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

% **Date of decision: 29th November, 2021**

+ **CM(M) 487/2020 & CM APPLs. 24939/2020, 24942/2020,
42408/2021**

ESHA DHIR

..... Petitioner

Through: Mr. Yakesh Anand, Ms. Sonam
Anand, Ms. Deepshikha Sansanswal,
Mr. Akshay Thakur, Adv.

Versus

SPARSH DHIR

..... Respondent

Through: Mr. Pratap Singh Parmar, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. This petition has been preferred challenging the orders of 17th January 2020 and 04th September 2020 passed by the Principal Judge Family Court. By the order of 17th January 2020, the Court noticing that the petitioner here had not filed a written statement, granted four weeks' time and called upon the respondent to file his replication, if any. The Principal Judge also took note of an application under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') which had remained pending before its Court. It, accordingly, called upon the party-respondent to file a reply to the said application. By the second order of 04th September, 2021, the Court took note of the contention of the respondent that since the petitioner here had failed to file a written statement, the provisions of Order VIII Rule 1 of the Civil Procedure Code would apply

and consequently consideration of the application for interim maintenance be deferred till such time as the written statement is tendered.

2. The Family Judge after noticing the rival contentions proceeded to hold and record as follows:

“.....However, after hearing learned counsel for the respondent and perusing the entire facts and circumstances of the case, in my view, it is essential that respondent must file WS in due course. The Court has to peruse the pleadings of both the parties and their affidavit of income, asset and liabilities while deciding the application under Section 24 of the HMA.

Hence, in my view, there is no merit in the submission of learned counsel for the respondent that respondent be not insisted for willing WS till her application under Section 24 of the HMA is decided and hence accordingly let WS be filed by the respondent positively within four weeks with copy to the other side.

Replication two weeks thereafter.

Let petitioner also file his affidavit of income, asset and liability positively within four weeks. No further opportunity shall be granted.”

3. When this petition initially came to be entertained impugning the aforesaid two orders, a learned Judge passed the following significant directions on 02nd February, 2021 and 10th March, 2021: -

Order of 02nd February, 2021-

“4. During the meeting with the parties, at this stage, they appear to have reconciled to the position that they must commence interaction with each other, keeping in mind the interest of the child. Considering the fact that the child is 5 years of age, this Court is inclined to put in place an interim arrangement. Accordingly, the following interim arrangement is being passed:

- i. The father would be permitted to speak with the child through electronic mode, preferably by a video call, every evening for 15 to 20 minutes. The time shall be communicated in advance to Ms. Esha Dhir, who would cooperate to facilitate the said call.

- ii. The father would be allowed to meet the child on 13th February, 2021 and 14th February, 2021. He would be permitted to pick up the child and Ms. Esha Dhir at about 11.30 am, to spend 4 to 5 hours with them. If the father wishes to spend solitary time with the child, Ms. Esha Dhir can be in a visible and non-audible distance for some during the said period. The father should drop them back to the residence of Ms. Esha Dhir, who is living with her parents, by 05.00 pm. Similarly, the father would be permitted one more physical meeting with the child, in the same terms, on a date which can be mutually agreed upon by him and Esha Dhir. This meeting would also be facilitated by Ms. Esha Dhir.
- iii. A sum of Rs. 15,000/- shall be paid by Mr. Sparsh Dhir to Ms. Esha Dhir by the 10th of every month with effect from February, 2021. The first payment shall be made by the 10th of February.”

Order dated 10th March, 2021-

“6. With the consent of the parties, the following interim arrangement shall operate till the next date of hearing:

i) The child shall be permitted to video call with the father on a daily basis for a period of 20 minutes, between 7 P.M to 8 P.M. During the said period, the Petitioner shall ensure that the child is fully visible on the video call and the father is able to speak to the child, without the presence of the mother, to the extent possible;

ii) The father would be allowed to pick up the child from the Petitioner's house at about 3:00 P.M and drop him back by 6:00 P.M. on 11th and 12th March, 2021. The child would be preferably taken to some public place or a place of recreation.

iii) Since it is the child's birthday on 2nd April, 2021, the Respondent father is allowed to pick up the child on 2nd April, 2021 at 3:00 P.M. and he shall drop the child back at 6:00 P.M.”

