

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 525 of 2019**

1. Vinay Khedia S/o Vijay Khedia, aged about 32 years, R/o House No. 575, L-7 Vinoba Nagar, Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. Sneha W/o Vinay Khedia, aged about 29 years, R/o C/o Shri Vinod Mittal, Sandeep Agro Products Bhaiya Than Road, Surajpur, Chhattisgarh.
2. Kishan Tulsiyan S/o Anil Kumar Tulsiyan, aged about 28 years R/o 76 Jawahar Nagar, Bhelupura, Varanasi, U.P.

(Ex-party before the Lower Court)

---Respondents

For Petitioner : Mr. Abhishek Sinha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****03.07.2019**

1. This writ petition under Article 227 of the Constitution of India is directed against the order dated 14/05/2019 passed by the Additional Principal Judge Family Court, Bilaspur in case No. 298-A/2018.
2. Mr. Abhishek Sinha, learned counsel for the petitioner submits that in a petition filed by the petitioner under Section 13 (1) of the Hindu Marriage Act, 1955 (henceforth 'Act of 1955'), respondent No. 1 was served with notice that on 09/01/2018, the matter was fixed for filing written statement by the respondent, but till date, written statement has not been filed by her. Subsequently, the petitioner moved an application for closing respondent No. 1's opportunity to file written statement in view of the provisions contained under Order 8 Rule 1 read with Section 151 of the CPC. That same application was not

adjudicated and was adjourned on 14/05/2019 for 15/07/2019, which is wholly impermissible in law, as the Supreme Court, in the matter of ***Kailash Vs. Nanhku & Ors.***¹ has held that the period stipulated under Order 8 Rule 1 has to be complied with necessarily. Therefore, appropriate direction be issued to the family Court to decide the application expeditiously.

3. I have heard learned counsel for the petitioner, considered his submissions and went through the records with utmost circumspection.
4. The Supreme Court, in the matter of ***Kailash*** (*supra*) has held as under :-

“46. (v) Though Order VIII, Rule 1 of the CPC is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the 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 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 was needed to be given for the 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.”

1 (2005) 4 SCC 480

5. Perusal of record would show that though respondent No. 1 was served with notice, yet she has not filed her written statement on the date fixed by the family Court for filing the same. When the petitioner filed the application for closing respondent No. 1's opportunity to file written statement in view of the provisions contained under Order 8 Rule 1 read with Section 151 of the CPC, the same was adjourned for two months. Such a course is impermissible in law. Learned family Court ought to have adjudicated the application of the petitioner promptly and even otherwise, adjournment for a period of two months to consider and decide the interlocutory application is totally unacceptable and cannot be approved by this Court.
6. Accordingly, learned family Court, Bilaspur is directed to hear and decide petitioner's application on the next date of hearing which is fixed on 15/07/2019, in accordance with law, by keeping in mind the provisions contained in Order 8 Rule 1 of the CPC. It is further directed that the family Court will conclude the trial expeditiously, preferably within a period of 6 months from the date of receipt of a copy of this order in view of Section 21 (b) of the Act of 1955.
7. With the aforesaid observations, this writ petition stands disposed of. However, respondent No. 1 is at liberty to file application for modification of this order, if any.
8. A copy of this order by sent to the concerned family Court by e-mail/fax.

Sd/-
(Sanjay K. Agrawal)
Judge