

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-4167-2023

Date of Decision: 27.7.2023

Ramandeep Kaur

....Petitioner

VERSUS

Satvir Singh

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Jagjit Singh, Advocate,
for the petitioner.

KARAMJIT SINGH, J.

Petitioner-respondent/Ramandeep Kaur filed revision petition against order dated 24.5.2023 passed by Additional Principal Judge, Family Court, Ludhiana whereby defence of the petitioner has been struck off in HMA Case No.10017/2022 titled **Satvir Singh v. Ramandeep Kaur** filed under Section 9 of Hindu Marriage Act.

2. Counsel for the petitioner made prayer that one last opportunity be granted to the petitioner to file written statement so that she be able to rebut the allegations made by her husband-Satvir Singh in the aforesaid petition. Counsel for the petitioner further submits that the entire allegations made by the respondent in the aforesaid petition seeking restitution of conjugal rights are false.

3. I have considered the submissions made by the counsel for the petitioner.

4. Order 8 Rule 1 CPC provides that the defendant shall, within thirty days from the date of service of summons, may file the written

statement of his defence. However, the proviso to this Rule further provides that if the defendant does not file the written statement within the said period of thirty days, he shall be permitted to file the same on such day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

5. Hon'ble Supreme Court while interpreting the provisions of Order 8 Rule 1 CPC in the matter of **Kailash v. Nanhku and others** 2005 AIR SCW 2346 held that :

“The provisions of Order 8 Rule 1 fixing time schedule for filing of written statement are directory and not mandatory. The purpose of providing the time schedule for filing the written statement under Order 8, Rule 1 of Civil Procedure Code is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 Order 8 of Civil Procedure Code is couched in negative form, it does not specify any penal consequence flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 of the Civil Procedure Code is not completely taken away.

As the said provision 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 ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom should be by way of exception.”

6. No doubt, the petitioner was somewhat negligent in filing the written statement and already availed two opportunities for that purpose, However, this Court is of the considered opinion that if an opportunity to file the written statement is not afforded to the petitioner, she will certainly suffer an irreparable loss. It is trite law that procedural rules are sub-servient to the principal and object of administration of justice and cannot be allowed to retard it and procedural technicalities should not be given proportionate importance to throttle justice.

7. Further, in the instant case, the petition filed by the respondent under Section 9 of HMA is at its initial stage and till date, no witness on behalf of the husband has been examined. Thus, no prejudice is going to be caused to the respondent in case the petitioner is allowed to file her written statement. Further more, counsel for the petitioner has apprised the Court that the written statement is ready and only one opportunity be granted to the petitioner to file the same in the Court concerned.

8. For the foregoing reasons, the present revision petition is allowed and order under challenge is set aside. The Family Court concerned is directed to permit the petitioner to place on record written statement. This order is subject to payment of costs of ₹ 2500/- which is to be paid by the petitioner to the opposite party on the next date fixed in the said Court.

9. Keeping in view the circumstances mentioned above, this

petition is being disposed of without issuing any notice to the opposite party. However, liberty is granted to the respondent that if he feels dissatisfied with this order, he may move an application to recall the same.

(KARAMJIT SINGH)
JUDGE

July 27, 2023

Paritosh Kumar

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