4. Before the Court, it is not disputed that the disputes between parties could not be finally settled by the Mediator and no amicable solution could be found. While the first order of 02nd February, 2021 had accorded visitation rights to the respondent, the second order provided for the system of the father being able to communicate with the child via a video call. Presently, the Court is informed that on account of a medical affliction, the respondent is not in a position to take advantage of the rights of visitation

physically and that the ends of justice would thus warrant the system of video calls being continued to enable the father to continue interactions with the child and thus participate in his upbringing.

5. The Court also notes that in terms of the two orders noted above, this Court had provided for fixation of an interim maintenance to be paid at a rate of Rs. 15,000/- and on one occasion had further directed the payment of an additional sum of Rs. 10,000/-. It is this arrangement which has continued to hold the field.

6. The first question which merits consideration of the Court is with respect to the validity of the two orders passed by the Family Judge and whether the issue of interim maintenance or otherwise is liable to be decided by this Court in this writ petition even before parties have had the liberty and the occasion to lead appropriate evidence in order to enable the Family Judge to arrive at what would be a just maintenance which would be payable.

7. Insofar as the latter question is concerned, this Court is of the considered view that the principal jurisdiction in this respect stands conferred on the Family Judge. It is the primary responsibility and function of the Family Judge to consider and decide as to what would constitute a fair maintenance, interim or otherwise, which should be fixed for the upkeep and upbringing of the minor child. It would thus appear to be appropriate for the Family Judge to be called upon to decide this question in the first instance since it would have the benefit of appraising the claims of respective parties and the evidence that they may choose to lead. This

Court would in this respect be obliged to exercise a secondary review only if a party to the lis has a grievance in respect of the ultimate decision that the Family Judge may render in this regard. The Court finds no justification to arrogate to itself the primary role and obligation to decide this question definitively even before the Family Judge has had an occasion to rule on this issue. The Court desists from proceeding in this direction for it may also denude a party from applying for review of the decision that the Family Judge may ultimately take in this respect.

8. That then takes the Court to consider whether the Family Judge was justified in law in refusing to take up the application under Section 24 of the Act in the absence of a written statement being filed. Learned counsel for the petitioner submits that the decision to defer consideration of the grant of interim maintenance is wholly unsustainable since the Family Judge appears to have proceeded on the premise that the consideration of grant of interim maintenance was dependent upon the filing of a written statement. It was further contended that the Family Judge failed to bear in mind that the provisions of the Civil Procedure Code have no strict application to proceedings before a Family Court and only the principles underlying its various provisions are liable to be taken into consideration. The Family Court, it was submitted, is empowered by law to follow its own procedure provided it be consistent with the principles of natural justice and the rights of parties to be afforded a fair opportunity. Learned counsel would contend that this issue is no longer res integra and stands authoritatively settled in light of the decision of this Court in **Nidhi Banga**

Vs. Mohinder Bir Singh¹. In that decision the Division Bench of this Court held thus:

“10.”The said Section confers a power on the Court in a given case to direct the Petitioner to pay necessary expenses of the proceedings to the respondent on an application being made by the respondent. Such an order can be passed when the Court is satisfied that the respondent does not have independent income. Proviso lays down that if an application for payment of expenses of the proceedings is made, normally the same shall be disposed of within 60 days from the date of service of notice on the wife or the husband, as the case may be. Thus, in a given case where a Petition is filed for divorce or other relief by the husband, if wife does not have income to bear the expenses of the proceedings, she can apply to the trial court for grant of a reasonable amount for meeting the expenses of the proceedings initiated by the husband. The law mandates that such application shall be decided within a period of 60 days. What follows is that till such application is not decided and till the amount ordered to be paid to the respondent-wife not paid, she is not expected to file written statement. At this juncture, it will be necessary to consider a decision of this in the case of *Meena alias Pratibha Deshpande v. Prakash Shriniwas Deshpande*, (1983 Mah LJ 821). It will be necessary to refer to what is held by this Court in paragraph 2 of the said decision.

