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

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Date of Decision: 23rd November, 2023

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CRL. M.C. 316/2022 and CRL. M.A. 276/2023

MS. SHOBHNA SARBHAI

..... Petitioner

Through Mr. Parinav Gupta and Mr. Rakshit
Rathi, Advocates

versus

DR. SANJEEV SAXENA

..... Respondent

Through Mr. Anil Gera, Advocate

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This petition has been filed by the Petitioner under Article 227 of the Constitution of India laying a challenge to an order dated 23.11.2020 passed by learned Additional Sessions Judge, Patiala House Courts, New Delhi, dismissing the appeal being Criminal Appeal No.135/2020 filed by the Petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act'), on ground of delay.

2. Facts to the extent necessary and relevant are that marriage between the Petitioner and Respondent was solemnized on 25.11.2007, according to Hindu rites and customs and a daughter was born out of the wedlock on 28.04.2010. The child was diagnosed as an autistic speechless child with 75% disability and IQ 37. On account of differences and disputes between the parties, Petitioner left the matrimonial home on 30.01.2016 and came to Delhi to live with her parents along with her minor daughter.



3. On 01.10.2016, as per the averments in the petition, an application was filed by the Petitioner under Section 12 of the DV Act being Complaint Case No.48726/2016 with an affidavit under Section 23(2) of the DV Act, seeking interim relief. Petitioner filed her affidavit of assets, income and expenditure on 17.02.2017, which according to her reflects that she does not have any source of income preceding 3 years and she was dependent on her parents. Respondent filed his reply on 24.04.2017 along with affidavit of income and expenditure with ITRs for Assessment Years 2014-15, 2015-16 and 2016-17. Subsequently, Petitioner also filed an application under Section 91 Cr.P.C. seeking production of documents from the Respondent such as cashbook, balance sheets, salary slips, etc. Without disposing the said application, by the impugned order dated 21.06.2019, learned Trial Court disposed of the interim maintenance application directing the Respondent to pay a sum of Rs.66,000/- per month to the Petitioner for her and for the maintenance of the daughter.

4. The order granting interim maintenance was challenged by the Petitioner by filing an appeal under Section 29 of the DV Act being Criminal Appeal No.135/2020, which was dismissed by the learned Sessions Judge on 23.11.2020 on ground of delay, without going into merits of the case. It is this order which is impugned in the present petition.

5. As per the averments in the petition, the appeal was filed along with an application seeking condonation of delay of 471 days under Section 5 of the Limitation Act, 1963. In support of the application, Petitioner had pleaded that the amount of interim maintenance granted was not adequate to meet the medical expenses of her daughter who required constant therapy and treatment as she is a special child. Efforts were made to



amicably resolve and settle the disputes before the Mediation Centre where the parties were directed to appear on 16.12.2019. However, the mediation failed as the Respondent was not willing to change his stand. Matter was being adjourned before the Trial Court from time to time for one reason or the other and thereafter, the functioning of the Court was impacted on account of COVID-19. On 19.10.2020, Petitioner learnt of some bank accounts of the Respondent and his parents from which it became clear that his correct income and financial resources were concealed from the Court. This led to the filing of the appeal for enhancement of the interim maintenance and the delay was for reasons beyond the control of the Petitioner.

6. By the impugned order, the Appellate Court has dismissed the appeal filed by the Petitioner on ground of delay without going into merits. The prime reason for not condoning the delay, as reflected from the order, was that the Petitioner did not intend to challenge the order dated 21.06.2019 at the initial stages and it was later that she took the decision to challenge the same after the period of limitation had expired. Learned Judge has observed that even if Petitioner has made out a sufficient cause for not filing the appeal from 02.11.2019 when the work was suspended due to lawyers' strike and thereafter on account of pandemic, there is no reason to show what prevented the Petitioner from filing the appeal till 02.11.2019 from 21.06.2019, the order under challenge.

