



2024:DHC:4780



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

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Judgment reserved on: 19.03.2024
Judgment pronounced on: 27.06.2024

+ CM(M) 1233/2023, CM APPL. 39322/2023—stay

GURSAHIB SINGH SETHI

..... Petitioner

Through: Mr. Siddhant Sharma and Mr. Deepak
Jain, Advs.

versus

GARIMA BATRA

..... Respondent

Through: Mr. Siddharth Bambha, Mr. Sucharu
Garg and Mr. Anuj Papnya, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. Vide the impugned order dated 01.06.2022, the petitioner's right to file written statement was closed and subsequently his application seeking recall of the said order was dismissed vide another impugned order dated 26.07.2023 passed in HMA No. 1607/2021 by the Learned Judge, Family Court, West District, Tis Hazari Court, Delhi. Dissatisfied by this, the petitioner has preferred to invoke the supervisory jurisdiction of this court under Article 227 of the Constitution of India through the present petition.

2. Barring superfluities, facts are that the parties got married on 24.02.2016 as per Sikh rites and rituals in Delhi. Thereafter, acrimony between the couple ensued which led to parties living separately. Respondent, then filed a complaint under Section 12 of the Protection of



Women from Domestic Violence Act, 2005, specifics of which are not relevant for the present petition.

3. Subsequently, the respondent in the year 2021, filed the Divorce Petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 which is pending adjudication before the Learned Judge, Family Court.

4. It is the case of the petitioner that after receiving the summons of the Divorce Petition, the petitioner appeared before the learned Judge Family Court on 16.08.2021, wherein the matter was referred to mediation. The court on 03.09.2021, while the mediation was ongoing, had also directed the petitioner to file the written statement in a closed envelop, in case the matter before mediation is received unsettled. However, the mediation failed and the learned Judge Family Court on 27.10.2021 granted additional two weeks' time to the petitioner to file the written statement.

5. The petitioner could not appear before the learned Judge Family Court on 01.06.2022 and a proxy counsel appeared on his behalf, who did not have knowledge of the matter but had appeared to seek adjournment. However, the learned Judge Family Court on the said date closed the opportunity of the petitioner to file the written statement and listed the matter for evidence of the respondent.

6. Thereafter, the learned Judge, Family Court proceeded ex-parte against the petitioner as he did not appear before the learned Judge Family Court on 01.05.2023. On 22.07.2023, the petitioner moved an application seeking recall of the orders dated 01.06.2022 & 01.05.2023. The application seeking recall of order dated 01.06.2022 was not pressed however, the application for recall of order dated 01.05.2023 was allowed and the ex-parte order was set aside.



7. The petitioner on 24.07.2023, filed another application seeking recall of order dated 22.07.2023 and 01.06.2023. Vide the impugned order dated 26.07.2023, the application was dismissed thereby foreclosing the right of the petitioner to file written statement. Hence, the present petition.

Submissions of the Parties:

8. Mr. Siddhant Sharma, learned counsel for the petitioner submitted that the learned Judge, Family Court erred inasmuch as failing to appreciate that due to the mistake and negligence of the erstwhile counsel of the petitioner, the opportunity to file written statement was closed and the petitioner was not even informed about the same. The petitioner was misguided and had no knowledge of the same as he was suffering from medical issues.

9. Learned counsel submitted that the erstwhile counsel of the petitioner had assured that the matter was being dealt with diligently, however which was not the case and to the utter shock of the petitioner, the opportunity to file written statement being closed came to his knowledge subsequently.

10. Reliance was placed on the judgements in the following, wherein it was held that a litigant should not suffer for the fault of his counsel:

- *Rafiq and Anr. Vs Munshilal and Anr* AIR 1981 SC 140,
- *Smt. Lachi and Ors. Vs Director of Land records and Ors.* AIR 1984 SC 41,
- *Tahil Ram Issardas Sadarangani and Ors. Vs Ramchandra Issardas Sadarangani and Anr.* AIR 1993 SC 1182 and;
- *Malkiat Singh and Anr. Vs Joginder Singh* and Ors. AIR 1998 SC 258



- *Salil Dutta vs T.M. & Mc (P) Ltd.* 1993 1 SCR 794

11. Per contra, the learned counsel for the respondent submitted supporting the impugned order that the petitioner has not raised any material ground for setting aside the impugned orders. The learned Judge, Family Court has discussed the conduct of the petitioner in detail in the impugned order, hence, there is no merit in the petition.

12. It was contended that the learned Judge, Family Court had directed petitioner that in case the mediation failed, the written statement be filed on the date fixed for hearing i.e. 27.10.2021. On the said date of hearing, the matter was returned as not settled and the learned Judge, Family Court as one last opportunity directed the petitioner to file the written statement within 2 weeks i.e. on or before 10.11.2021. However, till 25.02.2022, the petitioner had not filed its written statement even after the lapse of 4 months. Thereafter, on 01.06.2022, as the written statement was not filed even after sufficient opportunities for around 7 months, the right to file the written statement was closed and the matter was posted for respondent's evidence.

