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

+ CRL.REV.P. 506/2024

DHEERAJ BHATIA

.....Petitioner

Through: Ms. Joshini Tuli with Mr. Joginder Tuli, Mr. Shrikant Sharma and Mr. Saurabh Mishra, Advocates.

versus

SIMRAN BHATIA@VIBHA KHURANA

.....Respondent

Through: Mr. Manish Sindwani with Mr. Ritesh Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

27.09.2024

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By way of the present petition filed under sections 397/401 read with section 482 of the Code of Criminal Procedure 1973, the petitioner (husband) impugns order dated 13.03.2024 passed by the learned Sessions Court in CA No. 23/2024, whereby the learned Additional Sessions Judge, Saket District Courts, New Delhi has dismissed the petitioner's appeal under section 29 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act'), by which the appellant had challenged order dated 21.01.2022 passed by the learned Metropolitan Magistrate (Mahila Court), Saket District Courts, New Delhi in Ct. Case No. 43436/2019.

2. Earlier, *vide* order dated 14.12.2021 the learned ASJ had set-aside order dated 15.09.2021 which had awarded *ad-interim* maintenance to the respondent (wife) at Rs.1,80,000/- per month; but subsequently



vide order dated 21.01.2022 the learned Magistrate re-affirmed order dated 15.09.2021, noting that since the petitioner had failed to clear the arrears of maintenance which was one of the conditions for setting-aside order dated 15.09.2021, the said order deserved to be reinstated.

3. Although no formal notice has been issued to the respondent (wife), Mr. Manish Sindwani, learned counsel is present on behalf of the respondent.
4. The court has heard Ms. Joshini Tuli, learned counsel for the petitioner, as well as Mr. Sindwani appearing for the respondent at length, at the stage of issuance of notice itself.
5. Ms. Tuli argues, that the learned Sessions Court has dismissed the appeal under section 29 of the DV Act, mainly on the ground of delay and has failed to consider the matter on merits.
6. The court has perused the impugned order. It transpires however, that for one, the learned Sessions Court *has dealt with the grounds of appeal on merits as well*, although in a separate section of the impugned order, the learned Sessions Court *has also rejected the condonation of delay application* filed on behalf of the petitioner.
7. The present case brings with it a long history of litigation, which may be briefly summarised as follows :
 - 7.1. The disputes between the parties arise from their marriage which was solemnised on 22.11.2009, from which the parties also have 02 children, aged about 14 years and 09 years. Both children are presently in the custody of the respondent (wife),



and the respondent has been separated from the petitioner (husband) since 01.12.2019.

- 7.2. By order dated 29.07.2020, the learned Magistrate had directed the petitioner to pay *ad-interim* maintenance to the respondent in the sum of Rs.41,391/- per month, which order was subsequently modified *vide* judgment dated 11.02.2021 passed by the learned Sessions Court in an appeal, whereby the *ad-interim* maintenance was reduced to Rs. 38,400/- per month.
- 7.3. Subsequently, the petitioner even challenged judgment dated 11.02.2021 (though it had reduced the maintenance to Rs.38,400/-) by way of CRL.REV.P. No. 176/2021 before a Co-ordinate Bench of this court, in which proceedings parties were referred to mediation; and the revision petition was disposed-of as withdrawn. The court is informed that mediation between the parties had failed.
- 7.4. In the meantime, *vide* order dated 15.09.2021, the learned Magistrate awarded interim maintenance in the sum of Rs.1,80,000/- per month in favour of the respondent, which order was subsequently set-aside by the learned Sessions Court *vide* judgment dated 14.12.2021, since interim maintenance had been awarded without the petitioner having filed his affidavit of income.
- 7.5. By way of judgment dated 14.12.2021, the learned Sessions Court had granted to the petitioner an opportunity to file his income affidavit within 01 month; and the learned Magistrate was directed to take such income affidavit on record and hear



the arguments afresh on the question of awarding interim maintenance. The learned Sessions Court had issued a further direction to the petitioner (appellant before the learned Sessions Court) to clear the arrears of *ad-interim* maintenance from April 2021 to December 2021 and had clarified that the setting-aside of order dated 15.09.2021 was subject to the petitioner clearing the arrears of *ad-interim* maintenance as directed by the court.

