

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

% **Decided on: 28.11.2017**

+ **MAT.APP.(F.C) 125/2017, CM APPL. 26040/2017 and CM APPL. 26041/2017**

ANITA SHARMA

..... Appellant

Through: Mr. Neeraj Yadav and Mr. Vikrant  
Yadav, Advs.

versus

SHIV KUMAR SHARMA & ORS

..... Respondent

Through: Ms. Sindhu Sakkarwal, Adv for R-1.

**CORAM:**

**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

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1. The appellant has impugned the order dated 02.03.2016 and 01.05.2017 passed by the Family Court.

2. The contention of the appellant is that while passing the order dated 01.05.2017, the learned Family Court has failed to appreciate the fact that the application for setting aside the order dated 02.03.2016 was moved immediately after receiving the entire set of petition by the learned counsel for the appellant and hence there was no delay in filing the application for setting aside the said order, also that the appellant, the wife, does not have

means to pay the cost of Rs. 3000/- imposed upon her for filing the written statement as she has all along been dependent upon the respondent. Due to her inability to engage a counsel, she had been appearing in person in the Court. She could get a lawyer through Delhi Legal Services Aid only in November 2016. It is further argued that the impugned order is based on the premise that the appellant had been taking adjournments while it was the respondent who had been seeking multiple adjournments. It is argued that impugned orders are against interest of justice and are harsh.

3. The brief mention of the proceedings before this Court would be relevant for disposal of the appeal. This Court vide order dated 25.07.2017, had directed the appellant to send a written intimation to the respondent through his counsel appearing before the learned Family Court and consequent to that, the counsel for the respondent had also attended this Court. This Court also made an attempt for amicable settlement between the parties and send the matter to the Mediation Centre on the request of the parties. However, the parties failed to settle the matter and thereafter the arguments have been heard of learned counsels appearing for the parties in the matter.

4. The facts show that the respondent (husband) filed a divorce petition on the ground of cruelty and adultery which came up for hearing before the learned Family Court on 20.05.2015 on which date the notice was issued to the appellant, returnable on 05.08.2015. On that date i.e. 05.08.2015, the appellant appeared in person and she was given two weeks' time to file the written statement and the matter was listed for hearing on 15.09.2015. The written statement, however, was not filed by the appellant and the Court granted further opportunity to her to file the written statement within two weeks and the matter was adjourned to 06.11.2015. On that date, Sh. Sanjay Yadav, Advocate appeared on behalf of the appellant and other respondent nos. 2 and 4 as a proxy counsel. He requested for the copy of CD's which were ordered to be supplied by the Court to appellant herein and the other respondents within three days and appellant along with other respondents 2 and 4 was given time to file their written statement within four weeks. The next date fixed in the case for framing of the issue was 23.12.2015. The written statement, however, was not filed by the appellant and the Court gave further opportunity of one week subject to cost of Rs. 2000/- and the matter was listed on 12.02.2016. However, no written statement was filed by the appellant till that date and on her request she was given one more

opportunity for filing the written statement within one week and further cost of Rs. 3000/- was imposed upon her. She on that date paid the previous cost of Rs. 2000/-. The appellant still did not file the written statement and finally on 02.03.2016 vide the impugned order, the learned Family Court closed the appellant's right to file the written statement and listed the matter for 01.04.2016 for petitioner's evidence. It was subsequently adjourned to other dates for recording of the evidences of petitioner/respondent No. 1 herein.

5. Subsequently, an application dated 25.01.2017 under Section 151 CPC for setting aside the order dated 02.03.2016 was filed by the appellant through her counsel. This application was finally dismissed vide impugned order dated 01.05.2017. This order also shows that the application dated 25.01.2017 remained pending as a settlement was arrived at between the parties and the modalities of the same were to be finalised. The family Court noted that *"the respondent No. 1 backtracked from the settlement and has stated that the matter may be proceeded with."*

6. The argument of learned counsel for the appellant is that the appellant is a poor lady and she remained unrepresented by a counsel and was not aware of her rights and was not even aware that she had to file the written statement within 30 days or within 90 days and that she was not in a position

to pay the cost of Rs. 3000/- due to the financial constraints. It is submitted that the justice requires that she be given one more opportunity to file the written statement.

7. The learned counsel for the respondent No. 1 however has argued that more than enough opportunities have been given to the appellant. She was even represented by counsel Sh. Sanjay Yadav, who appeared on her behalf on 06.11.2015 and sought the copy of CD's which was supplied to him and that, therefore, so the argument that she was not aware that she had to file the written statement within 30 days or 90 days, has no merit. It is further argued that no application for condonation of delay in filing the application under Section 151 CPC for recalling the order dated 02.03.2016 has been filed along with the said application and no reasonable grounds for filing the application dated 25.01.2017 belatedly for setting aside the order dated 02.03.2016 which is almost after an year has been explained. It is further argued that the learned Family Court was justified in dismissing the said application vide its order dated 01.05.2017 and thereby refusing to recall the order of closing of right of the appellant for filing the written statement.

8. We have given a thoughtful consideration to the rival contentions and arguments of learned counsel of parties and perused the relevant record.

9. Admittedly, the appellant was served with the summons of petition for divorce for the date 05.08.2015. She appeared on that date and the Court had adjourned the matter giving her the opportunity to file the written statement. The Court adjourned the matter to various dates and gave her number of opportunities including opportunities on payment of cost and it was only on 02.03.2016 that the Court closed her right to file the written statement. She was apparently given almost 8 months of time for filing the written statement.

