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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: October 19, 2023

+ MAT.APP.(F.C.) 309/2023 & CM APPLS. 54773-54776/2023

SHIV PRASAD

..... Appellant

Through: Mr. Rajesh Srivastava and Mr. Gaurav
Verma, Advocates.

versus

MANJU

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)**CM APPLS. 54773/2023**

1. Exemption allowed, subject to all just exceptions.
2. Application is disposed of.

MAT.APP.(F.C.) 309/2023 & CM APPLS. 54774-54776/2023

3. The appeal has been filed by the appellant with the following prayers:

“a. Cancellation/ Stay of warrants vide orders dated 14.09.23 passed by the Ld. Principal Judge, Family Court, South, Saket, New Delhi, Execution Petition No-I 75/2022 and Execution Petition No- 230/23, without prejudice to right of the petitioner to file objections in both of the executions petitions, in the interest of justice;

b. Set aside the order dated 12.10.2018 passed by Ld. Principal Judge, Family court, South, Saket, New Delhi, in application under Section 24 of H.M.A bearing No-511115 in case title Smt. Manju vs Shiv Prasad;

c. Summons for trial court record; and



d. It is pertinent to mention here that petitioner father expired in 9th -August-2018. Appellant is the only son to take care of her mother as she is unable to talk, unable to walk and unable to eat mother as she is unable to talk, unable to walk and unable to eat (Pipe installed in the nose by the doctor) as she is completely on bed and her health condition is very critical.”

4. Suffice to state, vide order dated October 12, 2018, the learned Principal Judge (South), Family Court, Saket, New Delhi ('Principal Judge', in short) has allowed the application dated April 13, 2011 filed by the respondent herein under Section 24 of the Hindu Marriage Act in the following manner:

“6.1 Thus, for the period from filing of petition i.e. 13.04.2011 to 12.04.2012, respondent shall be liable to pay maintenance at the rate of Rs.4,000/- per month i.e. Rs.48,000/- (Rs.4,000/- x 12). For the next year i.e. 13.04.2012 to 12.04.2013, respondent shall be liable to pay maintenance at the rate of Rs.4,320/- (Rs.4,000/- x108/100) for 12 months i.e. Rs.51,840/-(Rs.4,320/- x 12). For the next year i.e. 13.04.2013 to 12.04.2014, respondent shall be liable to pay maintenance at the rate of Rs.4,665/- (Rs.4,320/-x108/100) for 12 months i.e. Rs.55,987/- (Rs.4,665 x 12). For the next year i.e. 13.04.2014 to 12.04.2015, respondent shall be liable to pay maintenance at the rate of Rs.5,038/- (Rs.4,665/-x108/100) for 12 months i.e. Rs.60,458/-(Rs.5,038/- x 12). For the next year i.e. 13.04.2015 to 12.04.2016, respondent shall be liable to pay maintenance at the rate of Rs.5,441/- (Rs.5,038/-x108/100) for 12 months i.e. Rs.65,303/-(Rs.5,441/- x 12). For the next year i.e. 13.04.2016 to 12.04.2017, respondent shall be liable to pay maintenance at the rate of Rs.5,877/- (Rs.5,441/-x108/100) for 12 months i.e. Rs.70,527/-(Rs.5,877/- x 12). For the next year i.e. 13.04.2017 to 12.04.2018, respondent shall be liable to pay maintenance at the rate of Rs.6,347/- (Rs.5,877/-x108/100) for 12 months i.e.



Rs.76,170/- (Rs.6,347/- x 12). W.e.f. 13.04.2018 till 12.10.2018, respondent shall be liable to pay maintenance at the rate of Rs.6,855/- (Rs.6,347/-x108/100) for 6 months i.e. Rs.41,130/-(Rs.6,855/- x 6).

6.2 W.e.f. 13.10.2018 onwards, respondent shall deposit an amount of Rs.6,855/- per month before every 20th day of each calendar month in the bank account of petitioner. There shall be an annual increase of 8 % on 13th of April of every year till the petition remains pending. Arrears be cleared within 3 months, in 3 equal monthly installments.”