“2. In the entire proceedings excepting para 5 of the trial Court's judgment, it does not appear that there was any consideration bestowed upon the entitlement of such wife to seek maintenance pendente lite and the expenses of the proceedings for which proper application was filed supported by the affidavit as available at Exs. 11 and 12. Without deciding such an application, it is indeed difficult to permit the passing of such ex parte judgment only because the written statement is not filed, particularly when the allegations on the basis of which relief of nullity and divorce are sought are serious enough and, before they are accepted, required sufficient and adequate proof. In such matters, looking to the policy of law it must be observed that the proceedings under Section 24 of the Act have an important bearing with regard to the rights of the defending spouse. Not only the provisions of Section 24 of the Act permit grant of maintenance pendente lite, but also it permits the Court to make an order with regard to necessary expenses of the proceedings. In a given case without provision for the necessary expenses of the proceedings, it would be impracticable to insist upon the defending spouse even to file a written statement. The trial Court, which was moved by filing the

¹ 2014 SCC OnLine Del 7628

application, was bound to decide the application with regard to the maintenance and the expenses. There is thus, obvious failure to follow the provisions of Section 24 of the Act and that should be enough to set aside the judgment under appeal and remit the matter back to the trial Court directing it to consider the application filed at Ex. 11 supported by Ex. 12 and then to proceed with the enquiry in the petition according to law."

9. Learned counsel for the respondent has sought to explain **Nidhi Banga** by asserting that the principles laid down in that decision would only apply where the Family Court finds that the filing of a written statement is being unjustifiably delayed and in order to avoid a decision on maintenance being pronounced. According to learned counsel, the facts of the present case would demonstrate that the petitioner failed to file a written statement despite adequate opportunity being afforded and only to avoid the consequences which flow from Order VIII Rule 1 of the Civil Procedure Code. Learned counsel while admitting that the provisions of the Code may not strictly apply to proceedings before the Family Court, at least the underlying principles of the provisions made therein must inform the proceedings taken before the Family Court. It was further asserted that a finding being returned on this issue, would render the application made by the respondent infructuous and thus the Court may not decide this issue and remand the matter to the Family Judge for considering the application for maintenance afresh leaving all contentions of respective parties on merits open. For the accuracy of the record, it may be noted that this suggestion was mooted since learned counsel for the respondent did concede that no reasons as such had been assigned by the Family Judge to refuse to take up the application for interim maintenance apart from merely recording that it would be appropriate to evaluate the pleadings of

respective parties as well as the material that may be placed with respect to earning, sources of income and other relevant factors.

10. Having noticed the rival submissions, it may at the outset be noted that apart from merely observing that the Court would have to peruse the pleadings of parties and the evidence that may be led before deciding the question of interim maintenance, the Family Judge has assigned no reasons for deferring consideration on the aforesaid question. The Family Judge has failed to assign any valid reason or allude to any circumstance which may have impeded its ability and authority to decide this issue irrespective of whether a written statement had been filed or not. A written statement, as a foundational precept, is a pleading dealing with the merits of the dispute. The insistence on the filing of a written statement and an application for maintenance being taken up for consideration only thereafter cannot possibly be recognized to be an inviolable rule. **Nidhi Banga** clearly holds and mandates to the contrary. Even if, a Family Judge were of the considered view that sufficient evidence had not been placed on the record to enable it to render a decision on the application for maintenance, it was open to it to ask and require a party to do so. That, in any case, could not have detracted from its obligation as well as the responsibility to take up and decide the application for maintenance expeditiously.

