

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

112

CRR-F-1395-2023 (O&M)

Date of order: 29.02.2024

Prakash Chand

.....Petitioner(s)

Vs.

Sumanlata

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Himanshu Sharma, Advocate
for the petitioner.

Nidhi Gupta, J.CRM-40762-2023

This is an application under Section 5 of The Limitation Act for condonation of delay of 148 days in filing the present petition.

No cogent reasons have been given that constitute a ground to condone such inordinate and extraordinary delay of 148 days in filing the present petition. Present application accordingly stands dismissed.

MAIN CASE

Challenge in the present petition is to order dated 20.01.2023 passed by learned Principal Judge, Family Court, Camp Court at Mahendergarh, whereby in an application filed under Section 125 Cr.P.C. by the respondent/wife, an amount of Rs.7,000/- per month has been granted as interim maintenance from the date of filing the application along with litigation expenses of Rs.5,000/-.

2. Learned counsel for the petitioner-husband inter alia submits that the petitioner was married to the respondent on 02.07.1983. Two sons were born out of their wedlock one of whom is married. It is submitted that the impugned order is on the face of it wrong as the respondent maintains very ill health and therefore, the petitioner cannot live with her. It is further submitted that the respondent/wife is staying in the matrimonial home of the petitioner whereas the petitioner himself is residing in rented accommodation as he had been thrown out of the matrimonial home by the respondent. Accordingly, it was the respondent who had deserted the petitioner and therefore, the petitioner is not liable to pay maintenance to her.

3. No other argument is made on behalf of the petitioner.

4. I have heard learned counsel for the petitioner and perused the case file in detail.

5. As regards argument of the petitioner that the respondent maintains very ill health, this Court posed a direct query to the learned counsel for the petitioner that in a marriage, if one spouse is unwell is it not the duty of the other spouse to look after him/her. Learned counsel for the petitioner is unable to deny that this is so.

6. As regards contention on part of the petitioner that he had been thrown out of the matrimonial home by the respondent-wife and was constrained to stay in rented accommodation, the record shows that the said plea on part of the petitioner is utterly false. A perusal of the reply (Annexure P3), filed by the petitioner to the respondent's application under Section 125 Cr.P.C. Shows that in Para 7 thereof the petitioner has stated

that he was staying in a rented accommodation as he was studying LLB from Mirpur University Rewari.

7. In view of the above, the contention sought to be made on part of the petitioner that the respondent was herself residing in the matrimonial home and had thrown away the petitioner, is found to be patently untrue.

8. Further perusal of record shows that in respect of the earning capacity of the parties, the learned Family Court has returned the following findings:-

“6....She is not earning anything. Respondent is retired Principal and also earning from agricultural land. Respondent has mentioned in his affidavit that he is M.Com, B.Ed and retired from service and his monthly income is Rs.47,000/- and his monthly expenditure is Rs.30,000/-. Petitioner is under matric. As per respondent, the petitioner is receiving rent of Rs.6,000/- per month and produced a rent payment slip. The said receipt is to be proved at the time of evidence. As per petitioner she has no source of income to maintain herself. Petitioner has claimed that she is suffering from diabetes and hard disc problem and is under treatment in Medanta Hospital. It is the moral as well as legal duty of the respondent to maintain his wife. Keeping in view the above facts, application for interim maintenance filed by the petitioner is accordingly allowed and respondent is directed to pay sum of Rs.7,000/- per month as interim maintenance to petitioner from the date of filing of application and litigation expenses of a sum of Rs.5,000/-.”

9. I am in complete concurrence with the above reasoning given by learned Family Court in impugned order dated 20.01.2023.

10. In view of the above, I find no merit in the present petition, and the same is accordingly **dismissed**.

11. Pending application(s) if any also stand(s) disposed of.

29.02.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No