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

% ***Judgment delivered on: 11.05.2026***

+ **MAT.APP.(F.C.) 123/2026 & CM APPL. 22857/2026**

JAYANT

.....Appellant

Through: Mr. Manish Kumar Sharma with
Mr.Aashish George & Ms. Neethu CJ,
Adv.

versus

CHARU LETHA S.

.....Respondent

Through: Mr. Chinmaya K. Bhatt with
Ms.Amrita Pandey, Adv. along with
Respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

CM APPL. 22858/2026 (*Condonation of delay of 10 days in filing the appeal*)

1. Learned counsel for the respondent submits that he has no objection to the delay condonation.
2. For the reasons stated in the application, which are found to be sufficient, the delay in filing the appeal is hereby condoned.
3. Accordingly, the present application stands disposed of.

MAT.APP.(F.C.) 123/2026

4. The present appeal has been filed by the appellant challenging the Order dated 27.02.2026 ("impugned order") in HMA No. 1257/2025 passed by the learned Principal Judge, Family Courts, East District, Karkardooma,



Delhi (“Family Court”) whereby, the right to file the written statement by the respondent/husband (“appellant herein”) was closed and his defence was struck down and *ad-interim* maintenance of Rs. 25,000/- per month was awarded to the petitioner/wife (“respondent herein”).

5. Learned counsel for the appellant at the very outset submits that he is pressing the present appeal only to the extent that the written statement was not permitted to be filed on the ground that it was filed beyond the period provided under Order VIII Rule 1 of the CPC and was not in the prescribed format and the same is not challenged with regard to any other part of the impugned order.

6. As per the appellant, the respondent filed a petition seeking dissolution of marriage on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 and on 11.08.2025, the Family Court issued summons of the divorce petition to the appellant which was served on 12.09.2025 to which the learned counsel for the appellant appeared on 17.10.2025 i.e., the date fixed by learned Family Court for appearance of the appellant. Learned counsel for the appellant filed his vakalatnama and sought time to file written statement in the above stated divorce petition and the matter was adjourned to 19.01.2026.

7. On 19.01.2026, it came to the knowledge of the appellant and his counsel that learned Principal Judge, Family Courts had been transferred and the learned Family Court is vacant as no such other learned Principal Judge had been assigned to the concerned Court and the matter was again adjourned to 27.02.2026.

8. On 27.02.2026, the appellant sought to physically file his written statement along with condonation of delay application, seeking to condone



the delay of 166 days in filing of the written statement. The learned Family Court *vide* Impugned Order did not accept the written statement and application for condonation of delay stating that the written statement suffers defect, being not properly verified as mandated under Order VI Rule 15 of the CPC and accordingly, closed the right of the appellant to file written statement and struck off his right of defence.

9. It is submitted that the delay in filing the written statement was neither intentional nor *mala-fide* but occurred on the account of *bona fide* efforts made by the parties to explore an out-of-court settlement of the matrimonial dispute, which ultimately failed. It is further submitted that the Family Court ought not to have declined to take the written statement on record on the ground that the same was not properly verified in terms of Order VI Rule 15 of the Code of Civil Procedure, 1908 (“CPC”) as such defects was procedural in nature and was curable.

10. He also submits that undoubtedly, the limit under Order VIII Rule 1 of the CPC has to be observed, but in exceptional circumstances in order to ensure that injustice is not done, the Court will have the power to permit the appellant to file the written statement.

11. *Per contra*, learned counsel for the respondent submits that the delay caused in filing of the appeal and an unexplained delay in complying with the direction of *ad interim* maintenance is a clever attempt to delay the divorce proceedings and to deprive the wife of *ad interim* maintenance.

12. In “*Uday Shankar Triyar v. Ram Kalewar Prasad Singh & Anr.*”, (2006) 1 SCC 75, wherein the Supreme Court held that procedural law is handmade for the administration of justice which can be cured at any stage of the trial as the procedural requirement should not defeat substantive rights or



cause injustice.

13. The Supreme Court in “*Kailash V. Nanhku*”, (2005) 4 SCC 480, held:-

“46. We sum up and briefly state our conclusions as under:

...

(iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though, the language of the proviso to Rule 1 of Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied.



Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.”

14. In view of the aforesaid, we are satisfied in the given circumstances that the provisions of Order VIII Rule 1 of the CPC being in the domain of procedural law, have to be directory and not mandatory. The cause shown for delay in filing of the written statement is properly explained. Moreso, the petition pending before the Family Court for dissolution of marriage should be heard and decided on merits.

15. Accordingly, subject to payment of costs of Rs. 50,000/- by the appellant, the appeal is allowed. The appellant shall file their written statement within a period of two weeks from today before the learned Family Court.

16. It goes without saying that the learned Family Court shall proceed with and decide the petition expeditiously, in accordance with law.

17. Pending application, if any, also stands disposed of.

(VIVEK CHAUDHARY)
JUDGE

(RENU BHATNAGAR)
JUDGE

MAY 11, 2026/ht