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

+ **MAT.APP.(F.C.) 42/2020 & C.M. Nos.5503-05/2020**

MAHAVEER JINDAL

..... Appellant

Through Mr. Om Prakash Gupta and Mr.
Radhey Shyam, Advocates.

versus

MONIKA JINDAL

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **11.02.2020**

MAT.APP.(F.C.) 42/2020, C.M. No.5503/2020 (stay), C.M. No. 5504/2020 (exemption) & C.M. No.5505/2020 (by the appellant under Section 5 of the Limitation Act for condonation of 132 days' delay in filing the accompanying appeal)

1. The appellant is aggrieved by an order dated 27.8.2019, passed by the learned Family Court, directing him to pay a sum of Rs.5,000/- per month to the respondent/wife as ad-interim maintenance, on or before the 10th day of every month.
2. The explanation sought to be offered in this application for condonation of delay of 132 days in filing the appeal is that the appellant was under a *bona fide* belief that his remedy was under Article 227 of the Constitution of India and therefore, he had filed a Civil Miscellaneous Petition in the High Court, which was withdrawn by him on 27.1.2020.
3. On enquiring from learned counsel for the appellant as to when did the appellant file the Civil Miscellaneous Petition in the High Court, he

states that the same was filed in the month of January, 2020. That being the position, the appellant cannot gain any benefit from invoking a wrong remedy in law. Had such a step been taken by the appellant within a reasonable time reckoned from 27.8.2019, i.e. the date of passing of the impugned order, it would have been a different matter. There is no other explanation offered in the application which can be treated either as just, or sufficient for this court to condone an inordinate delay of 132 days in filing the appeal.

4. At this stage, learned counsel for the appellant states that the appellant is unemployed and did not have sufficient funds to approach the court. On enquiring from learned counsel for the appellant as to whether he has been privately engaged by the appellant or is conducting this case *pro bono*, he concedes that he has been privately engaged by the appellant. In this view of the matter, the unemployment of the appellant can hardly be of any assistance to him. Even otherwise, on perusing the impugned order whereunder, the appellant has been directed to pay a sum of Rs.5,000/- per month to the respondent as ad-interim maintenance, we see no justification for interfering with the same.

5. The present appeal is accordingly dismissed, not only on the grounds of delay, but also on merits, alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

FEBRUARY 11, 2020/NA