11. The assertion of the petitioner was that she had no source of income and that she was facing financial constraints to look after the needs of the minor. It is not the case of the respondent that he was contributing to the expenses required for the wellbeing of the minor prior to the intervention of this Court. If it were an issue of assessing and evaluating the competing

financial abilities of respective parties, evidence could have been called for on the application for interim maintenance itself. For the aforesaid reasons, this Court is compelled to hold in favour of the petitioner insofar as this issue is concerned.

12. Learned counsel for the respondent has forcefully and vehemently urged that the provisions of Order VIII Rule 1 of the Civil Procedure Code must be held to apply and in view thereof, the petitioner must be held to be obliged to file a written statement before the issue of maintenance is considered by the Family Judge. The aforesaid argument is liable to be rejected firstly on humane considerations, not because the plea for grant of maintenance is raised by a mother, but in light of the responsibility which must be recognised to be placed upon him to contribute to the needs of the minor. The respondent fails to weigh into consideration that he too is a parent and thus obliged in law to contribute equally to meet the needs of the child.

13. Secondly, the argument with respect to strict application of Order VIII Rule 1 of the Civil Procedure Code is liable to be rejected even on a legal plane. The arguments as addressed fail to bear in mind the distinctive jurisdiction which stands conferred upon a Family Court and the nature of the duties that they are obliged to discharge. The Family Judge is supposed to perform a special and unique role under the Act. That Court, unlike others in the hierarchy of the judicial system does not merely preside over adversarial litigation. It also has to proactively engage with parties and act as a facilitator and mediator. The Family Judge performs the twin role of an adjudicator as well as a problem solver called upon to deal with complex

issues connected with the breakdown of families and relationships. The Courts have consistently held that the Act does not contemplate a strict application of the provisions of the Code. The Bombay High Court in **Vishal Nitinkumar Kondhia Vs. Jahnvi Vishal Kondhia**² explained this settled position in the following terms: -

“14. The contention as urged on behalf of the respondent that the conduct of the petitioner in not initially raising such a plea in the written statement and at a belated stage after three years by filing of the written statement raising such plea when the petitioner was fully conscious and aware that the Dubai Court had granted a decree of divorce, itself would defeat the amendment application of the petitioner. This submission also cannot be accepted considering the nature of the proceedings before the Family Court and the provisions of the Family Courts Act, in my opinion the rigorous and strict technicalities of law and the procedure cannot be strictly applied to the proceedings before the Family Court. In any case technicalities should not defeat the cause of justice. The Family Court can device and lay down its own procedure to ascertain the issues before it and the application of the principles under the general law are subject to the provisions of the Family Courts Act as section 10 of the Act would provide.”

14. The Bombay High Court in **Sau Vanita Pravin Gaikwad Vs. Shri Pravin Pundlik Gaikwad**³ dealing more specifically with the provisions of Order VIII and the question of payment of maintenance pendente lite held:-

“10. The said Section confers a power on the Court in a given case to direct the Petitioner to pay necessary expenses of the proceedings to the respondent on an application being made by the respondent. Such an order can be passed when the Court is satisfied that the respondent does not have independent income. Proviso lays down that if an application for payment of expenses of the proceedings is made, normally the same shall be disposed of within 60 days from the date of service of notice on the wife or the husband, as the case may be. Thus, in a given case where a Petition is filed for divorce or other relief by the husband, if wife does not

² (2018) 3 Mah. LJ. 823

³ AIR 2010 BOM 62

have income to bear the expenses of the proceedings, she can apply to the trial court for grant of a reasonable amount for meeting the expenses of the proceedings initiated by the husband. The law mandates that such application shall be decided within a period of 60 days. What follows is that till such application is not decided and till the amount ordered to be paid to the respondent-wife not paid, she is not expected to file written statement. At this juncture, it will be necessary to consider a decision of this in the case of *Meena alias Pratibha Deshpande v. Prakash Shriniwas Deshpande* (1983 Mah LJ 821). It will be necessary to refer to what is held by this Court in paragraph 2 of the said decision:

