last one and a half years and also during the passing of the impugned order. She further submits that the respondent/wife is a well qualified person and besides being an MBA from AIMA, she has done one year

Diploma in Textile International Polytechnic for Women. The counsel contended that the respondent/wife is more qualified than the appellant/husband and has got two professional degrees in comparison to the appellant/husband who is a post graduate with a diploma in International Business. In this backdrop, it is submitted that the respondent/wife is not entitled to any maintenance for the period granted by the Family Court as she is earning well from her own garment manufacturing and sales business in Bhubaneswar, Odisha.

7. The counsel for the appellant/husband further contended that the appellant/husband despite of being unemployed is looking after his old aged mother who has been paralysed and also paying monthly installments of the Housing Loan taken by him.

8. Counsel for the respondent/wife has opposed this appeal on the ground that since 21.04.2017, the appellant/husband has not paid even a single penny in compliance of the order passed by the Family Court. The case set up by the respondent/wife before the Family Court was that the husband was drawing a salary of Rs. 1,85,000/- per month. However, the Family Court has awarded a meagre maintenance of Rs. 20,000/- per month and that is only for the limited period between 21.01.2009 to 20.01.2013.

9. We have heard the learned counsels for the parties and carefully examined the order passed by the Family Court. The relevant para 22 of the impugned order dated 21.04.2017 reads as under:

> *"22. Perusal of the income tax returns of the petitioner would show that assessment year 2008-2009, his gross total income*

was Rs. 21,67,610/-. The income tax returns for the year 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 are not placed on record. There is placed on record a pay slip dated 02.11.2009 showing his net income Rs. 87,551/- per month. However, for the assessment year 2014-2015 income taxable is shown to be Rs. 2,72,009/- and for the financial year 2015-2016 Rs. 8,14,190/-. Another fact that may be considered regarding the life style of the petitioner is that bill of Rs. 1,35,191/- towards SBI credit card payable by 02.04.2016 and earlier Rs. 1,78,080/- of the credit card Standard Chartered Bank payable by 02.03.2016. The said discussion brings to the light that the respondent has not cared to file income tax returns for the years prior to 2016-2017 and at the cost of repetition, certain deposits in her account have not been explained. It was rightly contended by Ld. Counsel for the petitioner that respondent is equally qualified if not more. The respondent has not given any detail of her boutique business in the nature of name of the boutique, its constitution a sole proprietorship concern or partnership or a juristic person; the location and/or measurement of the premises from which the business is being run, sales turn over, number of the persons employed. <u>Without much ado, I also do not find the story of the petitioner fathomable that he is unemployed since 15.01.2016 and there is certainly an attempt by him to conceal his earnings. In fact, both are attempting to hoodwink the process of the law</u>."

10. As it is often seen that the spouse(s) do not reflect their true and correct income making the task of the Family Court difficult to assess the true and correct income of the spouse. The Family Court has to rely upon guess work to estimate the income of the spouse. (*See*: ***Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun and Ors.***, reported at ***(1997) 7 SCC 7***). The case at hand is a perfect example of not reflecting the true and correct income by the spouse(s) before the Family Court.

11. Taking into consideration that at the time of separation, the respondent/wife was fully dependant on her husband/appellant herein and only thereafter she had started her business career from scratch and a gestation period of four years to set up her boutique business was taken into account, we are of the view that the Family Court has rightly analyzed the facts and the position of law and fixed a maintenance of Rs. 20,000/- per month, in addition to the maintenance for their daughter, only for a period of four years i.e. period from 21.01.2009 to 20.01.2013. We find no infirmity or illegality in the interim order passed by the Family Court.

12. The present appeal is devoid of any merit. Resultantly, the appeal alongwith the pending application stands dismissed.

G.S.SISTANI, J.

JYOTI SINGH, J.

FEBRUARY 07, 2019
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