

\$~55-FM

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

% **Date of Decision: 28th May, 2018**

+ CM(M) 307/2018 and CM No.9853/2018 (stay)

A Petitioner
Through: Mr.Mayank Khurana, Advocate

versus

TRespondent
Through: Mr.Nitin Kalra, Advocate for
Respondent along with respondent in
person

**CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA**

JUDGMENT (ORAL)

1. The petitioner has challenged the order dated 6th February, 2018 whereby the learned Family Court closed the petitioner's right to file the written statement.
2. The record of the Family Court has been perused. The respondent instituted the petition for dissolution of marriage on the ground of cruelty in which the notice was issued to the petitioner on 5th July, 2017. The respondent, on receipt of the summons, approached the Supreme Court for transfer of the divorce petition to Ambala in which the Supreme Court issued the notice to the respondent and stayed further proceedings in the

divorce petition. The matter was, therefore, kept pending for awaiting the outcome of the transfer petition. However, the transfer petition was dismissed on 1st December, 2017 and the interim stay was vacated. On 3rd January, 2018 the Family Court directed the petitioner to file the written statement within fortnight and the case was fixed for 6th February, 2018. On 6th February, 2018, the petitioner sought further time to file the written statement which was declined and the learned Family Court closed the right to file the written statement and framed the issues. The case was thereafter taken up on 22nd February, 2018, 15th March, 2018, 28th March, 2018, 4th April, 2018, 18th April, 2018, 5th May, 2018 and 9th May, 2018 for counselling.

3. This Court is of the view that the impugned order dated 6th February, 2018 passed by the Family Court in closing the right to file the written statement appears to be passed in undue haste. It is matter of record that the proceedings before the Family Court remained stayed by the Supreme Court upto 1st December, 2017 when the transfer petition was dismissed. The matter came up thereafter on 3rd January, 2018 when the Family Court granted just two weeks time and on 6th February, 2018, the Family Court rushed to close the right to file the written statement. After closing the right to file the written statement, the case is just pending for counseling. If case listed for counseling/settlement, this Court is unable to comprehend what was the haste in closing the valuable right to file the written statement. In *Telefonaktiebolaget L.M Ericsson v. Lava International Limited*, (2016) 226 DLT 342, this Court held that if parties are negotiating settlement during the pendency of a matter, then the Court will condone the delay in filing of written statement due to such settlement talks. The relevant portion of the

said judgement is reproduced herein under:

“22. Even otherwise, it is a well settled principle of law that if parties are negotiating settlement during the pendency of a matter, then the Court will condone the delay in filing of written statement due to such settlement talks. This Court, in its decision in Dr. Sukhdev Singh Gambhir v. Amrit Pal Singh, ILR (2003) 1 Delhi 577, inter alia held that:

“5. Having heard, counsel for the parties and taking into consideration the respective pleas urged before me, I am of the view that this is a case where the delay in filing of the written statement deserves to be condoned. Firstly it is a suit for partition concerning family members where every endeavor should be made for amicable settlement. Even otherwise, the mandate under Section 89 effort ought to be made to settle the matter. Secondly, the defendant had already filed the written statement in the suit in District Court. Hence it could not be the situation that the defendant was delaying the case, but on account of the attempts at settlement written statement was not filed””

(Emphasis Supplied)

4. Learned counsel for the petitioner submits that the petitioner's written statement is ready. He further submits that the advance copy of the written statement shall be handed over to the counsel for the respondent today itself. Learned counsel for the petitioner submits that the petitioner shall not seek any unnecessary adjournment in this matter.
5. The petition is allowed and impugned order dated 6th February, 2018 is set aside. The Family Court shall take the written statement on record on the date fixed. Pending application is disposed of.
6. The record of the Family Court be returned back forthwith through a

special messenger.

Post Script

7. This Court is of the view that it is the duty of the Courts to search the truth and then do justice; this is the very object for which Courts are created. The Courts have to remove chaff from the grain to separate falsehood from truth. The matrimonial litigation begins with parties mounting claims on each other, which are often exaggerated and are magnified to such an extent that the truth and falsehood become so inextricably mixed up, that it is difficult, if not impossible, to separate them.

8. It becomes even more difficult to find the truth if the right to file the written statement or the right to lead evidence or right of cross-examination of any witness is closed in undue haste. Therefore, in matrimonial litigations, the Family Courts should take due care and caution in closing the valuable right to file the written statement or to lead the evidence or the right of cross-examination of any witness.

9. In ***Gajanan Laxman Bhalchandra v. Rangrao Amrutrao Deshpande***, 1980 Mah LJ 821, the Division Bench of the Bombay High Court observed as under:-

“The very weapon of cross-examination would stand scuttled. Cross-examination is not a mere continuation of examination-in-chief nor is it in all cases and circumstances supposed to fall within the routine strait-jacket formula as of examination in chief. Indeed, to the contrary. It is a very effective instrument and a powerful searchlight to draw out the truth and further the cause of justice. Its object inter alia is to impeach the very credit of the concerned witness and shake his entire testimony.”

(Emphasis Supplied)

10. In ***Nandram Khemraj v. State of Madhya Pradesh***, 1995 Cri.L.J.

1270, the Madhya Pradesh High Court noted that weapon of cross-examination is a powerful weapon by which the defence can separate truth from falsehood piercing through the evidence given by the witness, who has been examined in examination-in-chief. The relevant portion of the said judgement is reproduced herein under:

“It is to be noted at this juncture that weapon of cross-examination is a powerful weapon by which the defence can separate truth from falsehood piercing through the evidence given by the witness, who has been examined in examination-in-chief. By the process of cross-examination the defence can test the evidence of a witness on anvil of truth. If an opportunity is not given to the accused to separate the truth from the evidence given by the witness in examination-in-chief, it would be as good as cutting his hands, legs and mouth and making him to stand meekly before the barrage of statements made by the witnesses in examination-in-chief against him for sending him to jail. Law does not allow such thing to happen.”

(Emphasis Supplied)

11. Copy of this judgment be sent to the Family Court along with the record.
12. Copy of this judgment Registrar General of this Court who shall send the same to the all Family Courts and other Courts dealing with matrimonial cases.
13. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

MAY 28, 2018
dk

J.R.MIDHA, J.