“2. In the entire proceedings excepting para 5 of the trial court's judgment, it does not appear that there was any consideration bestowed upon the entitlement of such wife to seek maintenance pendente lite and the expenses of the proceedings for which proper application was filed supported by the affidavit as available at Exs. 11 and 12. Without deciding such an application, it is indeed difficult to permit the passing of such ex parte judgment only because the written statement is not filed, particularly when the allegations on the basis of which relief of nullity and divorce are sought are serious enough and, before they are accepted, required sufficient and adequate proof. In such matters, looking to the police of law, it must be observed that the proceedings under Section 24 of the Act have an important bearing with regard to the rights of the defending spouse. Not only the provisions of Section 24 of the Act permit grant of maintenance pendente lite, but also it permits the court to make an order with regard to necessary expenses of the proceedings. In a given case without provision for the necessary expenses of the proceedings, it would be impracticable to insist upon the defending spouse even to file a written statement. The trial court, which was moved by filing the application, was bound to decide the application with regard to the maintenance and the expenses. There is, thus, obvious failure to follow the provisions of Section 24 of the Act and that should be enough to set aside the judgment under appeal and remit the matter back to the trial Court directing it to consider the application filed at Ex. 11 supported by Ex. 12 and then to proceed with the enquiry in the petition according to law.”

15. (Emphasis added)

11. Thus, what is held by this Court is that in a given case without making provisions for necessary expenses of the proceedings, it would be impracticable to insist upon the defending spouse even to file a written statement. Therefore, this Court came to the conclusion that unless application made under Section 24 of the said Act was decided, the Court could not have proceeded to pass an ex parte decree.

12. On this aspect there is one more relevant decision in the case of *Vanmala w/o. Maroti Hatkar v. Maroti Sambhaji Hatkar* (1999 (2) Mah LJ 297) : ((1999) 9 SCC 559 : AIR 1999 SC 388). This was a case where the husband committed default in complying with the order of interim alimony and payment of expenses passed under Section 24 of the said Act. This Court held that in such a contingency, if the offending party is the petitioner, the proceedings of the Petition can be ordered to be stayed. If the offending party is respondent, then the defence of the respondent can be struck out. Thus if compliance is not made by a Petition with an order passed under Section 24 of the said Act, the proceedings of the Petition can be stayed. Thus, the law laid down by this Court is that unless an application made by the respondent for grant of litigation expenses is decided, the respondent is not even expected to file written statement. If such application is decided in favour of the respondent, it is not expected of the respondent to file the written statement unless order granting litigation expenses is complied with. It is not necessary to go into the wider question whether the provisions of Order VII of the said Code as amended in the year 2002 stand automatically incorporated in Rule 12 of the said Rules. Even assuming that what is incorporated is the amended Rule 1 of Order VIII of the said Code, the same will apply mutatis mutandis. It will apply only to the extent to which it is applicable considering the provisions of the said Act and the said Rules. If it is held that the period for filing written statement provided in Rule 1 of Order VIII as amended is applicable to a Petition under the said Act, the provision of Section 24 of the said Act which is a salutary provision will be rendered nugatory. Moreover, if Rules 10 and 12 are read together, it is apparent that in a given case the Court may issue notice to the respondent without calling upon him/her to file Written Statement. Moreover, the court has discretion to call upon the respondent to file written statement within a longer period than the period of four weeks. This power is conferred by Rule 10 itself. Apart from this, it is obvious that amended Rule 1 of Order VIII which provides for a time limit is inconsistent with the provisions of the said Act and said Rules and in particular Section 24 as well as rules 10 and 12 of the said Rules. If the intention of the framers of the Rules was to apply all the provisions of Order VIII in its entirety to the proceedings under the said Act, the phraseology used in Rules 10 and 12 would not have been used. It is intended to apply only those provisions of Order VIII of the said Code which are not inconsistent or contrary to the provisions of the said Act and the said Rules. In this view of the matter, the time frame provided in Rule 1 of Order VIII, as amended in the year 2002, will not strictly apply to a proceeding of a Petition under the said Act.”

