

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

112

CR No.3347 of 2023

Date of decision: 30.05.2023

Shalini Walia

....Petitioner

V/s

Arun Walia

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Anil Kumar Garg, Advocate, for the petitioner.

VIKAS SURI, J.

1. In this revision petition preferred under Article 227 of the Constitution of India, grievance raised is against the order dated 11.05.2023 (Annexure P-10), whereby the defence of the petitioner-wife was ordered to be struck off for not filing reply, despite four opportunities having been granted for the said purpose.

2. It is submitted by learned counsel for the petitioner that the petitioner-wife had put in appearance on 22.12.2022 in the petition under Section 25 of the Guardian and Wards Act, 1890 (for short 'the Act'), instituted by the respondent-husband for custody of the minor son, who was born to them on 08.12.2015.

3. The Family Court vide order dated 14.03.2023, granted last opportunity to file reply with costs of Rs.500/- and the matter was posted for 10.04.2023. As the Additional Principal Judge was to go to the Judicial Academy at Chandigarh for training from 10.04.2023 to 07.05.2023, he adjourned the matter to 11.05.2023 for the purpose already fixed and further ordered that the parties through their counsel be informed accordingly of the date fixed. However, on the

adjourned date, i.e. 11.05.2023, the impugned order was passed and the defence of the petitioner-wife was ordered to be struck off.

4. It is pleaded that as respondent-husband had not placed on record the documents that were relied upon in the petition under Section 25 of the Act and reply to the said application was to be finalized after perusal of the same, petitioner-wife filed an application seeking direction to the respondent-husband to produce on record the original documents on the Court file and supply a copy thereof to her. Despite having granted time to the respondent-husband for filing reply to the said application, time was not granted to the petitioner-wife for filing reply to the main petition by the Family Court.

5. Learned counsel for the petitioner submits that concededly the reply could not be filed within the time stipulated under the provisions of Order 8 Rule 1 CPC but the Family Court ought not to have struck off the defence of the petitioner-wife despite having entertained the application for production of documents, as the respondent-husband could be compensated with costs for the inconvenience caused. It is pleaded that the petitioner-wife seeks only one opportunity to file the reply.

6. Heard learned counsel for the petitioner and with his able assistance perused the paper book.

7. Keeping in view of the order proposed to be passed, the present petition is being disposed of without issuing notice to the respondent as it would only delay the proceedings and entail additional expenses to the respondent.

8. Order 8 Rule 1 CPC stipulates the written statement to be filed within 30 days on notice and the said period can be extended by Court up to 90 days. It was held in ***Desh Raj vs. Balkishan (Dead) through proposed Legal***

Representative Ms. Rohini, (2020) 2 SCC 708, that as regards the timeline for filing of written statement in a non-commercial dispute, the observations of the Apex Court in a catena of decisions, most recently in ***Atcom Technologies Ltd. vs. Y.A. Chunawala & Co., (2018) 6 SCC 639***, holds the field. The provisions of Order 8 Rule 1 CPC as un-amended by the Commercial Courts Act, 2015, continues to be directory and does not do away with the inherent discretion of Courts to condone certain delays.

9. In view of the peculiar facts and circumstances, the Family Court was required to exercise jurisdiction after due circumspection of attending circumstances.

10. In ***Bharat Kalra vs. Raj Krishan Chhabra, 2022 SCC OnLine SC 613***, while considering 193 days delay in filing the written statement, allowing the civil appeal, the Apex Court held that the said delay could be compensated with costs but denying benefit of filing the written statement is unreasonable and thus, ordered the written statement to be taken on record.

11. In light of the above discussion and the law settled by the Apex Court, I am of the considered view that ends of justice would be met, if reply is permitted to be filed, even though belatedly, subject to payment of costs. It is well settled that procedural law is subservient to and is in aid of justice. The rules of procedure are handmaid of justice. Moreover, it would be in the interest of both the parties if their respective stands are before the Court while adjudicating upon custody rights for the minor. No prejudice would be caused to respondent-husband in case the petition is decided on merits, after affording proper opportunity to contest the same.

12. Accordingly, the present petition deserves to be allowed. The

impugned order dated 11.05.2023 (Annexure P-10) is set aside to the extent that it orders striking off the defence of the petitioner-wife.

13. Resultantly, the petitioner-wife is permitted one more effective opportunity to file reply to the petition under Section 25 of the Act, subject to payment of costs of Rs.2500/- to be paid to the respondent-husband. While imposing costs, a lenient view has been taken as it is pleaded in the application under Section 125 Cr.P.C. (Annexure P-3) that the petitioner-wife has no source of income of her own.

14. The present revision petition is disposed of in the aforesaid terms.

(VIKAS SURI)
JUDGE

May 30, 2023
vcgarg

Whether speaking/reasoned:	Yes
Whether reportable:	No