

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

CR-1444-2021

Date of Decision: 04.08.2021

Menu Rani

...Petitioner

Versus

Tarsem Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Nishan Singh Chahal, Advocate,
for the petitioner.
(Presence marked through Video Conference)

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ARUN MONGA, J. (ORAL)

Petitioner assails an order dated 11.02.2020 (Annexure P-2) passed by Learned Additional Principal Judge, Family Court, Bathinda striking off her defence in the application filed by the respondent-husband under Section 25 of the Guardian and Wards Act and also order dated 09.04.2021 (Annexure P4) vide which her application seeking setting aside/recalling of the aforesaid order was also dismissed.

2. Learned counsel for the petitioner submits that after service was effected, the petitioner-wife caused her appearance and her counsel took adjournments on 23.10.2019, 15.01.2020 and 27.01.2020 for filing the written statement. On 27.01.2020 matter was adjourned for 03.02.2020, on which date the learned Court below adjourned the case for 11.02.2020 for filing reply subject to payment of costs of Rs. 1,500/-.

3. Learned counsel for the petitioner submits that though the reply of petitioner was duly drafted by her counsel in advance and even supporting affidavit thereof was also got attested on 11.02.2020 itself, but by the time her counsel reached and appeared before the Court below, case had already been called out and the defence of the petitioner-wife was ordered to be

struck off and adjourned for evidence of the respondent-husband vide impugned order dated 11.02.2020 (Annexure P-2). He further submits that petitioner moved an application before the trial Court for setting aside the aforesaid order, but the same has also been dismissed vide order dated 09.04.2021 (Annexure P-4). Hence the instant petition.

4. Learned counsel argues that impugned order has resulted in grave miscarriage of justice. For effective and proper adjudication of the case on its merits, the petitioner be permitted to file her written statement.

5. I have heard learned counsel for the petitioner and perused the case file. Notice to the respondent is dispensed with.

6. It is trite law that Rules of procedure are handmaids of justice. Any interpretation thereof that leads to foil real and substantial justice between the parties ought to be discouraged. More so, in the case in hand, on the appointed day, reply affidavit was ready and duly affirmed on oath but seems that the counsel for the petitioner reached the court after the case had already been called out. In any case, no prejudice would be caused to the respondent if the petitioner is permitted to file her written statement even at this stage. Even otherwise, provision contained in Order 8 Rule 1 of CPC, has been held to be directory in nature by Supreme Court in *Salem Bar Association Vs. UOI, 2005(6) SCC 344*. The Courts should ordinarily, therefore, not take too harsh a view to strike off the defense at very early stage.

7. The counsel for the petitioner undertakes to file the written statement on the adjourned next date.

8. For the foregoing reasons, I deem it appropriate to grant one more opportunity to the petitioner for filing the written statement subject to costs of Rs.10,000/- in addition to Rs.1,500/- imposed by the court below, to

be paid to the respondent. Both the costs shall be adjusted by the respondent-husband from the maintenance dues payable by him to the petitioner-wife. The impugned order dated 11.02.2020 is modified to that extent and the revision petition is allowed accordingly.

(ARUN MONGA)
JUDGE

04.08.2021
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No