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

CRR(F)-882-2022 (O&M)

Date of Decision:- 11.04.2023

Darshan Singh

....Petitioner

Vs.

Harpal Kaur

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

**Present:- Mr. A.K. Walia, Advocate
for the petitioner.**

**Mr. Jagdeep Singh Bajwa, Legal Aid Counsel
for the respondent.**

AMARJOT BHATTI, J. (Oral)

CRM-35904-2022

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 108 days in filing the present revision.

For the reasons stated in the application, the same is allowed and the delay of 108 days in filing the present revision is condoned.

CRM stands disposed of.

CRR(F)-882-2022 (O&M)

Petitioner - Darshan Singh has filed the present revision against impugned order dated 08.10.2021 passed by learned Additional Principal Judge, Family Court, Bathinda in a petition titled “Harpal Kaur versus Darshan Singh”, MNT 125-92/2020 where his defence has been struck off by passing the aforesaid impugned order. It is argued that the respondent wife filed a petition under Section 125 Cr.P.C. for grant of maintenance by

levelling false allegations. The trial Court had issued notice and on 26.02.2021, the petitioner had received summons and engaged Sh. Lovnish Garg, Advocate who filed his power of attorney on 05.04.2021. At that relevant time, he was posted in Indian Army. He had already given detailed instructions to his counsel to file a written statement and also supplied him necessary record. However, his counsel did not file the written statement by saying that it will be filed when the Courts will be open and fully functional after the second wave of COVID-19 pandemic. After the lapse of about one year, when the petitioner requested his counsel to supply him certified copy of the written statement which he had filed in the said case, he avoided on one pretext or the other. Thereafter, he visited the Court complex himself and saw that the Courts were fully functional. His counsel did not supply the copy of written statement. In August 2022, he engaged another counsel who filed his power of attorney on 26.08.2022 and he came to know that the case was fixed for petitioner evidence. At this point, he further came to know that his defence was already struck off. He has placed on record all the relevant zimni orders dated 05.04.2021, 12.05.2021, 11.08.2021 and 07.09.2021 as Annexures P-2 to P-5 respectively. It is argued that because of the aforesaid reasons, he could not file his written statement and is unable to contest his case. It is prayed that he may be given one opportunity to file written statement in the petition under Section 125 Cr.P.C.

Mr. Jagdeep Singh Bajwa, Legal Aid Counsel appeared on behalf of the respondent and filed his reply, contesting the revision by alleging that despite given number of opportunities, the written statement was not filed. Ultimately, the defence of the petitioner was struck off.

There was a negligence on the part of petitioner. He has wrongly shifted

the entire responsibility on his trial Court Counsel. Now, at this stage, when the case is fixed for petitioner evidence, he cannot be allowed to file his written statement.

I have considered the stand taken by learned Counsel for the petitioner as well as the plea of learned Counsel for the respondent. Admittedly, the petitioner did not file written statement despite given number of opportunities. The copies of zimni orders are Annexures P-2 to P-7. The defence of the petitioner was struck off vide impugned order dated 08.10.2021 and the case was fixed for evidence of the petitioner. There is lapse on the part of petitioner in pursuing his case but at the same time, it is always in the interest of justice that the case is decided on merits by giving opportunity to both the parties to present their case. Even otherwise, at present the case is pending for recording of evidence of applicant i.e. Harpal Kaur. The respondent - Harpal Kaur can be compensated by imposing cost. Therefore, in the interest of justice and for proper adjudication of the case, the revision preferred by the petitioner – Darshan Singh is allowed. The impugned order dated 08.10.2021 passed by learned Additional Principal Judge, Family Court, Bathinda is set aside with the direction to give one opportunity to the petitioner - Darshan Singh to file his written reply as well as reply to interim maintenance application, subject to the payment of cost of Rs. 10,000/- to respondent - Harpal Kaur.

The revision is accordingly, disposed of.

Pending application, if any, also stands disposed of.

11.04.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No