



2023:0103:0393



\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 22.11.2023***+ **CM(M) 1292/2022 & CM APPL. 50848/2022****VIKRANT VASHISHT**

..... Petitioner

Through: Mr.P. Roy Chaudhuri and
Mr.Gagan Gupta, Advs.

versus

SHWETA

..... Respondent

Through: Mr.Pradeep Sehrawat, Adv.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed challenging the Order dated 31.08.2022 (hereinafter referred to as 'Impugned Order') passed by the learned Principal Judge, Family Court, Patiala House Courts, New Delhi (hereinafter referred to as 'Family Court') in HMA No. 919/2019, titled *Shweta v. Vikrant Vashisht*, whereby the learned Family Court dismissed the application filed by the petitioner herein seeking recall of the orders dated 01.04.2021 and 07.03.2022 passed by the learned Family Court, whereby the right of the petitioner to file the written statement and the right of

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 24.11.2023

18:22:05

CM(M) 1292/2022

Page 1 of 8



2023:0103:0393



the petitioner to cross-examine the respondent herein had been closed, respectively.

Petitioner's Submissions

2. The learned counsel for the petitioner urges that the above petition seeking divorce, being HMA No. 919/2019, has been filed by the respondent on 26.09.2019. It was taken up for the first time for hearing by the learned Family Court on 21.01.2020, and the parties were referred to the Court Counsellor where they were directed to appear on 22.01.2020. While the petitioner appeared before the Court Counsellor, the respondent did not appear on the said date and the matter was fixed for 18.03.2020 by the Court Counsellor. Unfortunately, before the said date, COVID-19 pandemic hit the country, because of which there was first a complete lockdown and thereafter partial working of the courts.
3. As the petitioner was appearing in person, he was not aware of the partial working of the court and remained under the impression that the Court Counsellor will fix a further date for the appearance of the parties by giving notice of the same to the petitioner. Due to this misconception, the petitioner did not appear before the learned Family Court on 10.09.2020, 05.11.2020 and 01.04.2021. The learned Family Court, in the absence of the petitioner, closed the right of the petitioner to file the written statement vide order dated 01.04.2021.

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 24.11.2023

18:22:05

CM(M) 1292/2022



2023:0108:0393



4. As the petitioner remained unaware of the listing of the Divorce Petition before the learned Family Court, he did not appear before the learned Family Court on 10.08.2021 and 18.12.2021 as well, and remained unaware of the order dated 01.04.2021 passed by the learned Family Court.
5. It is only on 02.03.2022, when the petitioner learnt that the courts have recommenced physical hearing of the petitions, on enquiry, he was informed that the date fixed by the learned Family Court in the Divorce Petition filed by the respondent is 07.03.2022.
6. The petitioner claims that on 07.03.2022, he was late in reaching the court and on an enquiry, was informed that the case has been adjourned to 28.04.2022. However, the petitioner was not informed that his right to cross-examine the respondent, who had appeared as PW-1, had been closed on the said date. On inspection, the petitioner became aware of the above orders and thereafter, filed an application on 20.04.2022, seeking recall of the orders dated 01.04.2021 and 07.03.2022. The said application has, however, been dismissed by the learned Family Court by its Impugned Order dated 31.08.2022.
7. The petitioner claims that the reason for not filing the written statement and for not appearing when the matter was called, was due to a misconception that due to the outbreak of the COVID-19 pandemic, the courts were not functioning and the Divorce Petition was not being listed and that first the counselling

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 24.11.2023

18:22:05

CM(M) 1292/2022



2023:0103:0393



proceedings would be completed by the Court Counsellor before calling upon the petitioner to file the written statement.

8. The learned counsel for the petitioner submits that even otherwise, the period of filing written statement stood extended due to the orders passed by the Supreme Court ***IN RE: Cognizance for Extension of Limitation*** (Suo Motu Writ Petition (C) No. 3 of 2020), and the right of the petitioner to file his written statement to the Divorce Petition could not have been closed by the learned Family Court. In support of his plea, the learned counsel for the petitioner has placed reliance on the judgment dated 03.10.2023 passed by the Supreme Court titled ***Aditya Khaitan & Ors. v. IL and FS Financial Services Limited*** (2023) 9 SCC 570.
9. As far as the non-appearance of the petitioner on 07.03.2022 is concerned, the learned counsel for the petitioner submits that the petitioner got delayed in appearing before the learned Family Court on the said date, however, he would be gravely prejudiced if his right to cross-examine the respondent is closed.

