

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

Divya Chhabra @ Divya Chhabra Petitioner
Vishal Kapoor Respondents

Present:- Mr.Vipin Mahajan, Advocate for the petitioner.

HARKESH MANUJA, J.)

The facts leading to the present revision petition are that marriage between the petitioner and respondent was solemnized on 22.01.2019. One female child, namely, 'Inyat' was born out of the wedlock on 10.12.2019. On account of temperamental differences, the parties could not pull on together and started living separately since April 2020.

The respondent/ husband filed petition under Section 25 of the Guardians and Wards Act, 1890, for short 'the Act' on 02.07.2021 claiming custody of the minor daughter 'Inyat', wherein the notice was issued to petitioner-wife for 06.12.2021. On the said date, the petitioner appeared through her counsel and the petition was adjourned to 27.01.2022 for filing of her written statement.

On 27.01.2022, the petition could not be heard on account of pandemic i.e. Covid-19 and the same was adjourned to 10.03.2022. Thereafter on 10.03.2022, 27.04.2022 and 26.05.2022, though the petitioner sought time for filing written statement, however, the needful was not done. Resultantly, the Additional Principal Judge, Family Court, Amritsar, ordered striking off defence of petitioner-wife.

Counsel for the petitioner submits that since father of the petitioner has been suffering from Parkinson disease (brain related disorder), being engaged with him, the petitioner was not able to contact her counsel for the purpose of filing written statement. It has also been submitted that the only brother of petitioner is settled in Australia and there is no one else in the family to support her, who on her own is also taking care of her minor child aged 03 years. Reference has also been made to the medical certificate relating to the father of petitioner which has been annexed as annexure P-8.

In the facts and circumstances of the present case wherein the dispute relates to the custody of minor child thereby involving substantial rights of the parties, the explanation appears to be genuine and worth consideration. Accordingly, this Court is of the considered opinion that the impugned order dated 16.05.2022 deserves to be set aside by granting one more effective opportunity to the petitioner-wife for filing of her written statement so as to defend her rights effectively by removing hyper-technical impediments of striking off defence.

Reliance can also be placed on the judgment rendered by the Hon'ble Supreme Court in **Kailash Vs. Nanhku and ors.**, 2005 (2) RCR (Civil) 379; wherein it has been held that the provision of Order 8 Rule 1 CPC being part of procedural law are directory in nature. For reference, relevant paragraph 45 (v) of the same is extracted hereunder:-

“45 (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.”

In addition, reliance can also be placed on the judgment rendered by Hon'ble Supreme Court in **Siddalingayya Vs. Gurulingappa and ors.**, 2018 (1) RCR (Civil) 543; wherein the

observations made by the Apex Court has also come to the help of the petitioner. For reference, relevant paras 15 to 18 thereof, are reproduced as under:-

"15) It is true that the time was granted to the defendants to file written statement initially before closing their right to file written statement, yet in our view, the Trial Court instead of closing their right to file written statement should have granted some time to the defendants subject to payment of reasonable amount of cost to the plaintiff to compensate the inconvenience caused to the plaintiff. The High Court was, therefore, right in imposing a cost of Rs.11,250/- on the defendants to be paid to the plaintiff as a pre-condition to file the written statement within the extended time granted by the High Court.

16) In our view, here comes the application of observations of Vivian Bose J. when His Lordship said "Too technical a construction of a section that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice, which requires that men should not be condemned unheard, that decision should not be reached behind their back, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them."

17) Having observed this, His Lordship cautioned "of course there must be exceptions too and where they are clearly defined they must be given effect to" and finally His Lordship concluded observing "But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever

that is reasonably possible, in the light of that principle."
18) The approach of the High Court, which resulted in remand of the case to the Trial Court for deciding the suit on merits after affording full opportunity to the defendants to contest the case and, at the same time, making it obligatory to pay cost of Rs.11,250/- to the plaintiff was, in our view, in tune with the aforementioned observations and did substantial justice to both the parties."

In view of the facts as well as provisions recorded hereinabove, the petition is allowed. Impugned order dated 16.05.2022 (P-6) passed by Additional Principal Judge, Amritsar is hereby set aside and the petitioner-wife is granted one effective opportunity to file her written statement subject to payment of costs of Rs.5000/ - to be deposited with Punjab and Haryana High Court Bar Clerks' Association, within a period of two weeks from today.

Keeping in view the nature of proceedings, the present petition is being decided without issuing notice to the respondent-husband, least it may delay the proceedings initiated at his instance.

Pending application(s), if any, shall also stand disposed of.

August 22, 2022
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No