7. Counsel for the Petitioner submits that DV Act is a beneficial legislation and the relief should not be denied on account of mere technicalities, including delay. He further urges that adequate and sufficient explanation was offered for the delay. At the time when the interim



maintenance was granted, Petitioner was not privy to some of the bank accounts of the Respondent as statements of accounts for the period 2013-14 and 2014-15 were not filed by the Respondent. The moment the Petitioner learnt of the fact that Respondent had misled the Court and concealed documents which would show his higher income and investments in stocks, shares and mutual funds, an appeal was filed for enhancement of the interim maintenance. In fact, Petitioner had filed an application under Section 91 Cr.P.C. before the learned MM Court seeking directions to the Respondent to produce his ITRs, salary slips, details of income from other employers, etc., but without deciding the said application, order was passed granting interim maintenance. In these circumstances, the appeal should have been entertained so that the interim maintenance can be enhanced, especially looking to the fact that Petitioner's daughter, who is a special child, needs constant therapy and treatment, on which there is an ever-increasing expenditure. It is also urged that the law of limitation and provisions of the DV Act have to be balanced out and the just cause of the Petitioner should not be defeated only on account of delay in filing the appeal. It is settled law that the expression 'sufficient cause' in Section 5 of the Limitation Act must be given a liberal construction so as to advance substantial justice. Reliance is placed on the judgment of a Co-ordinate Bench of this Court in ***Jagmohan Kashyap v. Govt. of NCT of Delhi and Another, 2022 SCC OnLine Del 1609.***

8. Learned counsel for the Respondent, on the other hand, opposes the petition on the ground that no justifiable explanation has been offered for the long delay of 471 days in filing the appeal and therefore, no infirmity can be found with the impugned order. Law of limitation is not a



technicality and if sufficient cause is not made out for an inordinate and unreasonably long delay, the delay ought not be condoned since this impacts the vested rights of the opposite party, which have accrued in the meantime and litigants will be encouraged to resort to dilatory tactics and will litigate leisurely.

9. I have heard learned counsels for the parties and examined their submissions.

10. There is no dispute between the parties that they are living separately on account of temperamental disputes and differences and the attempt to amicably resolve the disputes in mediation has failed. It is equally undisputed that the daughter of the parties is a special child and has been diagnosed as autistic speechless child with 75% disability and requires constant therapy and treatment, on which considerable expenses are being incurred. By order dated 21.06.2019, Petitioner was awarded interim maintenance of Rs.66,000/- per month by the learned MM. Reading of the petition shows that efforts were made by the Petitioner to have the order executed including filing a contempt against the Respondent on 22.01.2020. The appeal was filed by the Petitioner assailing the quantum of interim maintenance and seeking enhancement, primarily on the ground that the income disclosed by the Respondent was not the correct income and various amounts lying in his bank accounts in the form of Fixed Deposits and other investments, etc. were concealed. Details of some of the investments were furnished in the appeal. Condonation of 471 days was sought in the accompanying application under Section 5 of the Limitation Act, a reading of which shows that Respondent has also preferred an appeal being Criminal Appeal No.163/2019, which is pending and during the



pendency, parties were referred to mediation, which, however, failed on 16.12.2019. In the meantime, the work remained suspended from 02.11.2019 on account of lawyers' strike for a considerable period. Petitioner sought execution of the order dated 21.06.2019 on 17.01.2020 but the matter was adjourned. Contempt was filed by the Petitioner on 22.01.2020, on which also no effective hearing took place. In March, 2020 lockdown was declared on account of Pandemic COVID-19. Subsequently, on 19.10.2020 Petitioner gained knowledge of the additional bank accounts and the deposits of the Respondent and preferred an appeal.

11. A holistic reading of the application under Section 5 of the Limitation Act shows that Petitioner was diligently pursuing her case for grant of interim maintenance as the money was required not only for her maintenance but also for the treatment of her daughter. Attempts were made to seek execution of the order and file a contempt petition. It cannot be said that the Petitioner did not act diligently. In the impugned order, no doubt it is correctly mentioned that initially the Petitioner was not aggrieved by the order granting interim maintenance, however, what is being glossed over in the impugned order is the categorical averment made in the appeal and the condonation of delay application that it was later on 19.10.2020 that the Petitioner received a letter whereby she learnt of some bank accounts of the Respondent and his parents, allegedly disclosing additional financial resources, which according to her had been concealed. It is this which triggered the filing of the appeal for enhancement of interim maintenance amount. Petitioner explained the reasons that prevented her from approaching the Court within the limitation period, which cumulatively included lawyers' strike, Pandemic COVID-19. In my view,



Petitioner has made out a sufficient cause for condonation of delay in filing the appeal.