13. It was further submitted that on 21.09.2022, the proxy counsel for the petitioner submitted that petitioner was ready for divorce and requested the matter to be referred to mediation, however, same was objected to by the respondent. The proxy counsel had instructions seeking matter to be referred to mediation, thus, the petitioner was well aware of the closure of his right to file the written statement. Even then, no averments were made on the said date as to willingness of the petitioner to file the written statement or to seek recall of the said order vide which the right to file the same was closed. Even on various dates of hearing, no averments were made with regards to



filing of the written statement by the petitioner. Thus, this shows the conduct of the petitioner that he never wanted to participate in the proceedings fairly and only wanted to protract the litigation and harass the respondent.

14. Learned counsel further submitted that the petitioner in the application did not state any satisfactory reason for not filing the written statement in time and instead tried to blame it on the previous counsel engaged by him and the learned Judge, Family Court had passed a reasoned and detailed order dated 26.07.2023, dismissing the application of the petitioner. It was submitted, nonetheless, an opportunity to cross examine the respondent was granted to the petitioner for 04.08.2023, however, to further harass and protract the litigation, the petitioner filed the present petition on 02.08.2023.

15. Learned counsel submitted that the law will aid those who are vigilant about their rights and not who sleep over it. Reliance was placed on the following judgments.

- ***Salil Dutta vs T.M. and M.C. (P) Ltd.*** (1993) 1 SCR 794,
- ***Moddus Media Pvt. Ltd. vs Scone Exhibition Pvt. Ltd.*** 2017 SCC Online Del 8491,
- ***Badri Bhagat Jhandewalan Temple Society vs DDA*** 2003 SCC Online Del 426 (para 21),
- ***Shankarlal Patwari vs Jagannath Mahaprabhu*** 2023 SCC Online Ori 583020

16. Concluding submissions, it was also contended that sufficient opportunities were afforded to the petitioner to file the written statement.



However, the same was still not filed on time. The impugned orders have rightly been passed and merit no interference from this court.

Reasons and Conclusion

17. It would be pertinent to note the provision governing the filing of the written statement under Order VIII Rule 1 CPC, which reads as under:

“1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other 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”

18. In view of the above provision, ideally the written statement of the petitioner would have been filed on record within 90 days from the date of service of summons on him and petitioner entered his appearance on 16.08.2021. The Court cannot be oblivious of the fact that during the said period, the parties were referred to mediation and also that the Covid-19 Pandemic had already ensued during this time.

19. Notably, the Hon’ble Supreme Court in ***Re: Cognizance for Extension of Limitation*** (2021) 17 SCC 231, had extended the period of limitation with respect to all kinds of limitations from 15.03.2020 till 28.02.2022. Further, in the fittest of things also granted an extension of 90 days with effect from 01.03.2022 keeping in view that the country was reeling under Covid-19 Pandemic.

20. In view of the above, the petitioner gained a chance to file his written statement by 31.05.2022. However, on 01.06.2022 his opportunity to file written statement was closed as by that day the written statement on behalf of the petitioner did not come on record. It is not disputed that the petitioner



on 24.07.2023 had moved an application seeking recall of the order dated 01.06.2022 and also of order dated 22.07.2023 vide which he was proceeded ex-parte.

21. Interestingly, the petitioner did not press his application for recall of the order dated 01.06.2022 which was filed on 22.07.2023, nonetheless, he moved another application on 24.07.2023 seeking recall of order dated 01.06.2022.

22. Relevantly, the Order VIII Rule 1 CPC confers discretion upon the Court to take on record the written statement upon reasons to be furnished by the defendant explaining the delay caused in filing the written statement which are to be recorded in writing by the Court. Nonetheless, the discretion with the Court is to be exercised judicially. The Court on a good cause shown by the defendant and on assigning cogent reasons for not being able to file the written statement on record within the stipulated period, can allow the defendant to place the same on record.

23. Having considered the statutory provisions, the reasons assigned by the petitioner for not being able to file the written statement on record is to be considered. The petitioner has assigned the reason that he was misguided by his erstwhile counsel and was also not told that his opportunity to file the written statement has been closed and at that time he was also suffering from medical issues. It is also submitted that a complaint under Section 35 of the Advocate Act, 1961 has been filed with the Delhi Bar Council with respect to the erstwhile counsel, the copy of the complaint has been placed on record.

24. In view of the entire gamut of facts and circumstances of the case as well as the submissions made on behalf of both the parties, the petitioner is



2024:DHC:4780



permitted to place the written statement on record within 10 days from today. The prejudice caused to the respondent due to the delay on part of the petitioner, the same may be compensated by way of cost of Rs. 35,000/- to be paid by him to the respondent on the next date of hearing before the learned Trial Court.

25. The impugned orders are set aside and consequently, the petition is allowed. Pending application stands disposed of.

SHALINDER KAUR, J.

JUNE 27, 2024
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