

FARAD CONTINUATION SHEET No.  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH AT NAGPUR

**WRIT PETITION NO. 2680/2017**

(DIPIKA SHYAMRAO ZATE **VERSUS** SHYAMRAO VASANTRAO ZATE)

Office Notes, Office Memoranda of Coram,  
 appearances, Court's orders of directions  
 and Registrar's orders

Court's or Judge's orders

Ms D.V. Sapkal, counsel for petitioner.

**CORAM : A.S. CHANDURKAR, J.**

**DATE : APRIL 04, 2019.**

In view of notice for final disposal issued earlier, the learned counsel for the petitioner has been heard. The respondent though served has not chosen to contest the writ petition.

The petitioner is aggrieved by the order passed below Exhibit 24 dated 24.11.2016 by which the application filed by her for setting aside the 'No Written Statement' order alongwith prayer for permission to cross-examine the respondent herein has been rejected. Subsequently, application for review at Exhibit 33 has also been rejected.

The respondent who is the husband of the petitioner has filed Hindu Marriage Petition for divorce. In those proceedings, after the petitioner was served, the proceedings were kept for filing of her written statement. On 12.08.2016, the petitioner filed an application seeking time to file the written statement. The trial Court rejected that application filed by the petitioner and directed the matter to proceed without her written statement. Thereafter on 22.10.2016, the petitioner filed an application below Exhibit 24 praying that the earlier order dated 12.08.2016 be set aside and she be granted permission to cross-examine the respondent. The trial Court has rejected that application on 24.11.2016. Similarly, the review application filed by the petitioner has also been dismissed.

Ms D.V. Sapkal, learned counsel for the petitioner submitted that considering the nature of proceedings as filed coupled with the fact that the petitioner was required to look after her minor daughter, she could not give necessary instructions for filing the written statement. Though permission was sought to file the written statement on 12.08.2016, the application came to be rejected. According to her, though the ground as to illness of the petitioner was mentioned in the application at Exhibit 12, the fact remains that even the minor daughter was not keeping well which fact is stated in the application at Exhibit 24. It is submitted that the marital rights of the petitioner are involved and therefore, an opportunity to contest the proceedings on merits deserves to be granted. It is thus submitted that the impugned orders are liable to be set aside.

As noted above, the respondent has not chosen to contest the writ petition.

I have heard the learned counsel for the petitioner. The proceedings as filed are for grant of divorce on the ground of cruelty. It is not in dispute that after being duly served, on 12.08.2016 the petitioner had sought time to file her written statement. Her illness was mentioned as a ground for seeking time. That application was rejected by the trial Court. In the subsequent application at Exhibit 24 the illness of the minor daughter has been stated as the reason for the petitioner's inability to file her written statement. Though it is true that time was granted to the petitioner to file her written statement, considering the fact that the proceedings related to the matrimonial status of the parties, an opportunity to contest the same on merits deserves to be granted. If the said proceedings are decided without contest, prejudice would be caused to the petitioner. Moreover, the petitioner was

taking care of her minor daughter. In that view of the matter, I am inclined to grant one opportunity to the petitioner to contest the divorce petition.

Accordingly, the orders passed below Exhibits 24 and 33 are set aside. The petitioner shall file her written statement in the matrimonial proceedings within a period of four weeks from today. The trial Court shall thereafter proceed to decide the matter on its own merits and in accordance with law. The Writ Petition is allowed and disposed of. No costs.

Fees of the counsel appointed for the petitioner are quantified at Rupees Three Thousand.

**JUDGE**

APTE