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

Date of decision: 14.07.2025

+ MAT.APP.(F.C.) 248/2025 AND CM APPL. 40901/2025 &
CM APPL. 40902/2025

RAJEEV RAKSHIT

.....Appellant

Through: Mr. N. Chaudhary and Mr.
Rajesh Singh Tomar, Advs.

versus

CHANDNA SINGH RAKSHIT

.....Respondent

Through: *Nemo.*

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Order dated 05.11.2024 passed by the learned Principal Judge, Family Court, South East District, Saket Courts, New Delhi (hereinafter referred to as, 'Family Court') in H.M.A. No. 314/2021 titled ***Rajeev Rakshit v. Chandna Singh Rakshit***, disposing of the application dated 23.03.2022 filed by the respondent/wife under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as, 'HMA'), directing the appellant/husband to pay *interim* maintenance of Rs. 60,000/- per month to the respondent for food, medicines, social obligations, transportation, toiletries, clothing, etc.

2. At the outset, we would note that the present appeal has been



filed with a delay of 203 days. The only explanation given in the application seeking condonation of the delay is as under:

“2.That due to health/medical issues since April, 2024, the previous Counsel for appellant had reduced his appearance before the courts. The previous Counsel finally had to undergo surgical procedure at Manipal Hospital, Dwarka, New Delhi on 30/04/2025. As the previous Counsel was facing health/medical issues and the appellant had to remain at Bangalore in connection with new job, therefore, the appellant came to know about the impugned Order dt. 05/11/2024 only in January, 2025. He immediately got applied for certified copy on 21/01/2025 and obtained the same on 08/04/2025. As the previous counsel was advised bed rest post surgery, therefore, the appellant engaged new Counsel, who after going through the complete file filed the appeal.”

3. We do not find the above explanation to be acceptable. Merely because the learned counsel for the appellant, due to his own health/medical issues, had reduced his appearance before the Courts and eventually had to undergo a surgical procedure, which was much after the passing of the Impugned Order, that is, on 30.04.2025, the same cannot explain such a huge delay in filing of the present appeal.

4. Even otherwise, we find no merit in the present appeal.

5. A perusal of the orders of the learned Family Court shows that the appellant had filed the above divorce petition on 19.02.2021 seeking divorce from the respondent under Sections 13(1)(ia) and (ib) of the HMA. On 23.03.2022, the respondent filed the abovementioned application under Section 24 of the HMA seeking *interim* maintenance of Rs. 2,00,000/- from the appellant. On 28.07.2023, the learned



counsel for the appellant submitted before the learned Family Court that she has instructions to withdraw the divorce petition filed by the appellant. This was objected to by the respondent/wife stating that she had incurred expenses for engaging a lawyer to defend her case and she sought time to produce her bank statement to show the money transferred to the counsel, so that appropriate costs could be awarded.

6. Thereafter, on 31.08.2023, when the petition was again listed before the learned Family Court, the respondent filed the statement of litigation expenses along with an affidavit and her bank account statements. On the said date, the learned counsel for the appellant prayed for time to go through these documents before making submissions. Further time to file a reply was again sought by the appellant, as recorded in the Order dated 13.10.2023 of the learned Family Court. In fact, this request for an adjournment was opposed by the learned counsel for the respondent, however, the same was still granted.

7. Subsequently, on 02.12.2023, the appellant filed a reply to the statement of litigation expenses filed by the respondent. However, an adjournment was again sought by the learned counsel for the appellant for moving an appropriate application to withdraw the divorce petition. The parties were then referred to the Counsellor for exploring the possibility of arriving at an amicable settlement.

8. On 09.01.2024, the appellant again sought an adjournment for moving the appropriate application to withdraw the divorce petition. The learned Family Court, as far as the application under Section 24 of the HMA is concerned, directed the parties to file their affidavits of



income and assets, in terms of the Judgement of the Supreme Court in ***Rajnesh v. Neha***, (2021) 2 SCC 324. The aforesaid opportunity was again granted to both the parties on 23.03.2024.