- 7.6. It transpired however, that the income affidavit was not filed by the petitioner despite the aforementioned orders; and in this backdrop, by way of the impugned order, the learned Sessions Court has dealt-with and rejected the petitioner's challenge to the award of interim maintenance, with the following essential reasoning :

“7. Vide order dated 15.09.2021, Ld. Trial Court decided the interim maintenance of Rs. 1,80,000/- per month in favour of the respondent without considering the income affidavits of the appellant. While passing the interim maintenance vide order dated 15.09.2021, Ld. Trial Court have succinctly brought the conduct of the appellant on the record, which is reproduced hereinbelow:

“None has appeared on behalf of the R-1 since morning despite repeated calls. R-1 had entered his appearance through his counsel on 22.06.2020 for the first time. On 13.07.2020, he was granted time of two more weeks to file his income affidavit by way of last and final opportunity. On 25.07.2020 he was again given another opportunity to file his income affidavit. Since the R-1 failed to file the same despite repeated opportunities, an ad-interim maintenance order was passed in favour of the complainant and the R-1 was again directed to file his income affidavit. The R-1 again failed to file the same on 13.08.2020 and again on 15.09.2020. He was again granted time of one more week to file his income affidavit. Even on the next date of hearing



i.e., 22.09.2020, the R-1 failed to file his income affidavit. Thereafter, the matter was adjourned on 27.11.2020, 24.12.2020 and 06.02.2021 as the file had been called by the Ld. Appellate Court. The matter was again adjourned on 19.04.2021 and 29.05.2021 on account of second lockdown.

“Till today, the R-1 has not filed his income affidavit. None has even appeared on behalf of the R-1 since morning. It is apparent that the absence on behalf of the R-1 is for no other reason other than to delay the disposal of the application of the complainant for interim maintenance and to avoid furnishing the details required in the income affidavit.

“In *Rajnish Vs Neha* (Crl. Appeal No. 730 of 2020) Hon'ble Supreme Court of India has directed that "... the R-1 must submit the reply with Affidavit of Disclosure within a maximum period of four weeks. The Court may not grant more than two opportunities for submission of the affidavit of Disclosure of assets and liabilities to une (sic : one) R-1. If the R-1 delays in filing the reply with the affidavit, and seeks more than two adjournments for dete (sic : that) purpose, the court may consider exercising the power to strike off the defence of the R-1, if the conduct is found to be willful and contumacious in delaying the proceedings. On failure to file the affidavit within the prescribed time, the court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record.

“The conduct of the R-1 is undoubtedly willful and contumacious in delaying the disposal of the application of the complainant for interim maintenance. His failure to file his income affidavit shows that he believes that non-filing of his income affidavit, he shall be gaining from the non-disclosure of his income from various sources”

“8. The appellant appeared for the first time before the Ld. Trial court on 22.06.2020 and till the passing of order dated 15.09.2021 he did not file his income affidavit. As per the directions given by the Hon'ble Supreme Court of India in *Rajneesh Vs. Neha* (Crl. Appeal No.730 of 2020), the income affidavit has to be filed



within maximum 4 weeks, but despite passing of more than 15 months, appellant did not file his income affidavit.

“9. Against the order dated 15.09.2021, appellant preferred a Criminal Appeal No. 99/2021 before the L.d. Sessions Court which was allowed and directions was given to the appellant to clear the complete arrears of ad-interim maintenance and to file his income affidavit before the Ld. Trial Court on the next date of hearing i.e. 17.01.2022. But despite the directions of the Ld. Appellate Court, the appellant did not clear the complete arrears of ad interim maintenance and even did not file the income affidavit. Perusal of order dated 14.12.2021 passed by Ld. Appellate Court in Crl. Rev. No. 99/2021, shows that it is clearly mentioned in the order that the setting aside of the order dated 15.09.2021 is subject to clearance of ad interim maintenance arrears, so, it was a conditional order.

