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

+ **CRL.REV.P. 329/2024, CRL.M.A. 7490/2024**

PRAVEEN BHARGAVA Petitioner

Through: Appearance not given.

versus

POONAM BHARGAVA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **11.03.2024**

CRL.M.A. 7491/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.A. 7492/2024

For the reasons stated in the application, the delay of 21 days in filing the appeal is condoned.

Application stands disposed of.

CRL.REV.P. 329/2024, CRL.M.A. 7490/2024

1. Petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for setting aside order dated 16.11.2023 passed by the learned Judge, Family Court, Patiala House Courts, New Delhi, whereby, application under Section 126(2) Cr.P.C., preferred on behalf of the petitioner, has been dismissed.

2. In brief, an application under Section 125 Cr.P.C. was preferred on



behalf of the respondent (wife), wherein, the respondent appeared and filed written statement on 11.02.2013. Also, an Income / Assets Affidavit was filed on behalf of the respondent during the course of proceedings on 01.04.2014. However, the petitioner failed to appear on 18.09.2014 and was finally proceeded ex-parte on 16.11.2015. Petitioner thereafter, appeared in proceedings before the learned Trial Court on 13.01.2017 and sought time to file an application for setting aside ex-parte proceedings, and the same was finally preferred on 16.10.2017. The said application was dismissed for non-prosecution vide order dated 13.09.2019 and an ex-parte judgment was passed on 03.10.2019.

3. Petitioner thereafter preferred an application under sub-Section 2 of Section 126 Cr.P.C. read with Section 5 of Limitation Act for setting aside of ex-parte order dated 16.11.2015 and 03.10.2019, which stands dismissed vide impugned order dated 16.11.2023. The stand taken on behalf of the petitioner before learned Trial Court is that he had engaged a lawyer for pursuing the application for setting aside ex-parte order dated 16.10.2015, but the said counsel failed to appear before the learned Trial Court and the application was dismissed for non-prosecution, leading to passing of an ex-parte judgment dated 03.10.2019.

Further, when the petitioner came to know about the ex-parte judgment dated 03.10.2019, he engaged a new counsel, who advised him that the judgment would be set aside only by filing revision petition before this Court. However, even the said counsel took a long time for preparation and subsequently, there was a lockdown and as such, the revision petition could not be filed. The file is stated to have been returned back to the petitioner even by the said second counsel and in the month of March, 2021, the petitioner



engaged a new lawyer, who filed an application before the concerned Court for setting aside of the ex-parte order dated 16.11.2015 and ex-parte judgment dated 03.10.2019.

4. It was contended on behalf of petitioner before the learned Trial Court that petitioner has been completely depending upon the counsels and as such, the delay in filing of the application be condoned.

On the other hand, application was objected to on behalf of the respondent (wife) and it was submitted that the Principal and other officials from the school, wherein the petitioner was posted, appeared before the Court on summoning and as such, petitioner was aware of the proceedings but deliberately avoided to appear before the Court.

5. Learned counsel for petitioner reiterates the contentions raised before the learned Trial Court and submits that the petitioner could not appear before the learned Trial Court due to his duty hours and health conditions and also suffered brain stroke on 21.03.2017. It is submitted that petitioner could not pursue his case as well as contact his counsel, who had filed an application only on 16.10.2017 for setting aside order dated 16.11.2015.

6. The reasons recorded by the learned Trial Court in paras 14 to 17 of the impugned order dated 16.11.2023 clearly reflect that the grounds taken by the petitioner for setting aside of the impugned order and ex-parte judgment were not found convincing or sustainable and may be briefly noticed:

“14. Applicant's absence from the canvas of entire proceedings can be divided into five period - first from 05.07.2014 to 16.11.2015, second from 16.11.2015 to 13.01.2017, third from 13.01.2017 to 16.10.2017, fourth from 16.10.2017 to 03.10.2019 and fifth from 03.10.2019 to 24.09.2021.



15. There is no explanation for his absence between the period from 05.07.2014 to 16.11.2015. The half hearted submission that he fell ill in October, 2015 does not justify his absence for the aforesaid period and for that matter his absence till 13.01.2017. Applicant has placed medical record that he suffered brain stroke in March 2017. Even if same is accepted, there is no satisfactory explanation for his absence from 16.11.2015 to 13.01.2017. His plea that his mother was not keeping well is also not supported by any medical document (which is of 2018 onwards) filed later. Further, in the application filed on 16.10.2017 for setting aside order dt. 16.11.2015 not a single word has been spoken about the counsel who was till then representing him and did not explain why said counsel stopped appearing in the matter.

16. Further, the applicant admittedly appeared on 13.01.2017 and on 16.10.2017 and his absence from March, 2017 to 16.10.2017 could be understood on account of brain stroke but what about his absence from 16.10.2017 to 03.10.2019. Although he had alleged that Counsel Sh Rajesh Singh who had filed on his instruction application for setting aside order dt. 16.11.2015, had assured him that he would look after the case and he did not do so yet there is no complaint against him for his alleged dereliction of his professional commitment.

17. Thus, even if applicant's explanation for the delay caused in filling the present application for setting aside ex-parte judgement is accepted, his explanation for his absence from 05.07.2014 to 16.11.2015 and from 16.10.2017 to 03.10.2019 is neither convincing nor sustainable nor supported by any documents. Hence, there is no merit in the application and same is accordingly hereby dismissed."

7. Ex-parte proceedings may be set aside for a good cause shown under Section 126(2) Cr.P.C. to advance substantive justice but nevertheless,



procedure cannot be given a complete go by. The powers of the court are to be used in appropriate cases and the litigant cannot assume that, as a matter of right, the ex-parte proceedings would be set aside. The right accruing to the respondent (wife) on account of the delayed action needs to be kept in perspective. The reasons given for explaining the delay are of paramount importance and not the length of the delay.

8. This Court is of the considered opinion that absence of the petitioner in the proceedings before the learned Trial Court cannot be justified as despite being aware of the proceedings, the petitioner intentionally evaded to appear in the proceedings and has just shifted the burden on the counsels without being diligent to prosecute. The contentions raised by the counsel for the petitioner that the petitioner could not understand the consequences of the proceedings and a technical approach has been adopted by the learned Trial Court, are without any merit.

In view of above, petition is devoid of merits and is accordingly dismissed. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to learned Trial Court for information.

ANOOP KUMAR MENDIRATTA, J.

MARCH 11, 2024/R