

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

111

CR No.2576 of 2023

Date of Decision: 29.04.2023

Rani

...Petitioner

Versus

Mantosh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Radhe Shyam Sharma, Advocate, for the petitioner.

VIKAS SURI, J. (Oral)

This is a petition preferred under Article 227 of the Constitution of India by the petitioner-wife aggrieved against the order dated 21.11.2022 (Annexure P-1), passed by the Principal Judge, Family Court, Sonapat, whereby defence was struck off for not filing the written statement despite last opportunity.

Learned counsel for the petitioner submits that marriage between the petitioner and respondent was solemnized on 28.02.2019 and from the said wedlock, one male child was born on 25.11.2019, who is in custody and care of the petitioner-wife. After the birth of the child, petitioner is living with her father at Delhi, on account of matrimonial differences and behavior of the respondent-husband. Allegations of harassment and demand of dowry have also been made against the husband and his family members.

It is further submitted that the petitioner-wife has no independent source of income. A petition under Section 125 Cr.P.C. for

maintenance is also pending before the Principal Judge, Family Court, North-West, Rohini, Delhi besides proceedings in FIR No.16, dated 03.01.2022 registered at Police Station Prem Nagar, Rohini, Delhi under Sections 498A, 406, 506/34 IPC and an application under Section 12 of the Domestic Violence Act, 2005 before the Chief Metropolitan Magistrate, New Delhi.

As a counter blast, the respondent-husband has filed a petition under Section 25 read with Section 7 of the Guardianship and Wards Act, 1890, seeking custody of the minor son, to build pressure on the petitioner. The said petition was instituted on 07.07.2021 and notice thereof was issued to the petitioner-wife. The petitioner having no source of income, was given the services of free legal aid counsel viz. Smt. Sudesh Panghal, Advocate, vide office Letter No.3804 dated 26.05.2022 issued by the CJM-cum-Secretary, District Legal Services Authority, Sonapat.

It is submitted that after the services of legal aid counsel were given to the petitioner-wife, the matter was listed on three occasions before the impugned order was passed striking off her defence. On 26.05.2022, the matter was adjourned to 01.08.2022, then to 19.09.2022 and thereafter to 12.10.2022. It is further submitted that the Principal Judge, Family Court, Sonapat was also pleased to pass an order for payment of litigation expenses to the petitioner-wife, but the same has not been paid by the respondent-husband. On 25.11.2022, it was duly noticed that payment of litigation expenses has not been made and the written statement was not filed despite last opportunity. The request for adjourning the matter was declined and defence of the petitioner-wife was struck off.

Having failed to get due professional assistance from the legal aid counsel, the matter was taken up with the District Legal Services Authority, Sonapat, which Authority was pleased to provide the services of Smt. Mantosh Sharma, Advocate, substituting the earlier legal aid counsel, vide office letter No.1615 dated 27.02.2023 (Annexure P-2).

It is pleaded that the fresh counsel after going through the record of the case, advised the petitioner-wife to take steps to seek setting aside the order dated 21.11.2022, whereby the defence was struck off. The matter is now posted for 22.05.2023 for petitioner's evidence and till date, respondent-husband herein has not examined any witness even after having availed three opportunities for the said purpose.

It is submitted that the petitioner-wife seeks only one opportunity to file written statement.

As per the provisions contained in Order 8 Rule 1 CPC, written statement is required to be filed within 30 days on notice and the said period can be extended by Court up to 90 days. It is also well settled that the aforesaid provisions are directory in character and not mandatory, if they do not pertain to commercial Court matters. Thus, the Principal Judge, Family Court was not divested by his discretion to grant extension of time in filing written statement beyond the period already granted even as last opportunity. The Principal Judge has noticed in the impugned order that litigation expenses have not been paid by the respondent-husband and the records reveals that the petitioner-wife is being represented by legal aid counsel.

In the peculiar facts and circumstances, the Principal Judge, Family Court was required to exercise jurisdiction after due circumspection of the attending circumstances. The Apex Court in *Bharat Kalra vs. Raj*

Kishan Chabra, 2022 SCC OnLine SC 613, held that delay could be compensated with costs but denying the benefit of filing written statement is unreasonable.

This Court, in view of the law settled by the Apex Court and the submissions made by learned counsel noticed above and also keeping in mind that the petitioner-wife was being represented by legal aid counsel and a change in counsel by the District Legal Services Authority, occasioned after passing of the impugned order, is of the opinion that the ends of justice would be met if one more effective opportunity is granted to the petitioner-wife to file her written statement.

In light of the above, without issuing notice to the respondent-husband to avoid any further delay, the impugned order dated 21.11.2022 (Annexure P-1) is set aside and one effective opportunity is granted to the petitioner-wife to file her written statement on the next date already fixed before the Principal Judge, Family Court, Sonapat.

In the facts and circumstances of this case, costs are not being imposed on account of the fact that the respondent-husband has not paid the litigation expenses, in compliance to the order passed by the Principal Judge, Family Court, Sonapat, which is a ground available for non-suiting the applicant-husband.

The present revision petition is allowed in the aforesaid terms.

(VIKAS SURI)
JUDGE

April 29, 2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No