The aforesaid decision and the view expressed therein has been followed by the Calcutta High Court in **Sunil Bansal Vs. Meeta Bansal**⁴.

15. The provisions of Order VIII Rule 1 of the Civil Procedure Code have been held to be directory except in those situations where the statute itself prescribes the consequences of a failure to adhere to its rigorous regimen. The Court records this in light of the principles enunciated by the Constitution Bench in **New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage**⁵ where the Supreme Court held: -

“31. Now, while considering the relevant provisions of the Code, it is noteworthy that Order 8 Rule 1 read with Order 8 Rule 10 prescribes that the maximum period of 120 days provided under Order 8 Rule 1 is actually not meant to be mandatory, but only directory. Order 8 Rule 10 mandates that where written statement is not filed within the time provided under Order 8 Rule 1 “the court shall pronounce the judgment against him, *or make such order in relation to the suit as it thinks fit*”. A harmonious construction of these provisions is clearly indicative of the fact that the discretion is left with the Court to grant time beyond the maximum period of 120 days, which may be in exceptional cases. On the other hand, sub-section (2)(b)(ii) of Section 13 of the Consumer Protection Act clearly provides for the consequence of the complaint to be proceeded ex parte against the opposite party, if the opposite party omits or fails to represent his case within the time given.

33. Once consequences are provided for not filing the response to the complaint within the time specified, and it is further provided that proceedings complying with the procedure laid down under sub-sections (1) and (2) of Section 13 of the Consumer Protection Act shall not be called in question in any court on the ground that the principles of natural justice have not been complied with, the intention of the legislature is absolutely clear that the provision of sub-section (2)(a) of Section 13 of the Act in specifying the time-limit for filing the response to the complaint is mandatory, and not directory.

48. *J.J. Merchant* [*J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635] is one relating to the provisions of the Consumer Protection Act, and

⁴ 2018 SCC OnLine Cal. 1501

⁵ (2020) 5 SCC 757

has been decided by a Bench of three Judges of this Court (which is after the decision in *Topline Shoes* [*Topline Shoes Ltd. v. Corporation Bank*, (2002) 6 SCC 33] was rendered). In this case it has been held that the time-limit prescribed for filing the response to the complaint under the Consumer Protection Act, as provided under Section 13(2)(a), is to be strictly adhered to i.e. the same is mandatory, and not directory. In para 13 of the said judgment, it has been held that : (*J.J. Merchant case* [*J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635] , SCC p. 644)

1. “13. ... For having speedy trial, this legislative mandate of not giving more than 45 days in submitting the written statement or the version of the case is required to be adhered to. If this is not adhered to, the legislative mandate of disposing of the cases within three or five months would be defeated.”

52. After considering the provisions of the Code and the Consumer Protection Act, the reference was answered “that the law laid down by a three-Judge Bench of this Court in *J.J. Merchant* [*J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635] should prevail”. In coming to this conclusion, the following was observed in paras 25 and 26 of the said judgment : (*New India Assurance Co. Ltd. case* [*New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, (2015) 16 SCC 20 : (2015) 16 SCC 22 : (2016) 3 SCC (Civ) 587 : (2016) 3 SCC (Civ) 589] , SCC p. 26)

2. “25. We are, therefore, of the view that the judgment delivered in *J.J. Merchant* [*J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635] holds the field and therefore, we reiterate the view that the District Forum can grant a further period of 15 days to the opposite party for filing his version or reply and not beyond that.

