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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P.(MAT.) 75/2024 & CRL.M.A. 32398/2024 CRL.M.A.
32400/2024 CRL.M.A. 32401/2024
SUMIT ARORAPetitioner

Through: Ms. Gargi Srivastava, Advocate.

versus

NITIKA KATARIA @ ISHANI ARORARespondent
Through: Ms. Bulbul Sharma, Advocate via
video-conferencing.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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25.10.2024

CRL.M.A. 32399/2024

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.M.A. 32401/2024

By way of the present application filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner/applicant seeks condonation of 53 days' delay in *re-filing* the petition.

2. For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed.
3. Delay in *re-filing* the petition is condoned.
4. The revision petition is taken on Board.
5. The application stands disposed-of.



CRL.REV.P.(MAT.) 75/2024

6. By way of the present petition filed under section 19(4) of the Family Court Act, 1984 read with sections 438 and 528 of the Bhartiya Nagarik Suraksha Sanhita 2023, the petitioner (husband) seeks setting-aside of order dated 02.09.2024, whereby the learned Principal Judge, Family Court, Shahdara, Karkardooma Courts, Delhi has been pleased to close the petitioner's right to file his written statement to the petition filed by the respondent (wife) under section 125 of the Code of Criminal Procedure, 1973.
7. Learned counsel for the petitioner submits, that *vide* order dated 07.05.2024 the learned Family Court had directed the respondent to supply to the petitioner a complete set of the petition against proper receipt/acknowledgement within 03 days, while also directing the petitioner to file his reply to the petition along with his affidavit of assets and liabilities, within 04 weeks thereafter.
8. Counsel submits however, that the respondent failed to comply with the said direction, by reason of which the petitioner was constrained to move an application under section 151 of the Code of Civil Procedure, 1908 before the learned Family Court, stating that the petitioner had not been served with a copy of all annexed documents to the petition, due to which he had not been able to file his written statement.
9. A perusal of order dated 26.07.2024 passed by the learned Family Court shows that in the course of hearing, the respondent had informed the learned Family Court that a copy of the petition had been supplied to Mr. Pankaj Kumar, learned counsel who had appeared on behalf of the petitioner on 19.02.2024 before the learned Family Court. The



learned Family Court had also proceeded to record that since the petitioner was himself a practicing advocate and had already received a copy of the petition, it therefore did not lie in the mouth of the petitioner to ask for copies again and again.

10. From the above run of events, the learned Family Court inferred that the petitioner was deliberately attempting to delay the proceedings and proceeded to impose costs of Rs.5,000/- for causing such delay.
11. The petitioner was thereafter granted another 02 weeks for filing his written statement and affidavit of assets and liabilities.
12. Subsequently however, since the petitioner had still not filed his written statement, *vide* order dated 02.09.2024, the learned Family Court observed as follows :

“Ld. Counsel for petitioner submits that the petitioner has again supplied complete set of petition to the counsel of respondent on 26.07.24. Written statement has not been filed neither affidavit of assets and liabilities has been filed nor the cost has been paid rather this application has been filed by the respondent for direction to the petitioner for supplying ITRs, bank account statements. These documents are not a part of record. Set of petition has been supplied to the respondent, and the respondent has not filed the written statement in time. The right of the respondent for filing written statement stands closed. The application filed by the respondent for waiver of the cost and for directions is bereft of any merit and is dismissed.”

(emphasis supplied)

13. Learned counsel for the petitioner submits, that a perusal of the affidavit of assets and liabilities filed by the respondent along with her petition would show that she had appended copies of her bank statements of all accounts for the last 03 years along with the petition; and that therefore, the observation contained in order dated 02.09.2024



recording that those documents were not part of the record, is factually incorrect.

14. Counsel further submits, that the observations of the learned Family Court that the petitioner was attempting to delay the proceedings is also misconceived, inasmuch as when the respondent did not furnish to the petitioner a complete set of her petition, the petitioner filed an application to obtain a certified copy of the entire paper-book vide cash receipt dated 03.07.2024, which shows his bona fides.
15. Moreover, it is also pointed-out that vide order dated 07.05.2024 passed by the learned Family Court, the respondent was directed to supply a complete copy of the paper-book against proper receipt/acknowledgment, but no such receipt/acknowledgement has been placed on record though the respondent contends that she has supplied a complete copy of the paperbook to the petitioner.
16. In the circumstances, counsel submits that serious prejudice has been caused to the petitioner, since his right to file written statement has now been closed by the learned Family Court.
17. Issue Notice.
18. Ms. Bulbul Sharma, learned counsel appearing for the respondent has joined via video-conferencing, accepts notice; and submits, that the respondent had supplied a complete set of the paper-book to the petitioner.
19. To the question as to whether the respondent had also supplied to the petitioner the bank statements as mentioned at Serial No. 9 of the affidavit of assets and liabilities filed with the petition, learned counsel for the respondent does not appear to have any convincing answer.



There is also nothing on record to show any receipt or acknowledgement against which the paper-book should have been supplied by the respondent to the petitioner.

20. Moreover, the observation of the learned Family Court that the bank statements were not part of the record, also does not appear to be accurate.
21. In any event, this court regrets to note that petty issues like supply or non-supply of copies of a petition and documents, are working their way up to this court, invoking its inherent powers, which routine matters should ordinarily be closed at the trial court level itself.
22. That being said however, considering the circumstances of the case, and the evident prejudice that would be caused to the petitioner if he is not permitted to file his written statement to the petition, this court is persuaded to allow the present petition, thereby setting-aside order dated 02.09.2024 made by the learned Family Court and directing the petitioner to positively file his written statement within 03 weeks from today based on whatever copy of petition is available with him and taking necessary objections, if necessary, in relation to the documents that he says are missing from the copy so received.
23. Furthermore, the petitioner is directed to pay costs of Rs.10,000/- to Friendicoes SECA, No.271 & 273, Defence Colony Flyover Market, Jungpura, New Delhi within 03 weeks; and place the proof of payment of costs on record within 01 week thereafter. It is made clear that the costs imposed as aforesaid shall be in addition to the costs of Rs.5,000/- imposed earlier, which are to be paid as per the directions of the learned Family Court.



24. The Registry is directed to re-list the matter if costs are not paid as directed.
25. The petition stands disposed-of in the above terms.
26. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 25, 2024

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