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

+ CRL.REV.P. 1233/2023 & CRL.M.A.31324-31326/2023
VISHAL KUMAR Petitioner

Through: Mr. Sanjeev Pathak, Adv.

versus

KARISHMA KUMARI Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **11.01.2024**

1. The present petition is filed challenging the order dated 18.07.2023 passed by the learned Principal District and Sessions Judge (hereafter '**PDSJ**'), North-East, Karkardooma Courts in Criminal Appeal No.26/2023 (hereafter '**impugned order**').

2. The petition under Section 12 of the Domestic Violence Act, 2005 (hereafter '**D.V. Act**') was filed by the respondent against the petitioner and his family members for which the summons were admittedly duly served on them *vide* order dated 03.06.2019.

3. The petitioner and his family members appeared before the learned Trial Court for the first time on 03.09.2019 and also appeared on a subsequent date 16.01.2020. It appears that the matter was then referred to Mediation, which was, however, unsuccessful and the matter was sent back to the Court. The date when the matter was sent back to the Court is not mentioned in the petition. However, it appears that the petitioner and his family members did not appear in the subsequent proceedings before the concerned Metropolitan Magistrate and the learned

Trial Court proceeded *ex-parte* on 23.11.2021. The respondent thereafter tendered her *ex-parte* evidence on 28.04.2022 and *ex-parte* final arguments were heard by the learned Trial Court on 02.06.2022. A final judgment thereafter, was passed on 13.07.2022. The learned Trial Court granted maintenance of ₹6,000/- per month in favour of the respondent.

4. It is significant to note that the learned Trial Court did not agree with the contention advanced by the respondent that the petitioner was earning ₹50,000/- per month, but passed the order of maintenance of ₹6,000/- per month assessing the income of the petitioner at ₹25,000 - ₹30,000 per month. The same in my opinion is a reasonable assessment, especially in the absence of any rebuttal by the petitioner.

5. Petitioner claims that he came to know about passing of the judgment dated 13.07.2022 sometime in October, 2022 when a police personnel came to inform that the matter is listed before the Court on 01.11.2022 in the Execution Petition filed by the respondent. The petitioner did not appear in Court even on 01.11.2022, although he claims that he had gone to Court on 01.11.2022 and was informed that the next date of hearing has already been fixed and the matter was adjourned to 10.01.2023. The petitioner then claims to have met his lawyer on 20.11.2022. The petitioner admittedly, also did not appear before the Executing Court on 10.01.2023 and filed an appeal challenging the order dated 13.07.2022 in March, 2023.

6. The learned Appellate Court by order dated 07.06.2023 stayed the operation of the order dated 13.07.2022, subject to the petitioner paying 50% of the maintenance. It is not disputed that even the said amount was only partially paid by the petitioner. The appeal was dismissed by the impugned order on the ground

of delay. The delay in filing the appeal was not condoned by the learned PDSJ and the appeal was dismissed, which led to filing of the present petition under Section 397/401 of Cr.P.C.

7. I find no infirmity in the impugned order passed by the learned PDSJ. In terms of Section 29 of the DV Act, the appeal before the Court of Sessions is to be filed within a period of 30 days from the date on which the order made by the Magistrate is served on the aggrieved person. In the present case, the order was passed by the learned Magistrate on 13.07.2022. The petitioner has been appearing before the learned Magistrate and had on its own volition stopped appearing and was proceeded *ex-parte*. In such circumstances, it cannot be argued that the petitioner was not aware of the order passed by the learned Trial Court and came to know about it only in the month of October, 2022. The explanation provided by the petitioner for his non-appearance before the learned Magistrate is unmerited.

8. A litigant cannot be allowed to take for granted the proceedings before the Court, especially when the same relates to the proceedings initiated by the victim of domestic violence. The DV Act was enacted to provide more effective protection to the rights of women granted under the Constitution, who are the victim of violence, of any kind, occurring within the family. The legislature also noting the victimization of the women has provided a mechanism for grant of maintenance to women who are not in a position to maintain themselves. Such proceedings cannot be taken in such a light manner as pleaded by the petitioner.

9. Petitioner being aware and having appeared in the proceedings before the learned Trial Court cannot be allowed to argue that he was not aware of the final judgment.

10. Significantly, even if it is to be assumed that the petitioner became aware of the judgment passed by the learned Trial Court in October, 2022, even then the appeal was filed belatedly in the month of March, 2023. In terms of Section 29 of the DV Act, the appeal is to be filed within a period of 30 days. The explanation provided by the petitioner for not filing the appeal within 30 days from October, 2022 is also meritless. Even as per the petitioner, the steps, for filing the appeal, were discussed by the petitioner with his counsel after 10.01.2023, by which time the limitation to file the appeal had already expired.

11. It is significant to note that an inconsistent stand has been taken by the petitioner, in its application under Section 5 of the Limitation Act filed before the Court of Sessions, in support of his appeal. He stated that the mother of his counsel expired on 24.11.2022 and for this reason he could not put pressure on his counsel to file an appeal.

12. As noted above, the appeal was filed in the month of March, 2023. The explanation provided is clearly an after thought and has rightly been rejected by the PDSJ.

13. The present petition is also filed belatedly in the month of October, 2023. The petitioner also has admittedly not complied with the order passed by the learned Trial Court and only partially complied with the interim order passed by the learned Appellate Court. The conduct of the petitioner does not entitle him for any relief.

14. The minimum wages for an unskilled employee, as on today, in Delhi are ₹17,494 per month. The petitioner as per his own pleading is working as a daily labourer and it can be assumed that he is earning at least the minimum wages as notified by the Government of NCT of Delhi. In such

circumstances, a monthly maintenance of ₹6,000/-, in my opinion, is even otherwise reasonable.

15. In view of the above, I find no merit in the present petition and the same is, accordingly, dismissed.

AMIT MAHAJAN, J

JANUARY 11, 2024

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