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

+ CM(M) 3909/2024

NISHI DHIR THROUGH SPA

HOLDER MEENU CHOPRA

.....Petitioner

Through: Mr. Vaibhav Vats, Advocate
(DHCLSC).
Ms. Meenu Chopra, SPA of petitioner
alongwith petitioner.

versus

ASHISH DHIR

.....Respondent

Through: Ms. Rhythm Shrivastav and Mr.
Pankaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

29.01.2025

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1. This is a petition under Article 227 of the Constitution of India with the following prayers:-

“In view of the facts and circumstances stated herein above, it is most respectfully prayed that this Hon'ble court may kindly be pleased to give ex-parte orders/directions in case No. H.M.A No. 588968/2016, P.S. Moti Nagar, titled Ashish Dhir Versus Nishi Dhir currently pending before the Hon'ble Judge adjudication before the Hon'ble Judge Sh. Arun Sukhija, Judge Family Court, (West) Tis Hazari Court, Delhi, to as below:-

a)To kindly ex-parte directions/orders to the Ld. Judge Sh. Arun Sukhija Family Court, (West), Tis Hazari Court, to not to proceed further in the matter HMA No. 588968/2016, P.S. Moti Nagar, titled Ashish Dhir Vs Nishi Dhir, until the wife Nishi Dhir application (Respondent in Divorce Case, petitioner in above Petition) i.e. Application U/s 24 H.M.A. for litigation expenses etc. is pending and decided.

b)To kindly give Ex-parte order and set aside the order dated 02,08.2024, except wife's U/s 24 HMA application whereby the right of the wife



(Respondent in Divorce Case) to file W.S. was closed and cost was imposed on the wife (Respondent in divorce case), so kindly set aside the order dated 02.08.2024, except Wife's application Under section 24 HMA for litigation expenses etc. which is pending for disposal.

c) To kindly give ex-parte order and allow the wife Nishi Dhir (Respondent in divorce case and Petitioner in above Petition) to file W.S. after the litigation expenses received from her husband (Petitioner in Divorce case). In this regard Ld. Counsel for the husband has already given his No Objection in order sheet dated 27.05.2024, which is already annexed herein at Page No. 40 to 48 that he has no objection, in case wife's application is allowed.

d) To kindly give ex-parte order and waive the cost of Rs. 5,000/- and Rs. 10,000/- which was imposed on the wife (Nishi Dhir respondent in divorce case) on dated 27.05.2024 and on dated 02.08.2024.

e) And kindly today's judgment/order copy Dasti under court Master Stamp today itself to the S.P.A. holder of the Petitioner.

f) And to kindly pass any further orders which may deem fit and proper in the facts and circumstances of this case in favour of the Petitioner and against the respondent."

2. Learned counsel for the petitioner, at the outset, states that petition is poorly drafted. His limited prayer is that the trial Court be directed to dispose of the application filed by the petitioner under Section 24 of the Hindu Marriage Act, 1955 [**'the Act'**] and the right of the petitioner to file the written statement be restored.

3. The prayers are opposed by learned counsel for respondent, submitting that the petitioner has not filed her income affidavit along with application under Section 24 of the Act and despite grant of 15 days' time, she did not file the written statement in the garb of pendency of her application under Section 24 of the Act, and therefore, the right to file written statement cannot be restored.

4. Learned counsel for petitioner places on record copies of various orders passed by the learned Family Court. Perusal of order dated 21.04.2016 reveals that the Family Court had granted Rs. 11,000/- as



litigation expenses in favour of the petitioner. Admittedly, the litigation expenses are not paid till date.

5. It appears that during the course of proceedings, the petitioner was proceeded ex parte on 27.08.2018 and her right to file the written statement was closed on 17.08.2019. Petitioner filed application for setting aside the ex parte order and for grant of right to file the written statement. The said application came to be decided as late as on 27.05.2024, whereby the ex parte order was set aside, subject to costs of Rs. 5,000/- and petitioner was directed to file the written statement within a period of 15 working days.

6. On 02.08.2024, petitioner filed an application under Section 24 of the Act for grant of pendentelite maintenance as also the applications for stay of divorce proceedings and for directions to the respondent to file income affidavit. However, learned Family Court closed the right of the petitioner to file the written statement and struck off her defence. Her application for stay was dismissed with cost of Rs. 10,000/-. Simultaneously, both parties were directed to file their respective income affidavits in terms of judgment of **Rajnish vs. Neha & Anr.** [(2021) 2 SCC 324].

7. The record clearly reveals that application under Section 24 of the Act was filed prior to closure of right of the petitioner to file the written statement. It is a settled law that if an application under Section 24 of the Act for grant of pendent lite maintenance and litigation expenses is pending, the Court cannot compel the petitioner/applicant to file the written statement till such time the order is passed on such application. Thus, petitioner was expected to file the written statement only after the disposal of application under Section 24 of the Act. The admitted position is that, even till date, the respondent has not paid the litigation expenses to the petitioner.



8. Thus considering the whole facts and circumstances, without considering the merits of the case, the order dated 02.08.2024 is set aside with following directions:-

- a. Respondent shall file the reply to the application under Section 24 of the Act within two weeks.
 - b. Both parties shall file their respective income affidavits within two weeks, after exchanging the same with each other.
 - c. The learned Family Court shall make best possible endeavour to dispose of the application under Section 24 HMA within a period of four weeks.
 - d. After the above said application is decided, the petitioner shall be granted four weeks' further time to file the written statement as a last opportunity, irrespective of the finding which may be arrived at by the learned trial Court.
 - e. The cost imposed by order dated 27.05.2024 is also set aside.
 - f. Respondent shall pay the litigation expenses, as directed vide order dated 21.04.2016 either by demand draft or pay order, after adjusting the cost of Rs. 5,000/- imposed vide order dated 27.05.2024.
 - g. Neither party shall seek unnecessary adjournment from the trial Court and shall render their due assistance for the purpose of the disposal of the application under Section 24 HMA and for expediting the adjudication of the matter.
9. The petition stands disposed of in terms of aforesaid order.



10. A copy of this order be given *dasti* under the signatures of the Court Master.

RAVINDER DUDEJA, J

JANUARY 29, 2025/vp /i