

**IN THE COURT OF MS. CHARU AGGARWAL:
ADDITIONAL SESSIONS JUDGE-02; E COURT: SHAHDARA:
KARKARDOOMA COURT: DELHI.**

Crl. (Appeal) No. 03/2024

Rajan
s/o Sh. Mange Ram
r/o H. No. B-30A,
Madhukunj Gali,
North Ghonda, Delhi-53.

..... Appellant

Versus

1. Yogesh @ yashi
d/o Sh. Prabhu Dayal
r/o B-120, Gali no.2/7,
West Nathu Colony,
Shahdara, Delhi-94.

..... Respondent.

Date of filing	:	04.01.2024
Date of arguments	:	04.05.2026
Date of order	:	21.05.2026

ORDER

1. The present appeal under Section 29 of the Protection of Women From Domestic Violence Act, 2005 (*hereinafter be referred as D.V. Act*) has been preferred by the appellant/husband challenging the order dated 21.10.2023, whereby he has been directed to pay interim maintenance of Rs. 3,000/- per month to the respondent/wife since filing of the application till disposal of the case in criminal complaint

under Section 12 of DV Act filed by the respondent. Along with the appeal, an application under Section 5 of The Limitation Act, seeking condonation of delay in filing the present appeal, has also been filed.

2. In the application u/s 5 of Limitation Act, it is stated by the appellant that the appeal could not be filed within the stipulated period due to his pre-existing financial crises, therefore, he approached DLSA on 17.11.2023 and was provided an advocate on 21.11.2023, thereafter, he was informed that the advocate allotted to him had left Delhi for indefinite time. He again approached DLSA and another advocate was allotted to him on 06.12.2023 but again appeal could not be filed within time due to winter vacations.
3. It is settled that there cannot be any hard and fast rule for deciding an application for condonation of delay. The expression sufficient cause in Section 5 of limitation Act is elastic enough to enable the courts to apply the law in a purposeful manner to meet the ends of justice. The courts always held that a liberal approach should be adopted while considering the application for condoning the delay so that substantive rights of the party are not defeated merely because of the delay. The court should be pragmatic in their approach while dealing with application for condonation of delay, unless the delay is unduly long and vexatious or frivolous.
4. There is delay of one month and 14 days in filing the appeal. This court is of the view that appellant has given sufficient reason for belatedly filing the present appeal and it

would be in the best interest of the justice, if the delay is condoned, hence in the interest of justice, the delay in filing the present appeal is hereby condoned. Application u/s 5 of Limitation Act is accordingly allowed.

5. On merits, the relevant facts for deciding the appeal are as follows: The parties were married on 18.04.2019 according to Hindu rites and ceremonies. No child has been born out of this marriage. Owing to temperamental differences, the parties separated in December 2020, since which time the respondent/wife has been residing at her parental home. Following the separation, the respondent/wife-initiated proceedings under the Domestic Violence Act, lodged an FIR under Sections 498A/406 IPC, and filed maintenance proceedings under Section 125 Cr.P.C. The present appeal arises out of the proceedings under the Domestic Violence Act.

6. Both parties have levelled several allegations and counter-allegations of cruelty against each other, which remain matters for trial.

7. By the impugned order dated 21.10.2023, the learned court directed the appellant/husband to pay interim maintenance of Rs. 3,000/- per month to the respondent/wife.

8. Aggrieved by the aforesaid order, the present appeal has been preferred on the following grounds:

(i) That the marriage between the parties was never consummated.

(ii) That the appellant's pleadings and submissions were not

duly considered by the learned court.

(iii) That the Family Court, in separate proceedings, has already declined interim maintenance to the respondent/wife.

9. The appellant/husband, challenging the order of the learned Trial Court, primarily contended that the averments made in the application under Section 12 of the Domestic Violence Act are identical to those raised in the application filed under Section 125 of the Cr.P.C. before the Principal Judge, Family Court. The Family Court, after considering the facts stated therein, declined to grant interim maintenance to the respondent/wife by its order dated 19.05.2023, observing that she had not approached the court with clean hands, as several unexplained credit entries were found in her bank account. Despite this, the learned Trial Court, while completely disregarding the Family Court's order, granted interim maintenance of Rs. 3,000 per month to the wife.

It was argued that since the Family Court's order has not been challenged in appeal, it has attained finality, and therefore, the same issue could not have been adjudicated afresh by the Trial Court. It was further submitted that the marriage between the parties was never consummated. On these grounds, the appellant urged that the impugned order be set aside.

10. Per contra, the learned counsel for the respondent/wife vehemently opposed the contentions of the appellant/husband that since both proceedings under D. V. Act and 125 Cr.P.c, are adjudicated on different footings, the

order of learned Family Court cannot have binding effect on the Courts dealing with the cases under DV Act.

