

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

110

CR No.2103 of 2023

Date of Decision: 11.04.2023

Vijay Pal

...Petitioner

Versus

Seema

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Atul Yadav, Advocate, for
Mr. Manoj Yadav, Advocate, for the petitioner.

VIKAS SURI, J. (Oral)

Learned counsel for the petitioner submits that two petitions were listed before the Principal Judge, Family Court on 20.07.2022 and the defence of the petitioner was struck off in both the petitions. In the other petition registered as MNT-359-2017, titled *Seema vs. Vijay Pal*, vide order dated 24.08.2022 the afore-noticed order was rectified and petitioner has been permitted to bring his defence in that case. In the present case, it is urged that the petitioner was under the impression that in both the matters, the order dated 20.07.2022 had been rectified and the petitioner was permitted to contest the petition.

In the present case, the Principal Judge, Family Court had posted the matter for 04.01.2023 vide the order dated 20.07.2022 and it is only on the adjourned date that it transpired that the order striking off the defence in HMA-560-2021, titled *Seema vs. Vijay Pal*, had not been recalled/rectified.

It is submitted that the written statement is ready and the petitioner seeks only one more opportunity to file the same. It is further submitted that in the present proceedings, prior to 04.01.2023 the petitioner was not represented by counsel and Mr. Pawan Singh, Advocate, whose presence has been shown in the impugned order, was in fact the counsel appearing in the connected matter, i.e. MNT-359-2017. Learned counsel would refer to the order dated 04.01.2023, whereby the application filed by the petitioner under Section 13 of the Family Courts Act, 1984 was allowed and the petitioner was granted permission to be assisted by a legal practitioner, viz. Sh. Manoj Kumar, Advocate.

It is further submitted that the proceedings are now posted for 19.04.2023 and till date no plaintiff's witness has been examined so far. The proceedings being at the initial stage, no prejudice would be caused to the other party in case one opportunity is granted to the petitioner to file his written statement and contest the matter on merits. The other party can always be compensated with costs for the inconvenience caused.

In view of the nature of the order proposed to be passed, the present petition is being disposed of without issuing notice to the respondent as the same would not only occasion further delay the matter but also burden the respondent-wife with additional financial liability to cause appearance before this Court.

It is well settled that the provisions of Order 8 Rule 1 CPC are directory in nature and not mandatory, inasmuch as they pertain to non-commercial Court matters and the civil Court is not divested of its discretion to grant extension of time for filing written statement beyond the period of 30/90 days stipulated therein. The Apex Court in *Bharat Kalra vs. Raj*

Kishan Chhabra, 2022 SCC OnLine SC 613, held that delay could be compensated with costs but denying the benefit of filing the written statement is unreasonable. In the said case, while allowing the Civil Appeal, the written statement was ordered to be taken on record.

In the light of the legal position noticed above, the instant revision petition is allowed and the impugned order dated 20.07.2022 is set aside, subject to payment of costs of Rs.30,000/- to be paid to the respondent-wife on the next date of hearing before the Family Court, i.e. 19.04.2023.

Needless to observe that after the written statement is taken on record, the Principal Judge, Family Court would necessarily be required to reframe the issues, in view the pleadings of the parties and thereafter, proceed in the matter in accordance with law.

It is, however, made clear that failing to pay costs as noticed above, or filing the written statement on the same date, no further opportunity for the said purpose is liable to be granted.

The present petition is disposed of in the aforesaid terms.

(VIKAS SURJ)
JUDGE

April 11, 2023
vcgarg

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