



2026:DHC:4914-DB



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

Date of decision: 26.05.2026

+ MAT.APP.(F.C.) 94/2026 & CM APPL. 18031/2026

SMT MOHUA SEN GUPTAAppellant

Through: Mr. Sushant Tripathi, Adv.

Versus

SH JOYDEEP SENGUPTARespondent

Through: Mr. Arvind Chaudhary, Mr.
Ankit Chaudhary and Mr.
Vinay Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT

1. The present appeal has been filed under Section 19 of the Family Courts Act, 1984, read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC") assailing the Order dated 12.02.2026 passed by the learned Judge, Family Court-01, South-West, Dwarka, New Delhi in HMA No.3897/2023, titled as "***Jaydeep Sengupta v. Mohua Sengupta***", whereby, the appellant's application filed under Order VIII Rule 1 read with Section 151 CPC seeking condonation of delay in filing the Written Statement has been dismissed.



2. Due to matrimonial discord between the parties, the respondent/husband had instituted divorce proceedings being HMA No.3897/2023 under Section 13(1)(ia) & (ib) of Hindu Marriage Act, 1955, in which the appellant was served with summons on 04.03.2024 and the matter was adjourned for filing reply/Written Statement, however, on the next date, as the appellant failed to appear as well as comply with the said directions, she was proceeded *ex-parte* by the learned Family Court on 30.04.2024.

3. Consequently, the appellant filed an application seeking setting aside of the aforesaid *ex-parte* Order which was allowed by the learned Family Court *vide* Order dated 27.11.2024, subject to payments of costs of Rs. 10,000/-. Furthermore, the appellant was directed to file her written statement within a period of one week.

4. On 07.02.2025, the written statement, along with application under Order VIII Rule 1 of the CPC seeking condonation of delay in filing the written statement, was filed by the appellant. *Vide* the impugned Order, the learned Family Court dismissed the said application and the Written Statement was refused to be taken on record.

5. Aggrieved thereby, the appellant has filed the present appeal assailing the dismissal of her application seeking condonation of delay in filing the Written Statement.

6. Heard learned counsel for the parties and have perused the record.

7. It is the case of the appellant that the learned Family Court



failed to appreciate that the delay in filing her Written Statement was due to medical exigencies which was neither deliberate nor intentional. It is also submitted that the learned Family Court failed to adopt a harmonious and balanced approach while deciding the application filed under Order VIII Rule 1 of CPC. Reliance in this regard has been placed on the decisions rendered by the Supreme Court in ***Kailash v. Nanhku*** (2005) 4 SCC 480 and ***Salem Advocate Bar Association v. Union of India*** (2005) 6 SCC 344, wherein it has been held that the provisions relating to the time period prescribed under Order VIII Rule 1 CPC are directory in nature and not mandatory, and that procedural law is intended to advance the cause of justice rather than to defeat it. It is further argued that there were *bona fide* reasons for delay, arising out of medical illness of the appellant. It is submitted that the said circumstances were duly explained before the learned Family Court by way of the application seeking condonation of delay, supported by relevant medical records and documents, which clearly constituted sufficient grounds for a liberal and justice-oriented approach.

8. *Per Contra*, learned counsel for the respondent vehemently opposed the present appeal. It is submitted that on 24.11.2024, the appellant sought an adjournment of one week for filing the Written Statement, however, despite the indulgence granted by the learned Family Court along with appropriate costs, the appellant failed to comply with the same, thereby, deliberately delaying the divorce proceedings. In view of the same, it is submitted that the learned



Family Court has rightly declined to take the Written Statement on record and thus, the present appeal is also liable to be dismissed being devoid of any merits.

9. At the outset, it is necessary to take into consideration the relevant law, in the case of **Kailash v. Nanhku**, (2005) 4 SCC 480, the Supreme Court had occasion to interpret and construe the provisions of Order VIII Rule 1 CPC which provides the time line for filing the written statements and held as under:

“42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

43. A prayer seeking time beyond 90 days for



filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on an affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the court that the prayer was founded on grounds which do exist.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, shall the defendant be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose : (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

*45. However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8 Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. **We hold that Order 8 Rule 1, though couched in mandatory form, is Directory being a provision in the domain of processual law.***

(emphasis added)

10. The Supreme Court in **Kailash** (supra) has also held that Order VIII Rule 1 CPC is procedural and its purpose is to expedite the hearing and not to scuttle the same. The rules of procedure should be interpreted to advance the cause of justice. The court held as under:



“28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar , [(1975) 1 SCC 774] are pertinent : (SCC p. 777, paras 5-6)

“The mortality of justice at the hands of law troubles a judge’s conscience and points an angry interrogation at the law reformer. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence — processual, as much as substantive.””

