



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 05.12.2023

Judgment delivered on: 18.12.2023

+ MAT.APP.(F.C.) 77/2023 & AM APPL.13388-13389/2023

MS NIDHI SAWNANI

..... Appellant

Through: Mr.S.S. Hora, Adv.

versus

HARSH SAWNANI

..... Respondent

Through: Mr.Arvind Kumar Gupta and
Mr.Shivank S. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. An appeal has been preferred under Section 19(1) of Family Courts Act, 1984 read with Section 151 CPC by the appellant-wife for setting aside order dated January 11, 2023 passed by learned Judge, Family Court whereby the Review Application preferred by the appellant for taking the written statement on record was dismissed.

2. In brief, the marriage between the appellant and respondent was solemnized according to Hindu rites and ceremonies on November 17, 2005. Two children were born out of the wedlock on January 20, 2008 and March 07, 2013. Respondent preferred a divorce petition under Section 13(1)(ia) and 13(1)(iii) of Hindu Marriage Act, 1955 on June 08, 2016 in which the appellant filed appearance through counsel on January 03, 2017 after receipt of notice and was directed to file her response to the petition. However, the appellant failed to file the written statement despite directions and sufficient opportunities being granted to her. Consequently, on the failure to file



written statement, defence of the respondent was directed to be struck off vide order dated December 04, 2017 by the learned Family Court. On an application preferred on behalf of the appellant under Order IX Rule VII CPC for setting aside the order dated December 04, 2017, further opportunity was granted to the appellant to file written statement on July 17, 2018. However, despite opportunity, the appellant failed to file the written statement and consequently, her right to file the written statement was closed on July 17, 2018. Thereafter, an application under Section 151 CPC was preferred by the appellant on October 16, 2018 before the learned Judge, Family Court along with written statement for passing necessary directions, which was dismissed vide order dated May 27, 2022 on the ground that no cogent and sufficient reasons were disclosed in the application as to why the written statement was not filed by the appellant despite extending sufficient time and opportunities. The matter was further posted for evidence of the petitioner.

A review application further preferred on behalf of the appellant was dismissed vide impugned order dated January 11, 2023 in the absence of any patent error or irregularity in order dated May 27, 2022. Aggrieved against the order dated January 11, 2023, the present appeal has been preferred.

3. Learned counsel for the appellant submits that the appellant had filed an application under Section 151 CPC for taking the written statement on record on October 16, 2018, since after engaging a new counsel, it was revealed that the right of appellant for filing of written statement stood closed. It is urged that the appellant was under trauma and mental stress since one of the daughters of the appellant was in the custody of respondent. Further, the said application is stated to have been dismissed on May 27,



2022 against which an application for review was preferred, which was dismissed vide impugned order dated January 11, 2023. The delay in filing of written statement is stated to be circumstantial due to mental stress and circumstances beyond control of the appellant. It is further submitted that in case the written statement is not allowed to be taken on record, the defence of the appellant shall be prejudiced and would also impact the future of two young daughters. Reliance is further placed upon ***Bharat Kalra v. Raj Kishan Chabra, Civil Appeal No.3788 of 2022*** decided by the Hon'ble Supreme Court of India on May 09, 2022.

4. On the other hand, learned counsel for respondent supports the order passed by the learned Judge, Family Courts. He further submits that that in the absence of any justifiable reasons being reflected for failure to file the written statement despite repeated opportunities, the learned Judge, Family Court rightly declined to take the written statement on record.

5. We have given considered thought to the contentions raised.

For the purpose of procedure generally, the proceedings before the Family Court, subject to other provisions of the Family Courts Act, 1984 are governed by the Code of Civil Procedure, 1908 (CPC), other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973. A Family Court is accordingly deemed to be a Civil Court and has all the powers of such Court. However, it may be noticed that nothing in sub-section (1) or sub-section (2) of Section 10 of the Family Courts Act, 1984 prevents a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceedings or at the truth of the facts alleged by one party and denied by the other. It may also be noticed that Section 14 of the Family Courts Act,



1984 empowers the Family Court to receive as evidence any report, statement, documents, information or matter which in its opinion assists the Court to deal effectually with the dispute whether or not the same is relevant or admissible under the Indian Evidence Act, 1872. Also, Section 20 of the Family Courts Act, 1984 provides overriding effect of the Act on other laws or instruments having effect of law.

Thus, for the purpose of 'procedure' and for the 'purpose of evidence', the Family Court adopts a less formal procedure and is free to evolve its own procedure although Section 10 of the Act makes the procedure laid down under Code of Civil Procedure, 1908 applicable to the proceedings. The time period of filing written statement being in the realm of procedural law, can accordingly be extended under the Family Courts Act, 1984 if the applicant spells out exceptional circumstances or disability faced by him/her in filing the written statement, though ordinarily the time schedule for filing the written statement needs to be followed to deal with family disputes in an expeditious manner. The departure should be as an exception for the reasons to be assigned by the respondent and in case grave injustice would be incurred, if the opportunity to file the written statement is denied. The same depends upon the facts and circumstances of a given case.

6. A bare perusal of order dated October 30, 2018 reveals that when the aforesaid application under Section 151 CPC for taking the written statement on record came up for consideration, the matter was put up for settlement/reply as well as consideration of the application. The appellant vide aforesaid application took a specific stand that she had changed her counsel and the new counsel Shri Surender Kumar Tyagi had inspected the judicial file of the case whereupon it was revealed that no issues had been



framed and the matter was fixed for evidence. As such, it is evident that the appellant was unaware that the written statement had not been filed and taken on record. No doubt, the Courts must act stringently to ensure that the timelines as set out procedurally are met to avoid any delays but at the same time it cannot be ignored that the future of the appellant along with two minor daughters is at stake and if the valuable right to defence by way of filing of written statement is closed, grave injustice may incur to the appellant. It cannot be ignored that the appellant was under a great mental stress as it has been pointed out that one of the daughters is in the custody of the respondent. The case is still posted for cross-examination of respondent and no prejudice is likely to be caused in case written statement is permitted to be taken on record and matter is proceeded with, after framing of issues.

7. In the facts and circumstances of this case, it would be just and equitable to permit the taking of written statement on record subject to cost of Rs.3,000/- (Rupees Three Thousand Only) to be paid by the appellant to the respondent. The same would ensure the proper and effective adjudication of the petition filed by the respondent.

The order passed by learned Judge, Family Court declining to take the written statement on record is accordingly set aside. Appeal is allowed. No order as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

DECEMBER 18, 2023/sd

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