

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR
CM 5300/2023 in FAQ (MAT) 8/2023

Masarat Jan

...Petitioner(s)/Appellant (s)

Through: Mr. Bilal Ahmad Khan, adv.

VS

Fayaz Ahmad Parray

...Respondent(s)

Through: Mr. Salman Jan, adv.

Coram: Hon'ble Mr. Justice Mohammad Yousuf Wani, Judge.

ORDER

17.05.24

CM 5300/2023

01. Through the medium of the instant petition filed under section 5 of the Limitation Act, petitioner has sought condonation of delay in filing the main Appeal against the respondent under section 19 of the Family Courts Act, 1984 (hereinafter referred to the "Act" for short).
02. The condonation of delay has been sought *inter alia* on the grounds; that mother of the petitioner was seriously ill, who had no other person except the petitioner to attend her properly and as such, she could not seek the legal guidance within time for taking necessary action in respect of the impugned order; that delay occasioned in filing the main appeal is neither deliberate nor intentional and the order impugned deserves to be set aside on merits as being illegal and perverse.
03. Heard learned counsel for the parties in respect of the application and considered their rival submissions.
04. On the grounds mentioned in the application coupled with the consideration of the rival submissions of the learned counsel for the parties advanced at the bar in the light of the law on the subject, especially as laid down by the Hon'ble Supreme Court in "**Collector Land Acquisition (ACR Anantnag) vs. Khatiji AIR 1987 SC 1353**", this Court is of the opinion that the ends of justice would be met if the application is allowed. Accordingly, the instant application is allowed and the delay occasioned in filing the main Appeal is condoned.
05. CM Disposed of.

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01. Pursuant to the condonation of delay, the instant Appeal is also taken up for its disposal.
02. Admit.
03. Heard.
04. The brief facts of the case relevant for the disposal of the appeal are that the appellant filed a petition U/s 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Code” for short) before the Court of Learned Principal Judge Family Court Sringar (hereinafter referred to as the “trial Court”) seeking monthly maintenance allowance in her favour. The learned trial court through order impugned dated 15.10.2022 returned the petition to the appellant with a direction to file the same before the competent court of jurisdiction. As per the order impugned the learned trial court has expressed its inability to hear the matter for want of jurisdiction.
05. The order impugned has been assailed by the appellant on the grounds *inter-alia*; that same is apparently suffering from illegality and perversity as the learned trial court has not appreciated the law on the subject as regards the jurisdiction and place of trial viz-a-viz the subject petition; that the learned trial court has failed to appreciate the fact that appellant has been presently residing at her parental home at Chinari Lane Umer Colon-B, Lal Bazar since the dawn of matrimonial dispute between her and her husband; that the petition for maintenance filed by the appellant is very well maintainable before the learned trial court in view of the provisions of section 7 of the Act and Section 126 of the Code; that in terms of Section 126 of the Code, petition for maintenance can be maintained by a wife against the husband in any District where she or her husband resides.
06. Per contra, learned counsel for the respondent submitted that the appellant has shown her original residence at Khalmulla, Ganderbal, Kashmir. That respondent has been admitted to be a resident of same place i.e Khalmulla, Ganderbal, Kashmir. According to the learned

counsel, petition would have been filed before the competent court in District Ganderbal.

07.Perused the instant memo of appeal and the copy of the order impugned dated 15.10.2022. Also considered the rival submissions of learned counsel for the parties.

08.Keeping in view the aforementioned perusal and consideration in light of the law on the subject, this court is of the opinion that the order impugned suffers from patent illegality and deserves to be set aside. As per the Section 7 of the Family Courts Act, 1984 and Section 126 of the Code of Criminal Procedure, the learned trial court is competent to hear the maintenance petition of the appellant.

09. It is profitable to reproduce the relevant provisions of the aforementioned Sections of law.

“Sec.7. Jurisdiction:-(1) Subject to the other provisions of this Act, a Family Court shall—

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—the suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

- (a)
- (b)
- (c)
- (d)
- (e)
- (f) a suit or proceeding for maintenance;
- (g)
- (2)
- (a)
- (b)

126. Procedure:

1. Proceedings under section 125 may be taken against any person in any district—
where he is, or
where he or his wife resides, or
where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

2.....
3.....”