“10. The order dated 14.12.2021, passed by the L.d. Appellate Court in Crl. Rev. No. 99/2021 was a conditional order and as the conditions imposed by the order was not adhered with by the appellant, therefore, the order dated 14.12.2021 could not be implemented and correctly Ld. Trial Court vide impugned order dated 21.01.2022 closed the opportunity of appellant to file his income affidavits.

“11. The appellant should be aware that in case he is not following the directions given by the Appellate Court then Ld. Trial Court has no other option except to comply with the direction of the Appellate Court. Therefore, this court does not find any infirmity, illegality or impropriety in the order dated 21.1.2022 passed by the Ld. Trial Court.”

(emphasis supplied)

8. Furthermore, it transpires that even the appeal under section 29 of the DV Act was filed by the petitioner after a *delay of almost 02 years*, and dealing with the petitioner’s prayer for condonation of delay, the learned Sessions Court has observed as follows :



*“12. As regarding the condonation of delay, as per Sec. 29 of the Act, appeal has to be preferred within 30 days. The impugned order was passed on 21.01.2022, therefore, appeal should have been filed on 20.02.2022 but present appeal has been filed on 17.01.2024 i.e. after a delay of almost two years. The only reason given by the appellant for delay is that they were referred to the mediation for settlement first by the Hon'ble High Court and the said mediation continued from 19.01.2022 till 07.10.2022 and after that they were referred to mediation by Saket court in execution proceedings and same kept pending from 15.03.2021 to 06.07.2023. Even if, court does not consider the period spent in the mediation proceedings by both the parties even then, appellant got almost **5 months** time between ending of mediation proceeding in Delhi High Court Mediation Center and starting of Mediation proceedings in Saket Court and almost **6 months** to file the appeal after the end of mediation proceedings in the Saket court. No explanation has come on record from the side of the appellant for not preferring the appeal in the above-mentioned two periods of 5 months and 6 months respectively.”*

(underscoring supplied; bold in original)

9. It is in this backdrop that the learned Sessions Court has dismissed the petitioner's appeal under section 29 of the DV Act, *both* on merits as well as for being beyond limitation.
10. Ms. Tuli informs the court that the petitioner has paid about Rs.22 lacs over a period of the last 05 years to the respondent.
11. Mr. Sindhwani submits, that as is evident from a perusal of the impugned order, the petitioner is guilty of defying and of repeated disobedience of various directions and orders made by the learned Magistrate as well as by the learned Sessions Court in earlier proceedings. Learned counsel states, that as of date, the respondent is



left alone to take-care of herself as well as her 02 minor children who are now about 09 years and 14 years of age. He submits that the petitioner has failed to pay interim maintenance of Rs.1.80 lacs as awarded; and is today in arrears to the tune of about Rs. 80 lacs, which the petitioner owes to the respondent.

12. Mr. Sindwani submits, that on point of fact, the petitioner is a Director in Kennedy Public School, Palam Colony, New Delhi which is owned by his mother. Counsel further submits, that the petitioner has still not filed his income affidavit, for which the opportunity was closed a long time ago; and the reason for not filing the income affidavit is quite evident, namely that the petitioner does not wish to disclose his true income even to the court.
13. Upon a conspectus of the aforesaid facts and circumstances; based on the submissions made by learned counsel for the parties; and *most importantly*, on a perusal of the impugned order, this court is unable to discern anything in the impugned order that would affect its correctness, legality or propriety.
14. In the circumstances, no ground is made-out for this court to exercise its revisional jurisdiction in relation to the impugned order.
15. The revision petition is accordingly dismissed at the stage of issuance of notice itself.
16. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 27, 2024

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