(emphasis added)

11. At this stage, it is also imperative to advert to the relevant sections of the Family Courts Act, 1984, which are reproduced hereinbelow:



“10. Procedure generally.—(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a **Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.**

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20. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

(emphasis supplied)

12. A conjoint reading of the aforesaid provisions makes it crystal clear that proceedings before a Family Court are not required to be governed by rigid procedural technicalities as it is empowered to adopt a more pragmatic approach. While Section 10 of the Family Courts Act, 1984 incorporates the provisions of CPC, a Family Court may evolve its own procedure to secure the ends of justice and advance substantial justice.



13. Generally, the timelines prescribed for filing a Written Statement ought to be strictly adhered to in order to secure expeditious adjudication of matters concerning matrimonial disputes, however, any deviation therefrom, maybe permitted in exceptional circumstances, for reasons to be specifically recorded, where refusal to grant such opportunity would result in miscarriage of justice. Therefore, when a party demonstrates a sufficient cause, *bona fide* circumstances, or genuine inability preventing timely filing, the Family Court may, having regard to the peculiar facts of such case, exercise its discretionary jurisdiction provided under the Family Courts Act, 1984.

14. In the present case, learned Family Court, *vide* order dated 27.11.2024, allowed the application preferred by the appellant seeking setting aside of the *ex parte* order dated 30.04.2024, subject to payment of costs of Rs.10,000/-, and granted one week's time to the appellant to file her Written Statement on record. The appellant, thereafter, filed the same on 07.02.2025 along with an application seeking condonation of delay explaining the reasons attributable for the delay including the following grounds:

- (i) Medical illness of the appellant including recurring fever and infection,
- (ii) Technical difficulty in accessing the pendrive containing bulky electronic documents in different languages supplied by the respondent,
- (iii) Travel to Bengaluru between 15.01.2025 to 22.01.2025 in



connection with pending criminal proceedings arising out of FIR No.56/2021,

(iv) Temporary unavailability of counsel during winter break.

15. To support the aforesaid reasoning, the appellant had also placed on record the relevant medical documents along with the appeal. A bare perusal of the same shows a prescription slip dated 30.11.2024 which suggests that the appellant was suffering with high grade fever, weakness and fatigue. It further reads that the appellant was advised bed-rest for at least two to three weeks for recovery. Furthermore, she has also placed on record the medical documents dated 18.01.2025 pertaining to her diagnosis for *acute atopic conjunctivitis, bilateral*. The aforesaid medical documents, in our opinion, sufficiently establish the existence of *bona fide* circumstances and constitute adequate cause for condoning the delay.

16. In the peculiar facts and circumstances of the present case, particularly the medical condition of the appellant coupled with her personal responsibilities for minor child, cannot be ignored or brushed aside by adopting a hyper-technical approach. Procedural law is intended to subserve the cause of justice and not to thwart adjudication on merits. In such circumstances, denial of an opportunity to place the Written Statement on record would seriously prejudice the appellant's right to effectively contest the proceedings and would defeat the larger interests of substantial justice.

17. Accordingly, adopting a balanced and lenient approach, this Court deems it appropriate set aside the impugned Order dated



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12.02.2026, subject to payment of costs. Consequently, the written statement filed by the appellant is directed to be taken on record before the learned Family Court, subject to payment of costs of Rs. 25,000/- payable by the appellant to the respondent.

18. Accordingly, the present appeal, along with pending application, if any, stands disposed of in the above terms.

19. We also hope and expect that the learned Family Court shall endeavour to proceed with and decide the divorce petition expeditiously, without granting any unnecessary adjournments to either of the parties.

VIVEK CHAUDHARY, J

RENU BHATNAGAR, J

MAY 26, 2026

Sm/Kz