

Madan Lal vs. Saroj Kumari and anr.

Cr.MP(M) No.2827 of 2022

Order reserved on: 12.12.2023

29.12.2023

Present: Mr. Dinesh Thakur, Advocate, for the applicant/petitioner.

Ms. Heena Chauhan, Advocate, vice Ms. Anita Jalota, Legal Aid Counsel, for non-applicant/respondent No.1.

None for non-applicant/respondent No.2

The present application has been filed under Section 5 of the Limitation Act for condonation of delay in filing the revision. It has been asserted that an a petition under Section 125 of the Cr.P.C. was decided by the learned Principal Judge, Family Court, Bilaspur on 26.07.2022. The applicant applied for the certified copy on the same day. The copy was attested on 06.08.2022 and was delivered on 09.09.2022. The counsel sought legal advice regarding the appellate authority. The Family Courts Act was newly enforced. The counsel took some time to seek the advice and thereafter, filed the present revision. The same is barred by 48 days. The delay was not intentional but due to circumstances beyond the control of the person. Therefore, it was prayed that the present application be allowed and the delay in filing the revision be condoned.

2. The application is opposed by filing a reply making preliminary submission regarding lack of maintainability and the applicant having concealed the material facts from the Court. The contents of the application

were denied on merits, however, it was admitted that the judgment was delivered on 26.07.2022. It was asserted that the applicant had not given any reasonable and probable explanation for the delay. He has not explained each day's delay and the application is not maintainable. Therefore, it was prayed that the present application be dismissed.

3. I have heard Mr. Dinesh Thakur, learned counsel for the applicant/petitioner and Ms. Heena Chauhan, learned counsel for non-applicant/respondent no. 1.

4. Mr. Dinesh Thakur, learned counsel for the applicant/petitioner submitted that the delay occurred due to the lack of knowledge on account of the learned counsel regarding the forum where the appeal/revision is to be filed. The applicant should not be penalized for the fault of the counsel, therefore, he prayed that the present application be allowed and the delay in filing the revision be condoned.

5. Ms. Heena Chauhan, learned counsel for non-applicant/respondent no. 1 submitted that the ignorance of the law is no excuse and its benefit cannot be granted to the applicant. Each day's delay has not been explained, therefore, it was prayed that the present application be dismissed.

6. I have given considerable thought to the submissions at the bar and have gone through the record carefully.

7. The plea of the applicant that he had contacted the counsel and learned counsel was unable to advise him is duly supported by an affidavit. These facts are within the personal knowledge of the applicant and his counsel. Therefore, these facts cannot be denied by the respondent. The applicant trusted his counsel to advise him about the Forum where the appeal/revision was to be preferred and the learned Counsel was himself not sure about the same. There is force in the submission of learned counsel for the applicant that the applicant cannot be penalized for the fault of the counsel.

8. Therefore, the present application is allowed and the delay in filing the revision is ordered to be condoned.

9. The present application stands disposed of.

Cr. Revision No. _____ of 2023

10. Be registered.

11. The delay in filing the revision has been ordered to be condoned as per the order passed in Cr.MP(M) No. 2827 of 2022.

12. Let the record of the learned Trial Court be requisitioned and the matter be listed for final hearing in due course.

(Rakesh Kainthla)
Judge

December 29th, 2023
(saurav pathania)