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

Date of decision: 18.09.2023

+ **CM(M) 862/2023 & CM APPL. 27227/2023**

KOMAL GUPTA

..... Petitioner

Through: Mr.Mohit Kr. Sharma &
Mr.Gaurav Kr. Pandey, Advts.

versus

AMRENDRA KUMAR GUPTA

..... Respondent

Through: Mr.Shiv Mangal Sharma,
Mr.Shashank Khurana, Mr.Deepak
Verma & Mr.Sanjeevani Mishra,
Advts.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the order dated 03.03.2023 passed by the learned Judge, Family Court, Patiala House Courts, New Delhi (hereinafter referred to as the 'Impugned Order') in HMA No. 910/2022 titled *Amrendra Kumar Gupta vs. Komal Gupta*, closing the right of the petitioner herein to file her Written Statement and striking off her defence.
2. The above-mentioned Divorce Petition had been filed by the respondent herein against the petitioner before the learned Family Court at Mathura, Uttar Pradesh. On being served with the notice of the



petition, the petitioner filed before the Supreme Court, a petition seeking transfer of the Divorce Petition, being Transfer Petition (Civil) no. 255/2021 titled ***Komal Gupta v. Amrendra Kumar Gupta***. The same was allowed by the Supreme Court vide its order dated 12.08.2022. Pursuant thereto, the record of the Divorce Petition was received by the learned Family Court, Patiala House Courts on 06.09.2022. The Family Court was pleased to issue notice on the same to the parties vide order dated 23.09.2022.

3. Subsequently, on 22.12.2022, the learned Family Court was pleased to record that the respondent has filed the English translation of the Divorce Petition. The learned Family Court was further pleased to grant a period of thirty days to the petitioner to file her Written Statements. As the petitioner did not file the Written Statement, but sought an adjournment on 03.03.2023 stating that the petitioner herein is unwell, the learned Family Court rejected the prayer for adjournment and/or for enlargement of time to file the Written Statement. The learned Family Court, by the Impugned Order, closed the right of the petitioner herein to file her Written Statement and also struck off her defence.

4. The learned counsel for the petitioner, drawing my reference to the medical records produced by the petitioner herein, submits that the petitioner was suffering from ailments; her father was also unwell; and so was the child, because of which she could not file the written statements on time.

5. The learned counsel for the respondent, on the other hand, submits that admittedly, the petitioner had been served with the notice of the



petition on 16.01.2021, when the petition was pending adjudication before the learned Family Court at Mathura. The petitioner cannot be allowed to take the excuse of filing of the English translated copy of the Divorce Petition before the learned Family Court at Patiala House Courts for seeking extension of time to file her written statement, inasmuch as the petitioner herself had filed a translated copy of the Divorce Petition before the Supreme Court in the Transfer Petition filed by her. He further submits that in spite of the opportunity granted, the petitioner did not file her Written Statement leaving the learned Family Court with no option but to close her right to file the Written Statement. He submits that, therefore, no fault can be found in the Impugned Order.

6. I have considered the submissions made by the learned counsels for the parties.

7. Though the respondent may be correct in his submission that the petitioner having being served with a notice of the Divorce Petition on 16.01.2021 should have filed her Written Statement, at the same time, keeping in view the peculiar facts of the present case and especially the fact that the Divorce Petition has been transferred by the Supreme Court to the learned Family Court, Patiala House Courts, and on such transfer, notice had earlier been issued to the parties to enter appearance and thereafter, by the order dated 22.12.2022, a period of thirty days had been granted to the petitioner to file her written statement, in my opinion, it was a fit case for the learned Family Court not to close the right of the petitioner to file her written statement, but to impose conditions for ensuring that the petitioner does not cause further delay in the



adjudication of the Divorce Petition.

8. In such matters of family disputes, the Family Courts have to be a little liberal and the stringent test, as may be applicable to commercial disputes, cannot be applied. It is to be remembered that closing of the right to file written statement would result in grave personal consequences to the party concerned. The approach of the learned Family Court, therefore, has to be guided by the object of the Family Court, rather than the technicality of law. At the same time, in case the learned Family Court finds that the party is intentionally delaying the adjudication/progress of the proceedings pending before it, it must pass orders stipulating conditions to ensure that such party does not succeed in its attempt to delay the proceedings.

9. In the present case, the petitioner has been able to make out a sufficient cause for not filing the Written Statement within the time granted by the learned Family Court.

10. The learned counsel for the petitioner submits that the Written Statement is ready and shall be filed by the petitioner on or before 20.09.2023, when the Divorce Petition is listed before the learned Family Court.

11. Keeping in view the above peculiar facts of the case, and subject to the condition that the petitioner files her Written Statement before the learned Family Court on or before 20.09.2023, the Impugned Order is set aside.

12. It is made clear that in case the petitioner fails to avail of this opportunity granted and does not file the Written Statement before the





learned Family Court on or before 20.09.2023, the right of the petitioner herein to file her Written Statement shall stand closed and the learned Family Court shall proceed further with the adjudication of the Divorce Petition in accordance with law.

13. The petition is disposed of in the above terms.

14. *Dasti.*

NAVIN CHAWLA, J

SEPTEMBER 18, 2023/rv/ss

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 22.09.2023

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CM(M) 862/2023