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

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Date of Decision: 30.01.2024+ **MAT.APP.(F.C.) 121/2023, CM Nos.22507/2023 & 22509/2023**

JYOTI PURI

..... Appellant

Through: Mr Deepak Singh Thakur and Ms
Komal Verma, Advs. for the appellant
along with appellant.

versus

SUMEET PURI AND ORS

..... Respondents

Through: Mr Anil Babbar, Adv. along with R-1.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.: (ORAL)****CM No.22509/2023 [Application filed on behalf of the appellant seeking
condonation of delay of 440 days in filing the appeal]**

1. This is an application seeking condonation of delay in filing the appeal.

1.1 According to the appellant, there is a delay of 440 days.

2. The reason given in the application for delay is that because counsel for the appellant had moved his office, the case file was misplaced causing delay in approaching the court.

3. Although, the reason given is rather curious, we propose to condone the delay having regard to the direction issued by the learned Principal



Judge, Family Court, South-East, Saket, New Delhi which, to our minds, is completely untenable in law.

4. Another reason for condonation is because this appears to be a case in which the appellant did not receive legal advice in time. The appellant's counsel also took his own time in filing the appeal and, therefore, the delay.

5. Besides this, we may note that the respondent has filed a reply to the application which is titled as "written statement", wherein, it is averred that the delay is nearly 501 days.

6. As indicated above, the delay appears to have its source in the procrastination of the counsel rather than a matter of laxity on part of the appellant.

7. More importantly, the decision of the Supreme Court in *Suo Motu Writ Petition (C) No. 3 of 2020* titled '***In Re: Cognizance for Extension of Limitation***' would reduce the period of delay. For convenience, the relevant directions in this behalf are extracted hereafter:

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.



IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

[Emphasis is ours]

7.1 Therefore, in effect, there is approximately, a delay of 274 days.

8. Given the peculiar facts and circumstances of the case, we are inclined to condone the delay. The delay is, accordingly, condoned.

9. The application is disposed of.

MAT.APP.(F.C.)No.121/2023 & CM No.22507/2023 [Application filed on behalf of the appellant seeking interim relief]

10. The appeal is directed against the order dated 15.11.2021 passed by the learned Principal Judge, Family Court, South East District, Saket, New Delhi.

11. Via the impugned order, the learned Principal Judge disposed of the following applications.

(i) Firstly, an application preferred under Section 12 of the Guardian and Wards Act, 1890, moved by the appellant/mother for grant of temporary custody and visitation rights *qua* the minor children.

ii) Second, an application moved by minor children to claim maintenance from the appellant/mother.

12. It is not in dispute that the couple have two children from the wedlock, i.e., Master Dhruv and Master Vihaan Puri.



13. Insofar as the appellant's/mother's application for grant of visitation rights was concerned, the learned Principal Judge issued the following operative directions:

“4. ... it is ordered that respondent shall bring both the children on 1st and 3rd Saturday of every month to the Children Room, Family Courts, Saket, New Delhi, where the applicant/mother can meet with the children from 2:00pm to 4:00pm. ...”

14. As regards the application moved by the minor children for grant of maintenance, the learned Principal Judge issued the following directions:

“8. Thus, keeping in view the status of parties, their respective needs, capacity of the non applicant/mother to pay, her own expenses, her liabilities and also keeping in view the facts and circumstances of the case, the application for grant of interim maintenance is disposed of, thereby directing the respondent/mother to pay to the petitioners a sum of Rs.6,000/- per month each (Rs.12,000/- in total) towards maintenance of children of parties from the date of filing of the application till final disposal of the petition on merits. The respondent/mother is directed to clear the arrears of maintenance within 3 months from today in equal instalments and to pay the monthly maintenance after the date of order by way of money order or by deposit in the bank account of the father of the children on furnishing the account number of the same by or before 10th date of each calendar month. The default shall be viewed in terms of the judgment of Hon'ble Delhi High Court in the case of **Gaurav Sondhi Vs. Diya Sondhi 120 (2005) DLT 426**. It is further made clear that as per settled Law, the children of parties shall be entitled to receive the maintenance to the highest amount the various allowances, if any, awarded to them by various courts.”

[Emphasis is ours]

15. As can be seen from the extract of the impugned order, the appellant/mother has been asked to pay Rs. 12,000/- per month, as maintenance, for the welfare of the two minor children who are in the custody of the father, i.e., the respondent.

16. The appellant/mother is an employee of Employees' State Insurance Corporation (ESIC). The respondent/father, who is present in court, says that



he works for a private entity, i.e., Safeguard Global.

17. While the learned Principal Judge does discuss that the appellant/mother is employed, and that the children are small and therefore, funds would be required to meet expenses such as on their food, clothing and education, there is no discussion as to why the burden of maintenance has been put on the appellant/mother. Furthermore, there is no discussion concerning the comparative financial resources of the parents.

18. In our view, if the respondent/father is unable to look after the children because of lack of financial wherewithal, he could, perhaps, accede to the prayer of the appellant/mother, that she should have the custody of the children.

19. The direction issued by the learned Principal Judge with regard to the payment of maintenance is unsustainable. The impugned order, as noticed above, gives no rationale for issuance of such a direction.

20. As far as the visitation rights are concerned, according to us, for the moment, the arrangement put in place in place by the learned District Judge appears to be in order.

21. We are told that a petition for permanent guardianship has been moved by the appellant, which is pending adjudication.

21.1 The concerned Family Court will take a decision on the said petition at the earliest.

22. The directions contained in paragraph 8 of the impugned order are set aside.

23. The appeal is, thus, partly allowed.



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24. Consequently, the pending interlocutory application shall stand closed.

25. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JANUARY 30, 2024/aj

Signature Not Verified

Digitally Signed By: ATUL
JAIN

Signing Date: 05.02.2024
16:12:28

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