

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Civil Revision No.289 of 2020
Date of Decision:4.2.2020**

Ravinder

...Petitioner

Versus

Smt.Rekha and another

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jai Vir Yadav, Advocate for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. The petitioner has approached this Court with a prayer for setting aside the order dated 31.10.2019 passed by the Principal District Judge, Family Court, Gurugram, whereby application under Order VIII Rule 1 CPC filed by the petitioner has been dismissed.

2. Heard learned counsel for the petitioner.

3. Technically speaking Mr.Jai Vir Yadav, Advocate may be right in submitting that the respondents took more than the maximum time to file their written statement set in Order VIII Rule 1 CPC, and, therefore, the Family Court ought not to have entertained the replies presented beyond 30 +90 [120] days. But I think a somewhat liberal approach deserves to be adopted in matrimonial matters which are neither commercial nor non-commercial matters though Order VIII Rule 1 CPC makes no such distinction.

4. There appear to be causes for the delay. As meanwhile in the divorce litigation by the petitioning husband against his wife and a named co-respondent, as time was spent involving transfer of the case from the

Family Court at Narnaul to the Family Court at Gurugram by order of this Court in TA-899 of 2018, decided on 30.11.2018. Having regard to that and other factors discussed infra, this court finds that the Principal District Judge, Family Court, Gurugram, by its order dated 31.10.2019 has done substantial justice by permitting respondent No.1-wife to present her written statement and simultaneously rejecting the application filed by the co-respondent under Order VII Rule 11 CPC and he too has also been permitted to file his written statement.

5. In coming to this liberal conclusion the learned Family Court relied upon the decision of the Supreme Court in M/s SCG Contracts India Pvt. Limited v/s K.S.Chamankar Infrastructures Pvt.Ltd. and others, 2019(2) RCR (Civil) 249. Though reliance on the ruling was not appropriate in applying the ratio as the Supreme Court dealt with commercial matters holding that the provisions of Order VIII Rule 1 CPC have to be stringently applied but family matters are not commercial litigation. Their Lordships of the Supreme Court were dealing with a case arising out of the Commercial Courts Act.

6. In a subsequent and recent judgment, the Supreme Court has drawn a distinction between commercial and non-commercial matters. However, in non-commercial matters, a strict view under Order VIII Rule 1 CPC may not be necessarily taken. This ruling is in case “Desh Raj vs. Balkishan (D) through proposed LR Ms. Rohini” decided on 20.1.2020, in Civil Appeal No.433 of 2020, wherein a three Judge Bench Bench presided over by Hon'ble the Chief Justice of India have taken a lenient view in non-commercial cases carving out limited exceptions by “unique circumstances” without laying down the discretion exercised by the Supreme Court in the

case as a precedent. The Supreme Court permitted written statements to be accepted in a non-commercial matter beyond the limit placed in Order VIII Rule 1 CPC. It has been observed the Court has to guard against 'routine condonations' and a 'cavalier attitude' towards the process of law in the matter of filing written statements of defence because it affects the administration of justice. The philosophy in these judgements is to prevent a vital delay, cost escalations and to avoid chaos.

7. Accordingly, I find no cogent reason to disapprove the approach of the learned Family Court, Gurugram in allowing respondents to file their written statements. It is inherent in an application under Order VII Rule 11 CPC that till it is not decided party is excused from putting in its written statement. This slows down the progress of a suit. Seen from these aspects, the order does substantial justice in a matrimonial matter, where the third viewpoint deserves to be introduced as against commercial and non-commercial matters, such as matrimonial disputes, guardianship petitions etc. Section 10 of the Family Court Act, 1984 (for short, "the Act"), provides that the procedure in the Code of Civil Procedure, 1908 "generally" applies to proceedings before the Family Courts. The word "generally" in Section 10 of the Act suggests to my mind and indicates that a slightly liberal approach can be adopted in such matters so that matrimonial divorce actions are determined after full-fledged contest between the parties so that no dispute remains. If the right to file a written statement is closed it would facilitate divorce, in this case asked for by the husband, though his ground for divorce is grave, if proved. The ground is so grave that it should not go without biparte or triparte contest, unless respondent surrenders to the pleadings in the divorce petition. Here the

respondents have come forward. They should be allowed the test by trial.

8. As a result of the discussion, the petition is dismissed but with the direction that the Family Court, Gurugram, will draw up a schedule of dates [See direction (J) in Ramrameshwar Devi v. Nirmala Devi, (2011) 8 SCC 249] for the speedy disposal of the case by notifying both the parties of the time lines in which they have to do acts and things to help in the conclusion of the case and by making parties stick to the schedule without parties seeking unwarranted adjournments.

9. Accordingly, the learned Family Court, Gurugram, will draw up a schedule of dates and compel parties to adhere to it. Toward this end two months' time will be given to the petitioner-husband to produce his evidence, which is the span of time asked for specifically by Mr. Yadav on his client's behalf. On closure of petitioner's evidence, a period of four months' will be granted to the respondents to produce their evidence and the learned Family Court, Gurugram, shall conclude the case within six months thereafter including rebuttal, if any, that is, preferably within a period of one year from the first effective date when parties put in appearance with this order on the board of of the Family Court. If for any reason beyond control and in the judicial discretion of the Family Court, the time lines are exceeded, it is not required to ask for extension of time from this Court but would record the reason for delay and proceed with the matter till conclusion.

10. With these observations and directions, the petition stands disposed of.

February 4, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes
Yes/No