Respondent's Submissions

10. On the other hand, the learned counsel for the respondent submits that even in the application filed seeking recall of the orders dated 01.04.2021 and 07.03.2022 of the learned Family Court, the petitioner did not seek permission to file the written statement. He submits that the intent of the petitioner is only to

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 24.11.2023

18:22:05

CM(M) 1292/2022



2023:0103:0393



delay the proceedings and the petitioner is falsely taking the plea of COVID-19 pandemic and trying to justify his non-appearance on account of the same. He submits that, therefore, the learned Family Court has rightly dismissed the application filed by the petitioner seeking recall of the Orders dated 01.04.2021 and 07.03.2022.

Analysis And Findings

11. I have considered the submissions made by the learned counsels for the parties.
12. By the order dated 21.01.2020, the parties had been referred to the Court Counsellor. The order further directed the petitioner to file the written statements/reply along with detailed affidavit relating to income/assets with supporting documents, within a period of one month. The petitioner claims that on 21.01.2020, the petitioner duly appeared before the Court Counsellor, however, the respondent remained absent, because of which proceedings before the Court Counsellor were adjourned to 18.03.2020. It cannot be disputed that before the said date, there was a declaration of lockdown on account of COVID-19 by the Central Government, resulting in *en masse* adjournment of the court proceedings as well. The Supreme Court, taking cognizance of the same, passed orders extending the period of limitation, and finally directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation. The Supreme Court in ***Aditya Khaitan*** (Supra) considered the said orders and

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 24.11.2023

18:22:05

CM(M) 1292/2022



2023:DHJ:0393



held that the extension of period of limitation would apply not only to cases where the limitation expired during the above period, but also where the limitation had expired prior thereto, however, the maximum period for which the delay can be condoned, had not yet expired.

13. The petitioner has also explained that at the relevant period, he was appearing in person and, therefore, remained unaware of the commencement of the restricted functioning of the courts in virtual mode as also partially in physical mode. He claims that he became aware of the same only on 02.03.2022.
14. Though, the petitioner should have been more vigilant in pursuing his defence in the Divorce Petition, in my opinion, the petitioner has been able to make out sufficient reasons for not being able to file his written statement within the period prescribed.
15. This Court, in *A v. T*, 2018:DHJ:3530, has held that where the parties have been referred for counselling/settlement, the court should not act in haste in closing the valuable right of the party to file the written statement.
16. In the present case, as the petitioner had stopped appearing before the learned Family Court, the learned Family Court closed the right of the petitioner to file written statement, however, before doing the same, the court should also have ensured that the petitioner had sufficient notice of the listing of the Divorce

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 24.11.2023

18:22:05

CM(M) 1292/2022



Petition before the learned Family Court post the commencement of partial functioning of the court. In addition to this, is the factor that the parties had been, in fact, referred to counselling by the Court by order dated 21.01.2020.

Conclusion and Directions:

17. For the reasons stated, the Impugned Order dated 31.08.2022 is set aside; the Impugned Orders dated 01.04.2021 and 07.03.2022 are also recalled.
18. The petitioner shall file the written statement in HMA No. 919/2019, on or before the next date of hearing before the learned Family Court, subject to payment of cost of Rs.50,000/- to the respondent for the delay that has been caused. It is made clear that no further opportunity shall be granted to the petitioner for the said purpose.
19. The Divorce Petition, being HMA No. 919/2019, shall commence from the stage of the completion of the pleadings. In case, the petitioner fails to avail of the opportunity to file the written statement, it shall continue from the stage of the cross examination of the respondent.
20. The learned Family Court shall endeavour to expedite the adjudication of the Divorce Petition filed by the respondent and shall not grant any unwarranted adjournments to either of the parties.



2023:DI03:0393



21. The petition is allowed in the above terms. The pending application also stands disposed of.

NAVIN CHAWLA, J

NOVEMBER 22, 2023/ns

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 24.11.2023

18:22:05

CM(M) 1292/2022

Page 8 of 8