3. 26. There is one more reason to follow the law laid down in *J.J. Merchant* [*J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635] . *J.J. Merchant* [*J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635] was decided in 2002, whereas *Kailash* [*Kailash v. Nanhku*, (2005) 4 SCC 480] was decided in 2005. As per law laid down by this Court, while dealing *Kailash* [*Kailash v. Nanhku*, (2005) 4 SCC 480] , this Court ought to have respected the view expressed in *J.J. Merchant* [*J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635] as the judgment delivered in *J.J. Merchant* [*J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635] was earlier in point of time. The aforesaid legal position cannot be ignored by us and therefore, we are of the opinion that the view expressed in *J.J. Merchant* [*J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635] should be followed.”

53. Although, after the above decision, no further reference was required to be made, but still we have proceeded to answer the question referred to this Constitution Bench and are of the considered opinion that the view

expressed by this Court in *J.J. Merchant* [*J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635] is the correct view.”

16. As would be manifest from the aforesaid exposition of the law, the provisions of Order VIII Rule 1 of the Civil Procedure Code are liable to be recognised as operating in absolute terms only where a particular statute may provide for consequences of a failure to adhere to the time frame prescribed for filing of a written statement. No such penal consequences stand engrafted in the Act with which we are concerned in this matter. A reading of the principles spelt out in **Nidhi Banga**, establishes that the Court essentially reiterated the underlying importance of Section 24 and of the obligation placed upon the Family Court to determine the payment of maintenance. As this Court reads the orders impugned here, it is manifest that the Family Court has failed to record even rudimentary reasons in support of its ultimate decision to defer decision on the application under Section 24 in the absence of a written statement being filed.

17. For the aforesaid reasons, this Court is of the considered view that the impugned orders would merit being set aside and the matter being remitted to the Family Judge who may take up the application for grant of interim maintenance as made under Section 24 and dispose of the same in accordance with law and upon due consideration of all objections that may be taken and evidences led by respective parties.

18. Till such time, as the aforesaid application is decided on merits, the ends of justice would also warrant the interim arrangement as made out by this Court and reflected in the orders of 02nd February, 2021 and 10th March, 2021 to be continued subject to the following modifications: -

1. While the respondent would continue to pay interim maintenance of Rs. 15,000/- as was fixed by this Court in its initial order of 02nd February, 2021, since presently, the respondent is unable to exercise the rights of visitation physically, the arrangement of an interactive session being put in place via a video call on a daily basis is liable to be continued.

2. The Court further reserves the right of the respondent to reassert his right of physical visitation as and when his medical condition does so permit.

19. Accordingly, this writ petition shall stand allowed. The impugned orders dated 17th January, 2020 and 04th September, 2020 are hereby set aside. The matter shall stand remitted to the concerned principal Judge who shall take up the application as made by the petitioners here under Section 24 for consideration and dispose of the same in accordance with law. The Family Judge shall dispose of the application for maintenance with expedition and without granting any unnecessary adjournment to respective parties.

20. Till such time as that application is decided, the respondent is held liable to continue to pay Rs.15,000/- as interim maintenance.

21. While the respondent would continue to pay interim maintenance of Rs. 15,000/- as was fixed by this Court in its initial order of 02nd February, 2021, since presently, the respondent is unable to exercise the rights of visitation physically, the arrangement of an interactive session being put in

place via a video call on a daily basis is liable to be continued. The Court further reserves the right of the respondent to reassert rights of physical visitation as and when his medical condition does so permit.

22. The Court also takes on record the undertaking as preferred by the petitioner here through learned counsel that no impediment shall be placed with respect to the daily video calls which the father shall be entitled to and that the petitioner would ensure that the video sessions which are to take place between 07.00 PM to 08.00 PM everyday are adhered to.

23. If the petitioner chooses to make any application before the Principal Judge with respect to reimbursement or sharing of expenses incurred till date with respect to the school fee paid and insurance, that may also be considered in accordance with law.

24. In view of the above, the petition along with pending applications stands disposed of.

YASHWANT VARMA, J.

NOVEMBER 29, 2021/nehha