10. It is not disputed that parental home of the appellant is at Chinar Lane, Umer Colony-B, Lal-Bazar, Srinagar. It is obvious and undisputed on the part of the respondent that appellant has been residing at her parental home at Lal-Bazar, since dawn of her matrimonial dispute. The appellant as per the provisions of Section 126 of the Code is fully competent to file a maintenance petition in District Srinagar.

11. It is the matter of common belief that in case of matrimonial disputes leading to separation of spouses, the wife uses to take shelter at her parental home. It was not a case of other civil or criminal nature where the learned trial court could have doubted the fact of present residence of the appellant as having been tactfully shown by her for invoking a wrong jurisdiction at her convenience.

12. The Provisions of Sections 125 and 126 of the Code providing for maintenance of wives, children and parents and the procedure for filing maintenance petitions with special reference to the place of maintaining the proceedings are in the form of social legislation aimed to benefit the destitute wives, neglected children and abandoned parents. It is their convenience which has to be kept in view while interpreting the scope of the Section 126. The Provisions of Section 126 which are in parametria with the provisions of Section 488 Clause (8) of the erstwhile repealed State Code of Criminal Procedure Svt. 1989, came to be enacted by way of amendment to alleviate hardships and sufferings of destitute wives, neglected children and abandoned parents who were forced to maintain the proceedings for much needed relief of maintenance at a place of residence of the respondent in his capacity as the husband, father or the son as the case may be. Situation can be conceived where it may not be possible for a wife to launch proceedings against her husband at place where he may be actually residing.

13. The expression “resides” occurring in the Section 126 Clause- (1) (b) is needed to be accorded a liberal and logical interpretation to meet the object of the legislation. The appellant in the instant case has shown her present residence at Chinar Lane Umer Colony-B Lane No.3 Lal Bazar, Srinagar being a place of her parental home. She is fully competent to

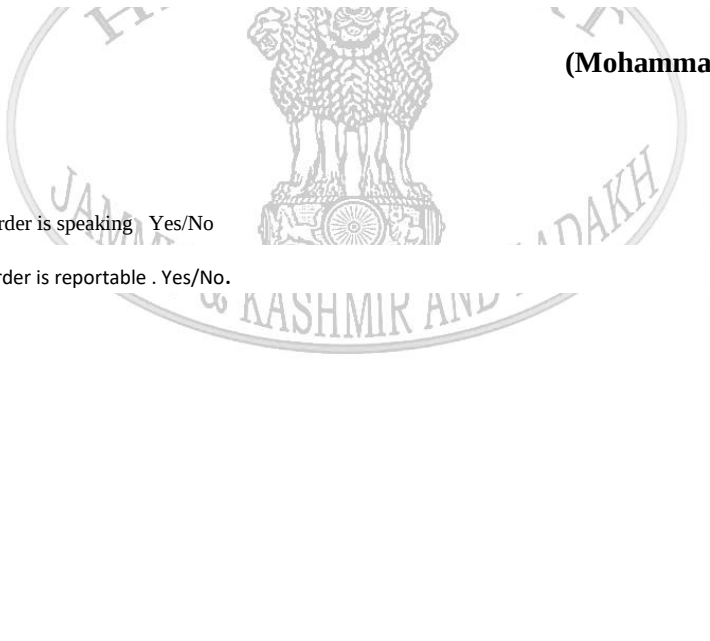
maintain the petition for maintenance at Srinagar also.

14. For the foregoing discussion, the appeal is allowed and the order impugned is set aside. The appellant is at liberty to present her petition before learned trial court directly in case she has received the same pursuant to the impugned order now having been set aside. In case the petition is still lying with the learned trial court, the same shall be tried under law by the learned trial court upon being approached by the appellant with the copy of this order.

15.Disposed of.

Srinagar.
17.05.2024
Ayaz

- i) Whether order is speaking . Yes/No
- ii) Whether order is reportable . Yes/No.



(Mohammad Yousuf Wani)
Judge