



2026:DHC:8605-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 28.09.2026**# **CNR No. DLHC010446372026**+ MAT.APP.(F.C.) 354/2026 & CM APPL. 64237/2026, CM
APPL.67326/2026

AKHIL GUPTA

.....Appellant

Through: Mr. Akash Nagar, Mr. Prateek
Tiwari, Mr. Shishir Mehra,
Advs.

versus

SANJANA GUPTA

.....Respondent

Through: *Appearance not given.***CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****HON'BLE MS. JUSTICE RENU BHATNAGAR****JUDGMENT (ORAL)**

1. The challenge in this appeal is to the Order dated 30.07.2026 (*hereinafter referred to as 'Impugned Order'*) passed by the learned Principal Judge Family Court, East District, Karkardooma Court, New Delhi (*hereinafter referred to as 'Family Court'*) in HMA No.1319/2025 titled '*Sanjana Gupta v. Akhil Gupta*'.

2. The learned Family Court *vide* the impugned Order has dismissed an application filed by the appellant herein under Order IX Rule 13 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*). The learned Family Court has not taken on record the written statement filed by the appellant herein, and has directed

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recording of evidence.

3. Shorn of unnecessary details, the facts which are relevant for adjudicating the present appeal are as under:-

- a. The marriage between the appellant and the respondent was solemnised on 23.10.2016. The couple has been blessed with two children, a daughter born on 28.07.2020 and a son born on 18.05.2023.
- b. Matrimonial disputes arose between the parties. It is the case of the appellant that the respondent left the matrimonial home along with the son on 20.02.2024 and that the parties have been living separately since then.
- c. The matrimonial disputes have resulted in a custody petition and also a divorce petition filed by the respondent/wife on the ground of cruelty. In the said divorce petition, the right of the appellant to file the written statement was closed *vide* an order dated 18.03.2026.
- d. The appellant thereafter moved an application seeking recall of the said order by filing an application under Order IX Rule 13 of the CPC, which obviously was not the correct provision since no *ex-parte* decree had been passed against the appellant.
- e. The said application came up for hearing on 07.05.2026, wherein the learned Family Court observed that a wrong provision of law had been invoked, that the appellant herein had not been proceeded *ex-parte*, and that all that the appellant was required to do was to move an application for condonation of delay in filing the written statement.

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- f. The case came up for hearing again on 30.07.2026, on which date the impugned Order was passed.
- g. The learned Family Court in the said order has placed reliance on the judgment of this Court in ***New Delhi District Legal Services Authority v. Jaspal S. Shergill & Ors.***, (2022 Latest Caselaw 4232 Del), wherein this Court had dilated on the appointment of Local Commissioners for recording of evidence, and accordingly directed that the evidence in the case be recorded before a Local Commissioner to be appointed through the Secretary, DLSA (East).
- h. The learned Family Court observed that the right to file the written statement of the appellant herein had been struck off on 18.03.2026 as no written statement had been filed within 30 days from the date of service. However, the learned Family Court had granted liberty to the appellant to move an application under Order VIII Rule 1 of the CPC for condonation of delay, along with the written statement, and noted instead of filing an application under the correct provision, the appellant had moved an application under Order IX Rule 13 of the CPC.
- i. It was observed that *vide* order dated 07.05.2026, the learned Family Court had clarified and had indicated that all that the appellant had to do was to move an application under Order VIII Rule 1 of the CPC for condonation of delay, along with the written statement.
- j. The learned Family Court observed that the written statement as filed did not contain the mandatory verification clause in

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accordance with Order VI Rule 15(1) of the CPC and has noted that the supporting affidavit filed along with the written statement does not pertain to the written statement; rather, it appears to relate to some undisclosed petition. Around 200 pages of documents have been filed without placing on record any list of documents. The learned Family Court commented that an advance copy of the said application had not been supplied to the respondent herein. Around three months of judicial time had been wasted, which, *prima facie*, was aimed at delaying the proceedings before the learned Family Court. The learned Family Court further observed that even the application which had been filed under Section 5 of the Limitation Act, 1963 does not disclose the period of delay for which condonation is sought and that the written statement is not accompanied by the mandatory affidavit of admission and denial of the respondent's documents. The learned Family Court also observed that the written statement is marred with irrelevant and inapplicable averments.

- k. The learned Family Court further observed that even the reply to the application under Section 24 of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'HMA'*) is not supported by a proper affidavit, inasmuch as the affidavit filed does not relate to the said reply.
- l. The learned Family Court thereafter fixed interim maintenance of Rs. 25,000/- per month, payable to the respondent from the date of filing of the application till the disposal of the



application under Section 24 of the HMA.

