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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 18.12.2024

+ **CM (M) 4108/2024**

DR SUNIL KUMAR

..... Petitioner

Through: Mr. Rajiv R.Mishra, Ms. Suruchi
Yadav and Kumar Jwala, Advs.

versus

DR ARCHANA

..... Respondent

Through: Mr. Rajesh Kumar and Mr. Atul
Aggarwal, Advocates.**CORAM:-****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT (ORAL)****CM APPLs. 74094-95/2024 (exemptions)**

Allowed, subject to all just exceptions.

These applications stand disposed of.

CM (M) 4108/2024 & CM APPL. 74096/2024 (for summoning of trial court record), CM APPL. 74093/2024 (stay)

1. The petition impugns the order dated 04.09.2023 passed by the learned District Judge, Family Court-02, Shahdara District, Karkardooma in petition bearing HMA No. 1719/2022 titled 'Dr. Sunil Kumar Vs. Dr. Archana' as also order dated 25.04.2024 whereby the review application filed by the petitioner has been dismissed.

2. Petitioner is the respondent in the divorce petition filed by the



respondent. Petitioner was served with summons on 24.01.2023. He appeared for the first time before the court on 18.04.2023. Learned Trial Court directed him to file the written statement. Since written statement was not filed, the learned Trial Court, vide order dated 04.09.2023, closed the right of the petitioner to file the written statement.

3. Petitioner filed an application for review dated 05.01.2024 before the learned Trial Court. However, the said application was dismissed vide order dated 25.04.2024.

4. The learned counsel for the petitioner submits that petitioner who is a Doctor could not travel to Delhi because of his professional commitments as also because of the medical emergency involving his father.

5. The petition has been vehemently opposed by the learned counsel for the respondent by submitting that there is no justified reason for not filing the written statement within the stipulated time. It is submitted that petitioner has not placed on record any document indicating any medical emergency of his father. It further submitted that the petitioner is undergoing prosecution in a rape case but was on bail at the relevant time, and therefore, there was nothing which prevented the petitioner from filing the written statement in the prescribed time period.

6. The learned Trial Court referred to the judgment of this Court in the case of **Smt. K.S.Sumi Mol Vs. Sh. Suresh Kumar E.K** MAT. APP.(FC) 127/2023 and CM APPL. 23305/2023 dated 31.07.2023,



while rejecting the review application. However, a perusal of the said judgment reveals that there was a delay of more than 5 years in filing the written statement, the learned Trial Court had allowed the written statement to be taken on record. The appeal against the said order was dismissed by the Division Bench of this Court stating that the impugned order does not merit any interference.

7. A Co-ordinate Bench of this Court in the case of **Komal Gupta Vs. Amrendra Kumar Gupta** (CM(M) 862/2023 and CM APPL. 27227/2023 dated 18.09.2023), while dealing with challenge to the order of the Family Court closing the right of the petitioner therein to file her written statement and striking of her defence has observed as under:-

“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.”

8. Admittedly, the respondent is a doctor and working in Bhilai, Chhattisgarh and not stationed in Delhi and is stated to be aged about 49 years, the Court can understand the professional exigencies of the duties of a doctor. Even though, the petitioner has not placed on record any document suggesting any kind of medical emergency of his father,



but keeping in view the facts and circumstances, and particularly the fact that it is a family dispute between the parties, which should be decided on merits, in the interest of justice, petition is allowed and the impugned orders dated 04.09.2023 and 25.04.2024 are set aside. However for the delay caused, petitioner is directed to pay cost of Rs.20,000/- to the respondent before the Trial Court on the next date. Upon payment of cost, the written statement filed by the petitioner be taken on record.

9. The Family Court is requested to make best endeavour to expedite the disposal of the case.

10. The petition is disposed of in terms of the aforesaid directions.

RAVINDER DUDEJA, J

DECEMBER 18, 2024/ib

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