5. The execution proceedings have been initiated by the respondent which are pending consideration before the learned Judge-02, Family Courts, District South, Saket, New Delhi ('Family Court', in short), in which on September 14, 2023, the following order has been passed:

*“ There are arrears pending against the JD.
Neither JD has appeared nor made any payment to the DH.
Fresh NB W be issued against the JD on taking steps executable through concerned SHO.
Copy of this order be sent SHO concerned for compliance.
Matter be listed for further hearing on 26.10.2023.”*

6. The grievance of the petitioner is against the orders dated October 12, 2018 and September 14, 2023. In support of the appeal against the order dated October 12, 2018, an application has been filed seeking condonation of delay of 1767 days in filing the appeal.

7. We have perused the contents of the application. The reasons justifying the delay are primarily in paragraphs 2 and 3 of the application, which reads as under:

“2. That it is submitted that the appellant is the only son and his father has already expired in the August 2018, leaving behind the appellant and his mother and since then



the entire responsibility of the mother is on the appellant. However, with great difficulty, the appellant has paid the said amount of maintenance to the respondent-wife till 10.01.2020. Thereafter mother of the appellant suffered Covid in December 2020 and went into Coma and hence the appellant was not able to pay the said maintenance to the respondent/wife.

3. The appellant submits that the condition of his mother deteriorated day by day and she was admitted in Apollo Hospital on 06.08.2022. 27.10.2022 and 29.03.2023 but her condition remained as it is and hence she was admitted in Holy Family Hospital on 08.04.2023. She was again admitted on 11.05.2023. The mother of the appellant is still in Coma.”

8. We have seen the order dated October 12, 2018 of the Principal Judge, whereby the maintenance has been granted in favour of the respondent. The same is on the basis of the findings in paragraphs 5.1 and 5.2 of the order, which reads as under:

*“5.1 Though, it is claimed by the respondent in reply to the application that petitioner is a trained home guard and nurse, however, no documentary evidence has been placed on record, in support of these averments. It is noticed that all these arguments were raised before the Ld. ASJ, while challenging the order passed by Ld. MM granting maintenance. The reply filed before this court is a cut/ copy/paste of the appeal, as the respondent has been described as appellant. The *arguments were evidently rejected by the Ld. ASJ.*

5.2 This court also find no merits in those arguments. There is no material placed on record by the petitioner to indicate the income of the respondent. The respondent has also avoided to file his latest income bank account statement or the proof of income. The court is, therefore, left with no parameter to quantify maintenance pendente lite. It is noticed that Ld. MM, vide order dated 04.02.2010 had granted an amount of Rs.4,000/- as maintenance, which order has not been set-aside. The order has, therefore, become final between the parties. Thus, this court is of the opinion that an amount of Rs.4,000/-



per month towards the maintenance pendente-lite shall serve the ends of justice from the date of filing of the application. However, considering the fact that the child is growing and also considering the fact that there is constant devaluation in the value of money, therefore, this court is of the opinion that enhancement of 8 % per annum on the amount initially awarded shall also serve the ends of justice.”

9. We are not convinced with the reasoning given by the appellant in filing the appeal with a delay of 1767 days. We also find that there is justification for the learned Principal Judge to pass the order dated October 12, 2018. The order is not liable to be interfered with. We dismiss the application for condonation of delay and the appeal.

10. Insofar as the order dated September 14, 2023 is concerned, as Non-Bailable Warrants have been issued against the Judgment Debtor in the execution petition, taking the undertaking of the appellant herein that he shall appear before Family Court where execution proceedings are pending on October 26, 2013, the present appeal is dismissed. On his appearance the Family Court shall proceed in accordance with law.

11. In view of the above order, the Non-Bailable Warrants, shall not be executed till October 26, 2023, when the appellant shall appear before Family Court.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

OCTOBER 19, 2023/R