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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 810/2020 & CRL. M. A. Nos. 3323-26/2020,
16497/2020

DHIRENDER CHHAUNKAR

.....Petitioner

Through: Mr. Kartikeya Rastogi and
Ms. Tamanna Kavdia,
Advocates.

versus

THE STATE (NCT OF DELHI)

& ANR

.....Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State.
Mr. Sugam Puri, Advocate
for Respondent No.2
(through VC).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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08.07.2025

1. The present petition is filed challenging the order dated 24.01.2020 (hereafter '**impugned order**'), passed by the learned Appellate Court, in CA No. 328/2019. The petitioner is also seeking remitting of matter to the learned Sessions Court for reconsideration of the maintenance amount.

2. By the impugned order, the learned Appellate Court dismissed the appeal filed by the petitioner against the order dated 30.05.2017, in CC No. 93/1/14, whereby Respondent No.2/ wife was awarded a maintenance of ₹15,000/month in the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('**DV Act**'), with directions of enhancement of the maintenance amount by 10% every year. It was observed that the appeal was barred by limitation as it had been preferred with an undue delay of two years, and no reasonable explanation had been offered for the delay.



3. The learned counsel for petitioner submits that the petitioner's income has been erroneously assessed on the higher side by the learned Trial Court. He submits that the petitioner is merely earning ₹17,000-₹18,000/ month from renting out a property that is owned by him and his siblings. He contends that the petitioner will be unable to pay such an exorbitant maintenance in the longer run.

4. He submits that the appeal preferred by the petitioner was dismissed by the learned Appellate Court without delving into the merits of the case. He further submits that the rules of limitation are not meant to destroy the rights of the parties and a liberal approach may be taken by the Court in this regard. He submits that the petitioner was suffering from various ailments and his previous counsel had returned to her hometown, whereafter, it was difficult for him to engage another counsel.

5. The learned counsel for Respondent No.2 submits that the conduct of the petitioner does not warrant any interference. He further submits that the rate of enhancement so awarded by the learned Trial Court ought not to be reduced in view of the increasing cost of living.

6. He submits that the petitioner was present when his income was assessed as ₹50,000/- at the time of grant of interim maintenance and there are categorical observations of the learned Trial Court at that stage that the petitioner appears to have stopped maintaining his account after filing of the case.

7. I have heard the counsel and perused the record.

8. At the outset, it is relevant to note that initially, the learned Trial Court had granted an interim maintenance of ₹9,000/- per month to Respondent No. 2 by order dated 03.01.2015, by assessing the petitioner's income as ₹50,000/- on the basis of his



rental income. It was noted that the petitioner had stated that he was a man of status and repute and he belongs to a high profile family. It was also noted that the petitioner had a big balance in his bank accounts but he had stopped maintaining the same after filing of the case.

9. The interim maintenance was enhanced to ₹15,000/ month by the learned Sessions Court by order dated 04.08.2015, in CA No. 14/2015 preferred by Respondent No.2, by noting that the petitioner had not challenged the assessment of his income as ₹50,000/-.

10. Subsequently, the petition under Section 12 of the DV Act was finally decided by the learned Trial Court by order dated 30.05.2017, whereby the maintenance of ₹15,000/- per month was awarded to Respondent No.2, with directions for enhancement of the maintenance amount by 10% per annum.

11. The said order was confirmed by the learned Appellate Court by the impugned order and the appeal was dismissed on the ground of delay. It was observed that although the petitioner had initially joined the proceedings, however, he did not appear from November, 2015 to November, 2019. It was further noted that instead of complying with the judicial orders or paying the arrears of interim maintenance, the petitioner had made himself scarce and belatedly preferred the appeal against final order on maintenance after two years. It was also noted that no reasonable explanation had been offered for delay.

12. The petitioner has sought to agitate the merits of his case without explaining the delay in filing the appeal. It is stated that the delay was caused due to the various ailments suffered by the petitioner and because his previous counsel had returned to her hometown. It is pleaded in the petition that the petitioner was



unable to engage a new counsel due to his ailments and that he also received bad legal advice. In the opinion of this Court, the learned Appellate Court has rightly noted that the explanation so furnished by the petitioner for the delay is not sufficient. The ailments suffered by the petitioner do not appear to be of such nature as would prevent him from approaching the Court. Moreover, if bald assertions of bad legal advice are allowed to be weaponised as grounds for condonation of delay, the same would lead to never ending litigations.

13. It cannot be ignored that the petitioner stopped appearing before the Court after November, 2015. It is also pertinent to note that the petitioner had filed a petition, being, 167/2020, before this Court challenging the enhancement of compensation by order dated 04.08.2015 (whereby interim maintenance had been enhanced) only in the year 2020. The same reflects that the petitioner did not challenge the enhancement of the maintenance amount for around 5 years as well, and he has been lethargic in availing his remedies. The Court cannot come to the rescue of such a litigant.

14. It is argued that a liberal approach may be taken by this Court in relation to the delay, however, considering the extent of delay and conduct of the petitioner, the same cannot substitute the substantial law of limitation. It is trite law that sufficient cause for each day of delay is to be shown and while considering the plea for condonation of delay, the Court ought not start with the substantive merits of the matter. In the case of **H. Guruswamy & Ors. v. A.Krishnaiah Since Deceased by LRS : 2025 INSC 53**, the Hon'ble Apex Court had observed as under:

“13.... Time and again, the Supreme Court has reminded the



District judiciary as well as the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

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15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not.... Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the ‘Sword of Damocles’ hanging over the head of a litigant for an indefinite period of time.”

(emphasis supplied)

15. In the present case, the parties have not yet obtained a decree of divorce and Respondent No.2 is the wife of the petitioner. The petitioner is thus responsible for maintaining Respondent No.2. Respondent No.2 had filed the petition under DV Act way back in the year 2010 and has been litigating against the petitioner since then. In such circumstances, the petitioner cannot be allowed to bypass the hurdle of delay and agitate the matter on merits, when he has failed to satisfy this Court on the ground of delay.

16. While this Court is not inclined to entertain the petition on merits and redetermine the maintenance amount, however, this



Court cannot remain blind to the fact that even after accounting for the increasing cost of living, the rate of enhancement per annum appears to be on the higher side. In view of the same, in the interests of justice, this Court considers it apposite to direct that the maintenance amount shall be enhanced by 6% per annum instead of 10% per annum.

17. Insofar as the apprehensions in relation to the inability of the petitioner to pay the maintenance in future or arguments in relation to his current income are concerned, the petitioner is at liberty to approach the learned Trial Court and avail the remedy under Section 25 of the DV Act for alteration or modification of the order on maintenance.

18. The present petition is disposed of with the aforesaid observations.

AMIT MAHAJAN, J

JULY 8, 2025