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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 333 OF 2024
WITH
INTERIM APPLICATION NO. 2979 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 333 OF 2024**

Arun Hariappa Shetty ... Applicant

vs.

Radhika Arun Shetty and Ors ... Respondents

Mr. Yuvraj Narvankar a/w. Mr. Ravi Uikey a/w. Mr. Mayur Mohite, for
Applicant.

Mr. Kamlesh Mali, for the Respondent.

Ms. S.K. Gajare, APP for Respondent-State.

CORAM : GAURI GODSE, J.

DATED : 30th AUGUST 2024

ORDER :-

INTERIM APPLICATION NO. 2979 OF 2024

1. This application is for condonation of delay of 522 days in filing the revision application. The revision is filed to challenge the order dismissing the applicant's appeal filed under the Protection of Women from Domestic Violence Act, 2005 ('DV Act'). The appeal was filed by the petitioner to challenge the order passed by the

learned Magistrate directing the applicant to pay monthly interim maintenance of Rs. 50,000/- to the respondent-wife and two minor children. The impugned order passed by the learned Magistrate also directs the applicant to pay the school and tuition fees of both the children and also bear the educational expenses. There is also an order passed prohibiting the applicant from dispossessing respondent no.1 and children from the residence where respondent no.1-wife and children are residing.

2. Learned counsel for the applicant submitted that initially writ petition was filed on 28th February 2024, to challenge the impugned order passed by the Sessions Court on 13th September 2022. He submits that by order dated 3rd May 2024, the revision was permitted to be converted into the criminal revision application. He submits that pursuant to the said order amendment is carried out on 3rd May 2024. He thus, submits that in such circumstances, there is a delay in filing the revision application. Learned counsel for the applicant submits that the reasons for delay in filing the criminal revision application are explained in paragraph no.7 of the application. He submits that due to financial constraints, the applicant was unable to take steps for challenging the impugned order within time. He therefore submits that the delay is of 522 days after excluding the period of pendency of the writ petition which was

initially filed. He further submits that inspite of financial constraints, the applicant has already paid total amount of Rs. 18,00,000/- towards arrears of maintenance. He further submits that apart of paying amount of maintenance, the applicant is incurring all the expenses for the children. He submits that considering the financial constraint of the applicant, the delay caused is unintentional and hence, the delay be condoned. He submits that the applicant has good case on merits to argue in the criminal revision application. He therefore submits that the delay be condoned and the application be heard on merits.

3. Learned counsel appearing for the respondent no.1, strongly opposes the condonation of delay. He submits that the detailed reply is filed on behalf of respondent no.1. He submits that the order was challenged only after distress warrant was issued. He thus, submits that only to stall the execution of the impugned order and avoid making payment towards maintenance amount, the proceedings are initiated by the applicant. Learned counsel for the respondent submits that initially the petition for divorce filed by the applicant was allowed. The divorce decree was challenged by respondent by filing First Appeal before the District Court. He submits that by order dated 25th April 2023, the decree of divorce was set aside by the District Court and appeal was remanded for

fresh hearing. He submits that initially the applicant has filed the Second Appeal to challenge the order of remand and later it is converted into Appeal from order and the same is pending.

4. Learned counsel for the respondent further on instructions submits that after the divorce decree was passed, the applicant has remarried and hence he has avoided making payment towards interim maintenance.

5. Learned counsel for the respondent submits that the minor son aged 16 years and daughter aged 12 years are residing with respondent no.1. He submits that the respondent is facing financial constraints in view of non payment of the arrears of maintenance by the applicant. He thus, submits that only to avoid making payment, the applicant has filed these proceedings. He submits that there are vague reasons given in the application for condonation of delay. He submits that there are no particulars provided regarding the reasons mentioned in the application. He submits that the applicant has filed proceedings with regard to setting aside of the divorce decree. He thus, submits that the reasons given by the applicant are not genuine. He strongly opposes condonation of delay.

6. Considering the rival contentions of the parties, I have perused the papers of the application. It is not in dispute that there

was delay even in filing the writ petition. The application refers only to only financial constraints as the ground for condonation of delay. The application is bereft of any explanation regarding the steps taken by the applicant after the impugned order was passed on 13th September 2022 till 28th February 2024, when the writ petition was filed. Though the applicant submits that he has till date paid an amount of Rs. 18,00,000/- towards maintenance, it is not in dispute that the applicant is still in arrears of maintenance for an amount of Rs. 13,50,000/-.

7. Considering the age of the minor children aged about 16 years and 12 years respectively, the respondent no.1 is justified in submitting that she is facing financial difficulties due to non-payment of maintenance by the applicant. A perusal of the date and events, indicates that the respondent no.1 is right in submitting that the applicant has filed this proceedings only to stall the recovery of the arrears of maintenance.

8. It is not in dispute that the applicant has re-married after the divorce decree. Though it is not in dispute that the applicant had remarried after the appeal period was over, the decree for divorce is set aside in the appeal preferred by respondent no.1. Thus, in view of the pending proceedings, the marriage between the applicant and

respondent no.1 is still subsisting.

9. To examine the reasons for condonation of delay, I have perused the application. The cause for delay is stated in paragraph no.7 of the application that after clearing arrears of Rs. 18,00,000/- the financial position of the applicant is precarious and he was not in a position to approach this court within the period of limitation. In view of the admitted facts of the case, I do not find that the reason mentioned in paragraph no.7 is genuine reason. The arrears towards maintenance was paid in September 2023, after the distress warrant was issued as per the impugned order dated 13th September 2022. It is not in dispute that amount towards arrears of maintenance was paid by the applicant only after the distress warrant was issued. Thus, the reasons mentioned in the application that in view of payment of arrears towards maintenance, the applicant was facing financial crisis is not believable. There is no explanation for not making payment of the arrears of maintenance till distress warrant was issued in September 2023. Thus, from the averments made in the application, it is clear that only to stall the recovery of arrears towards maintenance the proceedings were initiated belatedly and kept pending.

10. There are no justifiable and genuine reasons stated to

condone the delay. I do not find that this is a fit case to condone delay of 522 days. Hence, for the aforesaid reasons, interim application is dismissed.

11. In view of dismissal of the Interim Application, criminal revision application stands dismissed.

12. It is clarified that this court has not passed any interim relief. Hence, respondent no.1 is at liberty to proceed with the execution for recovering the arrears towards maintenance as per the order impugned in the revision application.

(GAURI GODSE, J.)