11. I have considered the arguments advanced by both the counsels and perused the record.
12. The first plea of the appellant/husband is that wife is not entitled for maintenance since their marriage was not consummated. However, this contention does not, by itself, disentitle the respondent/wife from claiming interim maintenance. The right to maintenance flows from the subsistence of a valid marriage and the inability of the wife to maintain herself.
13. Another contention of appellant is that his pleadings were not considered by the Ld. trial court while passing order under challenge, but this appears to be contrary to record indicating that the learned trial court has taken note of the pleadings and material placed before it. Interim maintenance is a discretionary relief, granted on a prima facie assessment, and does not require a detailed adjudication at this stage.
14. The main submission of the appellant is that by passing impugned order, the Ld. trial court awarded the maintenance to wife, completely ignoring the order of Ld. family court declining interim maintenance to her.
15. In this regard, the following excerpt laid down in the landmark Judgment of Hon'ble Apex Court in **Rajnesh Vs. Neha, 2021 (2) SCC 324**, is consigned to quote here :-

“55. The issue of overlapping jurisdictions under the HMA and D.V. Act or Cr.P.C. came up for consideration before a division bench of the Delhi

High Court in RD v BD wherein the Court held that maintenance granted to an aggrieved person under the D.V. Act, would be in addition to an order of maintenance u/S. 125 Cr.P.C., or under the HMA. The legislative mandate envisages grant of maintenance to the wife under various statutes. It was not the intention of the legislature that once an order is passed in either of the maintenance proceedings, the order would debar re-adjudication of the issue of maintenance in any other proceeding. In paragraphs 16 and 17 of the judgment, it was observed that :

"16. A conjoint reading of the aforesaid Sections 20, 26 and 36 of DV Act would clearly establish that the provisions of DV Act dealing with maintenance are supplementary to the provisions of other laws and therefore maintenance can be granted to the aggrieved person (s) under the DV Act which would also be in addition to any order of maintenance arising out of Section 125 of Cr.P.C."

17. On the converse, if any order is passed by the Family Court under Section 24 of HMA, the same would not debar the Court in the proceedings arising out of DV Act or proceedings under Section 125 of Cr.P.C. instituted by the wife/aggrieved person claiming maintenance. However, it cannot be laid down as a proposition of law that once an order of maintenance has been passed by any Court then the same cannot be re-adjudicated upon by any other Court. The legislative mandate envisages grant of maintenance to the wife under various statutes such as HMA, Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'HAMA'), Section 125 of Cr.P.C. as well as Section 20 of DV Act. As such various statutes have been enacted to provide for the maintenance to the wife and it is nowhere the intention of the legislature that once any order is passed in either of the proceedings, the said order would debar re adjudication of the issue of maintenance in any other Court." (emphasis supplied) The Court held that u/S. 20(1)(d) of the D.V. Act, maintenance awarded to the aggrieved woman under the D.V. is in addition to an order of maintenance provided u/S. 125 Cr.P.C. The grant of maintenance under the D.V. Act would not be a bar to seek maintenance u/S. 24 of HMA.

16. The law laid down by Hon'ble Apex Court in the judgment, is clear that the maintenance application decided under one statute would not foreclose the claim for maintenance under a different statute. Hon'ble Apex Court has gone to the extend that even in a case if maintenance is awarded under one of the statutes that by itself would not preclude the claimant from raising another claim application under a different statute claiming maintenance.

17. Thus, the contention of the appellant/husband that Ld. family court has declined maintenance to wife, therefore, she is not entitled for maintenance under any other statute is untenable for the following reasons:

a) The remedies available under Section 125 Cr.P.C. and the Domestic Violence Act are independent of each other. Section 125 Cr.P.C. is a general provision intended to prevent destitution and vagrancy, whereas the Domestic Violence Act is a special statute enacted to provide immediate and effective relief to women facing domestic violence, including monetary support.

b). The law recognizes that a wife may pursue remedies under both statutes simultaneously. Relief granted under one does not automatically bar relief under the other. The only limitation is that the respondent cannot enjoy double benefits for the same period; appropriate adjustments can be made at the stage of final determination.

c). The Family Court's refusal to grant interim maintenance does not conclusively determine the respondent's entitlement. Interim orders are discretionary

and based on a prima facie assessment of circumstances. The Domestic Violence Court, in exercising its jurisdiction, is empowered to take a different view based on the material before it.

18. Though the quantum of maintenance awarded by the learned Trial Court has not been challenged by the appellant, in the interest of justice this Court has examined the impugned order from that perspective as well. On such consideration, it is found that the approach adopted by the Trial Court is balanced and reasonable. Having regard to the husband's admitted monthly income of RS. 15,000–17,000, the award of interim maintenance of Rs.3,000 per month to the respondent-wife is fair and consistent with the principle that maintenance should secure the wife's sustenance without imposing an undue financial burden on the husband.

19. In view of above discussion, this court finds no infirmity in the impugned order. Accordingly, the present appeal is hereby dismissed. Trial Court record be sent back along with a copy of this order.

Appeal file be consigned to Record Room.

Announced in the open
Court on 21.05.2026.

(Charu Aggarwal)
ASJ-02/E-Court/Shahdara
KKD Court, Delhi.