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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 1339/2024 & CRL.M.A. 36476/2024**
VISHAMBHARPetitioner

Through: Counsel *via* video-conferencing
(appearance not given).

versus

THE STATE (GOVT. OF NCT OF DELHI) & ORS.Respondents

Through: Ms. Shubhi Gupta, APP for the State
with SI Sumeet Poonia, P.S.: Vivek
Vihar.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **04.12.2024**

CRL.M.A. 36477/2024

Exemption granted, subject to just exceptions.

The application stands disposed of.

CRL.M.A. 36478/2024

By way of the present application filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner seeks condonation of 180 days' delay in *re-filing* the petition.

2. For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed.
3. Delay in *re-filing* the petition is condoned.
4. The petition is taken on Board.
5. The application stands disposed-of.

CRL.REV.P. 1339/2024

6. By way of the present petition filed under section 430 BNSS, the petitioner impugns order dated 20.02.2024 passed by the learned



Family Court, Karkardooma Courts, Delhi in Misc. CrI. No. 04/2024 whereby an application filed by the petitioner under section 126(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') seeking setting-aside of *ex-parte* judgment dated 23.07.2019 has been rejected.

7. By way of *ex-parte* judgment dated 23.07.2019 the learned Family Court had directed the petitioner to pay to his wife and 02 minor children a sum of Rs. 6,000/- per month (Rs. 2,000/- each) from the date of filing of the petition till the wife remarries and the children attain majority, with a further direction to clear all arrears within 03 months of that date.
8. Learned counsel for the petitioner argues that judgment dated 23.07.2019 was passed *ex-parte* and without notice to the petitioner, who was not even aware about the pendency of those proceedings.
9. Furthermore, counsel submits that the learned Family Court has failed to appreciate that at least the wife was not entitled to any maintenance at all since she was living in adultery, in support of which contention the petitioner has placed on record certain documents and photographs.
10. A perusal of impugned order dated 20.02.2024 shows that the learned Family Court has proceeded to reject the petitioner's application principally on the following reasoning :

"Admittedly, this case was filed way back on 22.09.2017 and applicant was duly served through his sister, who along with her husband also appeared before the Court on 20.03.2018 and 06.06.2018 and apprised to the Court that applicant was not well and was residing at Village Sehri, Gorakhpur, U.P. However, when they again appeared, ad-interim maintenance of Rs. 25,000/- was passed against applicant on 06.06.2018, but still applicant failed to



appear. Applicant also failed to pay ad-interim maintenance and his opportunity to file WS was closed and case was fixed for ex-parte evidence. In fact, ad-interim order was passed against applicant in the presence of his sister and brother-in-law and they never disclosed to the court that they had no communication or were not sharing good relations with him. They were well aware about physical condition of applicant and must have communicated to him about the case as well as adverse order, but still applicant preferred not to appear before the court.

Not only this, warrant of arrest was also issued against applicant to recover ad-interim maintenance vide order dated 22.09.2018, which was issued repeatedly but always received back unexecuted with report not residing there. Ld. Counsel for applicant has argued that respondent herein deliberately furnished wrong address of applicant pertaining to his sister, whereas he has failed to explain as to why applicant failed to appear when his family members duly appeared before the Court and were apprised about pendency of this case. However, he kept mum and allowed this Court to pass ex-parte judgment dated 23.07.2019 and now after almost 4½ years, he has moved this application thereby stating that he was not aware about this case or was not served. He has moved this application after a long of delay but no application for condonation of delay has been filed. No explanation has been tendered as to why he failed to appear earlier, if warrant of arrest/warrant and attachment were also issued and he was not found at his permanent address as well. Though it may be considered that he might have been residing in his native village, yet it cannot be accepted that he was not aware about pendency of this case, if his sister and brother-in-law appeared before the Court repeatedly. In view of ground mentioned in application for non-appearance of applicant, I am of the opinion that applicant is not entitled for any relief, hence application dismissed”

(emphasis supplied)

11. A perusal of the aforesaid extract of impugned order dated 20.02.2024 shows that the petitioner's sister and brother-in-law had in fact appeared before the learned Family Court repeatedly and had apprised



the court that the petitioner was not well and was residing in his native village, viz. Sehri, Gorakhpur, Uttar Pradesh.

12. Furthermore, judgment dated 23.07.2019 also records :

“1. This petition was filed by petitioner no. 1 wife and petitioners no. 2 & 3 minor children against respondent for claiming total maintenance of Rs. 20,000/- per month. The notice of the petition was duly served upon the respondent and his sister and brother in law once appeared on 06.06.2018. The matter was adjourned for filing the written statement but thereafter neither respondent appeared nor filed any written statement and ultimately he was proceeded ex parte on 17.07.2018.

** * * * **

“5. After considering the above facts and circumstances, I deem it proper to award sum of Rs.6,000/- per month payable from the date of filing of this petition by the respondent to all the three petitioners. Petitioner no.1 wife will get maintenance till she remarries and petitioners no.2 & 3 will get maintenance till the date of their majority. Respondent is directed to clear all the arrears within three months and continue to pay future maintenance from August 2019 by depositing in the bank account of the petitioner no. 1 before 10th day of each month. Petitioner is directed to supply her bank details to the respondent within one week. Any other amount being awarded towards maintenance in any other proceedings shall be adjusted. Petition is thus disposed off. Copy of judgment be given to petitioner no. 1 free of costs and file be consigned to Record Room.”

(emphasis supplied)

13. It is therefore observed that by way of judgment dated 23.07.2019, the learned Family Court has awarded only a paltry sum of Rs.2,000/- per month *each* to the petitioner’s wife and 02 children, who all reside in Delhi and would but barely be able to sustain themselves with the said amount of money.



14. In the circumstances of the case, this court simply cannot accept that the petitioner was not duly served in the matter, or at least that he was not aware of the pending proceedings, especially since his sister and brother-in-law had both appeared before the learned Family Court repeatedly, *on his behalf*, in the course of the proceedings under section 125 Cr.P.C. as recorded in judgment dated 23.07.2019.
15. In view of the above, this court finds nothing remiss in the correctness, legality or propriety of the impugned order that would warrant interference by this court in exercise of its revisional jurisdiction.
16. The revision petition is accordingly dismissed *in-limine*.
17. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 4, 2024

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