9. On 24.05.2024, the learned Family Court directed the respondent to file a certificate in terms of Section 65B of the Indian Evidence Act, 1872, in support of the electronic records filed by her.

10. It is relevant to note here that from 24.05.2024 onwards, the appellant and his counsel stopped appearing before the learned Family Court, nor was any application seeking withdrawal of the divorce petition moved by the appellant before the learned Family Court.

11. The learned Family Court, therefore, proceeded with the divorce petition as also the application filed by the respondent under Section 24 of the HMA, resulting in the Impugned Order being passed by the learned Family Court.

12. The learned counsel for the appellant submits that the learned Family Court has erred in not allowing the appellant to withdraw the divorce petition, especially when the appellant was not seeking any liberty to file a divorce petition afresh. In support of his contention, he places reliance on the Judgment of the Supreme Court in ***Hulas Rai Baij Nath v. Firm K. B. Bass & Co***, 1967 SCC OnLine SC 61 and of this Court in ***K. K. Modi v. K. N. Modi***, 2007 SCC OnLine Del 1371.

13. He submits that once the appellant had already expressed his intent to withdraw the divorce petition, the learned Family Court could not have granted *interim* maintenance in favour of the respondent.

14. He further submits that the respondent had also filed separate



proceedings under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as, 'DV Act'), wherein, *vide* Order dated 04.03.2020, *interim* maintenance of Rs. 40,000/- per month to each child had been granted. He submits that even the said amount has not been directed to be adjusted in the Impugned Order.

15. We have considered the submissions made by the learned counsel for the appellant.

16. As noted hereinabove, we have not found any justified explanation for the delay in filing of the present appeal; however and notwithstanding that, we have also proceeded to consider the submissions of the learned counsel for the appellant on merits.

17. In ***Hulas Rai Baij Nath*** (supra), the Supreme Court, while holding that there is no provision in the Code of Civil Procedure, 1908, which requires the Court to refuse permission to withdraw the suit unconditionally, or to compel the plaintiff to proceed with the same, also held that in such circumstances, the Court may award the costs of the suit to the defendant.

18. In the present case, as recorded in the Order dated 28.07.2023 passed by the learned Family Court, though the appellant had expressed the intention to withdraw the divorce petition, however, the respondent had insisted on the litigation costs and had also sought time to produce proof in that regard. Further, proceedings were duly conducted for the said proof to be considered.

19. Even though the appellant sought time to file a formal application seeking withdrawal of the divorce petition, however, neither such an application was filed and from 24.05.2024 onwards,



the appellant, without any further explanation, stopped appearing before the learned Family Court. The learned Family Court, therefore, had no option but to continue with the proceedings of the divorce petition, including the application filed by the respondent under Section 24 of the HMA.

20. As far as the application under Section 24 of the HMA is concerned, the same cannot be defeated by merely seeking to withdraw the divorce petition. The maintenance has to be granted from the date of filing of the application and, therefore, has to continue till the date when the divorce petition is permitted to be withdrawn by the learned Family Court.

21. In the instant case, as noted hereinabove, the divorce petition was never withdrawn by the appellant and the same duly continued. The learned Family Court, therefore, in our opinion, rightly proceeded with the matter, and after examining the affidavit of income and assets filed by the respondent, awarded the *interim* maintenance by way of the Impugned Order.

22. Insofar as the adjustment of the maintenance granted under the DV Act is concerned, the order passed by the learned Mahila Court appears to be for the maintenance of the children. Even otherwise, this will be a matter to be determined in an appropriate proceedings seeking enforcement of the impugned order, if filed.

23. For the reasons stated hereinabove, we do not find any reason to interfere with the Impugned Order.

24. The appeal along with pending applications is, accordingly, dismissed on account of delay as well as on merits.



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25. There shall be no order as to costs.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

JULY 14, 2025

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