12. The Supreme Court in *S. Ganesharaju (Dead) through LRs. and Another v. Narasamma (Dead) through LRs. and Others, (2013) 11 Supreme Court Cases 341* held that it is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Not the length of delay alone but acceptability of the explanation is the criterion inasmuch as sometimes small delay may be uncondonable due to want of acceptable explanation whereas in some cases, long delay can be condoned on satisfactory explanation. It was also held that when the first Court refused to condone delay, the superior Court is free to consider the cause shown for delay afresh and come to a finding untrammelled by the conclusion of the Lower Court. Law of limitation is founded on public policy. Rules of limitation are not meant to destroy the rights of the parties but to see that they do not resort to dilatory tactics and seek their remedies promptly. Liberal construction must be given so as to advance substantial justice and there should be no presumption that delay in approaching the Court is always deliberate. In *Jagmohan Kashyap (supra)*, this Court upheld an order of the Appellate Court entertaining an appeal under the DV Act pertaining to interim maintenance, even though the same was filed after 3 years and 99 days on finding a just cause for condonation of delay. In the said case, the wife had filed a complaint case under DV Act and her application under Section 23 seeking interim maintenance was dismissed. Appeal was filed against the said order with a delay of 3 years and 99 days, along with an application for condonation of



delay, which was allowed and the delay was condoned subject to cost of Rs.8,000/-. This order was challenged before this Court by the husband and the petition was dismissed on the ground that DV Act is a welfare legislation and procedural technicalities should not come in the way of justice. The Court observed that the DV Act is without a doubt a welfare legislation, to protect the interest of women in domestic relationships and shared households against not just physical abuse but also emotional and financial abuse. Law of limitation which is premised on public policy must be balanced with the DV Act and the aims and objectives behind the said enactment.

13. Applying the aforesaid judgments to the present case and finding that sufficient cause is made out by the Petitioner for condonation of delay, this Court is of the view that applying the expression ‘sufficient cause’ in a meaningful manner, it would subserve the ends of justice if the delay is condoned as delay alone cannot be determinative in light of explanation offered by the Petitioner. The reason that led to the Petitioner filing the appeal with delay has been sufficiently brought forth not only before the Appellate Court but even before this Court. Court is also informed that the appeal filed by the Respondent against the award of interim maintenance is pending and is next listed on 05.12.2023 before the Appellate Court. In my view, it will serve the ends of justice if the Petitioner is permitted to address arguments on the appeal on merits and it would be appropriate if both the appeals are heard together as they arise out of the same impugned order.

14. Accordingly, the impugned order dated 23.11.2020, passed in Criminal Appeal No.135/2020 is set aside. Delay of 471 days in filing the



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appeal is condoned and the appeal is restored to its original number, requesting the learned Appellate Court to take up Criminal Appeal No.135/2020 for hearing along with Criminal Appeal No.163/2019 on 05.12.2023 or any other short date thereafter, if for some reason the two appeals cannot be heard on 05.12.2023. Be it noted that while this Court was inclined to impose costs on the Petitioner, learned counsel for the Respondent graciously and fairly submits that he would not press on the costs looking at the nature of the disputes involved in the matter and the medical condition of the child of the parties. This Court appreciates the fair stand taken by the learned counsel for the Respondent.

15. Petition is disposed of in the aforesaid terms along with pending application, making it clear that this Court has not expressed any opinion on the merits of the case and it is open to the Appellate Court to take a decision on the appeals unaffected by any observations in this judgment and in accordance with law and facts of the case.

JYOTI SINGH, J

NOVEMBER 23, 2023/KA