4. It is this order which is challenged before this Court.
5. Undoubtedly, the verification clause of the written statement, the applications filed in support thereof, and the supporting affidavit to the reply to the application under Section 24 of the HMA, all suffer from defects.
6. It is well settled that substantive rights of the parties cannot be sacrificed at the altar of procedure and the Court must always lean in favour of grant of substantive justice rather than take away the substantial rights of the parties. It is also well settled that procedure is the handmaid of justice. The Supreme Court as well as this Court have repeatedly held so, including in the context of the filing of the written statement. In **Kailash v. Nanhku & Ors.**, (2005) 4 SCC 480, dealing specifically with the time schedule for filing the written statement under Order VIII Rule 1 of the CPC, the Supreme Court held that the provision is procedural and therefore directory and not mandatory. It was further held that purpose of Order VIII Rule 1 of the CPC is to expedite and not to scuttle the hearing and the power of the Court to extend the time is not taken away. It was, however, cautioned that extension is not to be granted as a matter of routine but by way of exception, for reasons to be recorded, and that costs may be imposed and affidavits or documents in support of the grounds of delay may be demanded, depending on the facts of the case. The relevant para of the judgment is extracted below:

“41. Considering the object and purpose behind enacting Rule 1 of Order 8 in the present form and the context in which the



provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact — the entire life and vigour — of the provision. The delaying tactics adopted by the defendants in law courts are now proverbial as they do stand to gain by delay.

...

43. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on an affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the court that the prayer was founded on grounds which do exist.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, shall the defendant be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him."

7. In **Uday Shankar Triyar v. Ram Kalewar Prasad Singh**, (2006)

1 SCC 75, the Supreme Court held that non-compliance with a procedural requirement relating to a pleading or an application should



not entail automatic dismissal or rejection unless the statute or the rule so mandates, and that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or cause injustice. The relevant portion of the judgment is extracted below :

“17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

(i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;

(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

(iii) where the non-compliance or violation is proved to be deliberate or mischievous;

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;

(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.”

8. The above principles, however, do not permit a litigant to treat



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procedural timelines lightly. Where the defects are curable and the default is not shown to be so deliberate as to justify shutting out the defence altogether, the just course is to permit the party to cure the defects on such conditions, including payment of costs, as would compensate the opposite party and protect the proceedings from further delay.

9. This Court is conscious of the Guidelines laid down by the Division Bench of this Court in ***K.S. Sumi Mol v. Suresh Kumar E.K.***, MAT.APP.(F.C.) 127/2023, decided on 31.07.2023, which provide that a written statement may be filed beyond thirty days only for reasons to be recorded in writing and, in any event, not beyond one hundred twenty days from the date of service of summons. The appellant herein having been deemed served on 14.02.2026, the said period has expired. However, as held by the Supreme Court in ***Kailash*** (supra), the time prescribed for filing the written statement is directory and the extension of time depends upon the facts and circumstances of each case. In the peculiar facts of the present case, the appellant was not proceeded against *ex-parte*, only his right to file the written statement was closed with liberty to seek condonation of delay, and he has filed a written statement before the learned Trial Court, albeit with curable defects, in a dispute concerning dissolution of marriage and custody of minor children. In the opinion of the Court, the interest of justice would be served by imposing heavy costs on the appellant herein and giving him one more opportunity to cure all the defects, so that the dispute between the parties is adjudicated on merits.



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10. A cost of Rs. 1,00,000/- is imposed on the appellant, to be paid to the respondent within a period of four weeks from today.

11. On the payment of Rs. 1,00,000/-, the proof of which has to be filed before the learned Family Court, this Court grants four weeks' time to the appellant to file a proper written statement with a proper affidavit, an affidavit of admission/denial of the documents of the respondent, and a proper reply to the application under Section 24 of the HMA with a proper supporting affidavit.

12. On the filing of the same, the learned Family Court is requested to consider the application under Section 24 of the HMA once again, in accordance with law. In the interregnum, the appellant is directed to pay the sum of Rs. 25,000/- per month as interim maintenance, as granted by the learned Family Court, and to clear the arrears, if any, within a period of four weeks from today.

13. This shall be in addition to the cost of Rs. 1,00,000/- imposed by this Court.

14. Unless the entire amount, as directed hereinabove, is paid before the filing of the written statement, the written statement shall not be taken on record.

15. Accordingly, the appeal stands disposed of, along with the pending applications.

SUBRAMONIUM PRASAD, J

RENU BHATNAGAR, J

SEPTEMBER 28, 2026*/pr/MY*

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