10. Order 8 Rule 1 of Civil Procedure Code prescribes 30 days from the date of service of the summons, the time limit within which the written statement is required to be filed. The provision permits the Courts to extend the time for filing the written statement beyond 30 days for reasons to be recorded but it shall not exceed 90 days from the date of service.

11. The Hon'ble Supreme Court vide several pronouncements however has clearly held that this provision is not mandatory but directory and the Courts still retain the jurisdiction to grant an opportunity for filing the written statement beyond the period of 90 days in appropriate cases. Accordingly, the learned Family Court in exercise of its jurisdiction,

continued giving the appellant several opportunities to file the written statement even after expiry of 90 days.

12. The principles governing the provision contained in Order 8 Rule 1 has been laid down by the Hon'ble Supreme Court in the case of **Kailash vs. Nanhku, (2005) 4 SCC 480**. The Court, in para 27 of the said judgment, has observed as under:-

*“ 27. Three things are clear. Firstly, a careful reading of the language in which Order 8 Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Secondly, the nature of the provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law. Thirdly, the object behind substituting Order 8 Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.*

*(emphasis supplied)*

The Court in paragraph 41 has further held that “ .....*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.”

13. The Court has further observed in paragraphs 42 and 44 as under:-

*“ 42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.*

*(emphasis supplied)*

*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.”*

*(emphasis supplied)*

14. Finally, the Court summed up in paragraphs 45 and 46 and held a under:-

*“45. However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8 Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order 8 Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law.*

*46- We sum up and briefly state our conclusions as under:*

*(iv)The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing .....*

*(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds*

*pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.”*

*(emphasis supplied)*

15. The Apex Court in the case of **Salem Advocate Bar Assn. (II) v. Union of India**, (2005) 6 SCC 344 has also propounded the same proposition of law.

*“.....Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1.*

*(emphasis supplied)*

16. The appellant was served and appeared in the Court on 05.08.2015 when she was first asked to file the written statement. Thereafter, she was given opportunities to file the written statement on 15.09.2015, 06.11.2015, 23.12.2015, 12.02.2016 and 02.03.2016. The learned Family Court continued to extend the time from 05.08.2015 till 02.03.2016 and matter remained pending for filing of the written statement by respondent No. 1 for

this period and the respondent No. 1 did not file the written statement despite taking adjournments. On two occasion, the cost of Rs. 2000/- and Rs. 3000/- were also imposed upon but still she did not file the written statement and also did not pay the costs. Besides, that she is poor and remained unrepresented by lawyer; the appellant has not disclosed any ground which prevented her from filing the written statement. The appellant who had come before this Court is required to show that she made sincere efforts for complying with the directions of the Court but some extraneous circumstances which were beyond her control prevented her from filing the written statement. The appellant has failed to disclose any such reason which prevented her from filing the written statement.

17. The various order sheets show that she simply sought adjournments for filing the written statement. The Court was considerate enough to keep on giving her opportunities after opportunities for filing the written statement although she did not disclose any valid grounds for extension of time beyond 90 days.

18. It is apparent that more than sufficient time had been granted by the learned Family Court to the appellant for filing the written statement.

19. The Apex Court in the case *Kailash (supra)* has clearly held that only in the exceptional circumstances, for the reasons beyond the control of the defendant that the Court should extend the time for filing written statement beyond 90 days. It is thus for the appellant to show that there were reasons beyond her control which prevented her from filing written statement within 30 days or 90 days. These have to be of exceptional nature. She filed an application under Section 151 of CPC seeking an opportunity for filing written statement. In this application also, she has not given any reason which can be termed as an exceptional reason, persuading the Court to give her an opportunity to file the written statement, by recalling the order dated 02.03.2016. The various order sheets clearly show that the conduct of the appellant has been very casual, lax and negligent. Despite the fact that twice the cost was imposed upon her, she still did not file her written statement. Her inability to engage a counsel cannot be termed as an exceptional reason. But a counsel did appear on her behalf before the Court and sought copies of the CD's. Despite that, she did not file the written statement. A party cannot be allowed to defeat the provisions of law by adopting a casual approach. The Court is required to exercise its discretion of extending time for filing written statement beyond 90 days in exceptional cases only to meet the ends

of justice and not to adjourn the matter for filing the written statement routinely.

20. The conduct of the appellant shows that she was taking the Court for a ride. First, she failed to file the written statement within 30 days from the date when the summon of the suit was served upon her, then within the period of 8 months during which the opportunity was given to her for filing the written statement. Even after her right to file the written statement was closed, she moved the application under Section 151 CPC only in January 2017. This shows the casual manner in which she had been acting in this matter. It was almost after one and a half year from the date she was served of the summon of the Court that she moved an application under 151 CPC seeking permission to file the written statement. The Supreme Court in the case of *Kailash (supra)* and *Salem Advocate Bar Assn (II) (supra)* has warned the Court not to exercise the discretion to extend the time too frequently and routinely so as to nullify the provisions of Order 8 Rule 1 CPC. Here, in this case, the appellant has acted with laxity and negligently and casually and is unable to disclose any exceptional reasons for extension of time for filing the written statement and the learned Family Court, therefore, was justified in closing the right of the appellant to file the written

statement vide the impugned order dated 02.03.2016 and thereafter dismissing the application under Section 151 CPC.

21. We find no infirmity or illegality in the impugned orders dated 02.03.2016 and 01.05.2017. The appeal has no merit and the same is dismissed along with pending applications. No order as to cost.

**DEEPA SHARMA  
(JUDGE)**

**SIDDHARTH MRIDUL  
(JUDGE)**

**NOVEMBER 28, 2017/ss**