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

+ **CM(M) 1723/2023 & CM APPL. 54694/2023**

VANDANA

.....Petitioner

Through: Mr. Manish Kumar Vikkey, Advocate
(through VC).

versus

YASHPAL SINGH JAIDWAL

.....Respondent

Through: Respondent in-person through VC.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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07.01.2026

1. This hearing has been done through hybrid mode.
2. The present petition under Article 227 of the Constitution of India, 1950, has been filed seeking the following prayers: -

“It is therefore most respectfully prayed that this Hon'ble Court, in the interest of justice, may most graciously be pleased to:-

i) Call for the record of HMA No. 617 / 2022, titled as Yashpal Singh Jaidwal V/s. Vandana , pending before Ld. Sh. Harish Kumar , Judge Family Court , Patiala House Court, New Delhi;

ii) Set aside order dated 4.8.2023, passed by Ld. Judge Family Court, Patiala House Court, New Delhi in HMA No. 617 / 2022, titled as Yashpal Singh Jaidwal V/s. Vandana and permit the Petitioner to place on record Written Statement / Reply on 30.10.2023 (date fixed before the Family Court);

iii) Any other further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly also be passed in favour of the petitioner and against the Respondent.”



3. The respondent had filed a petition, HMA No.617/2022, under Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1955, (for short, “HMA”) seeking dissolution of marriage between the petitioner and him on 02.06.2022 before learned Judge Family Court, Patiala House Courts, New Delhi.
4. In the aforesaid divorce petition, on 10.04.2023, learned Judge Family Court, Patiala House Courts, New Delhi, passed the following order: -

“Till date Written Statement has not been filed by the respondent. On the last date of hearing, respondent was directed to file WS within 10 days from that day failing which it was directed that defence of the respondent shall be struck off. Since respondent has not filed WS even till today, therefore, her defence is hereby struck off.

Perusal of the file shows that application u/s 24 HMA of respondent is pending disposal. On enquiry, petitioner submits that he has been depositing Rs. 5,000/- in Sukanya Samriddhi Yojna. On further enquiry, he submits that he could not send any money for the expenses of the child as respondent is not taking to him nor permitting any visitation nor giving her account details and, therefore, he is unable to send any money to the respondent for the maintenance of the child. He further submits that respondent is a Government servant working with Ministry of Railways and is posted as Steno. Perusal of the application u/s 24 HMA of respondent, nowhere shows that respondent is working. If she is in Government Service and despite that if she has not mentioned that she is working, it is a serious concealment on her part. However, since neither respondent is present nor her main counsel is present, therefore, this issue is kept open which shall be taken care of at the time of hearing of arguments on application u/s 24 HMA.

In the meantime as an interim measure, respondent is directed to pay Rs. 10,000/- per month to the respondent for the maintenance of the child till further orders. Aforesaid payment shall be made by 10th of every month into the bank account of the respondent whose details shall be provided by the counsel for respondent within 10 days from today.

Put up for disposal of application u/s 24 HMA on merits as well as for PE on **04.08.2023.**”



5. Thereafter, an application was preferred on behalf of the petitioner herein on 03.08.2023 seeking recall of the aforesaid order whereby, her defence in the divorce petition filed on behalf of the petitioner was struck off. In said application, following order was passed by learned Judge Family Court, Patiala House Courts, New Delhi, on 04.08.2023: -

“Sh. Manish Kumar Vikky, adv, has filed vakalatnama for the respondent and also moved an application on behalf of the respondent seeking recall of order dated 10.04.2023 whereby defence of the respondent was struck off.

By way of this application, it has been submitted that child of the parties is a special child and in the month of February-March, child was suffering from problem which required respondent to visit hospital almost everyday and, therefore, she did not get time to sit with counsel to prepare the written statement. It has been further stated that in the meantime, uncle of the previous counsel was also hospitalised and as a result of which, the previous counsel was also not free to prepare the written statement and in these circumstances, written statement could not be prepared and filed. He further submits that the child of the parties being special child requires constant company of the respondent having abnormality of Down Syndrome requiring respondent to be around him 24 hours and, therefore, he has prayed that respondent may be permitted to file her written statement and contest the present matter.

Record perused. Perusal of record shows thin respondent was served any date prior to 14.09.2022 as appearance was put on behalf of the respondent on 14.09.2022 on which day, demand draft of Rs. 11,000/- was handed over to the counsel who had appeared for the respondent. Respondent was given liberty to file her written statement till the next date of hearing which was on 02.11.2022. On 02.11.2022, written statement was not filed however, since file was not traceable, matter was listed for 09.11.2022. On 09.11.2022, file was again not traceable but no written statement was filed though respondent moved an application u/s 24 of HMA and matter was adjourned for 21.11.2022. On 21.11.2022, written statement was not filed on behalf



of respondent and respondent was given time to file written statement within 30 days and matter was adjourned for 02.02.2023 on which day again written statement was not filed by respondent. On 02.02.2023, respondent was given another opportunity to file written statement within 10 days making it very clear that failure of the respondent to file written statement shall make her defence to be struck off and matter was adjourned for 10.04.2023. On 10.04.2023, since no written statement was filed, therefore, this court was left with no other option but to close the defence of respondent. In none of the dates of hearing, at any point of time, it was ever pointed out on behalf of respondent that respondent is not being able to prepare the written statement as she was not getting time due to her ore-occupation round the clock looking after her special child. However, it also sounds strange that though she found time to get her application u/s 24 of HMA prepared and filed but did not get time to prepare her written statement. Hence, in these circumstances, it appears to the court that respondent is looking for justification to justify her inability to file written statement within the repeated time granted by this court and now humanitarian ground is being pleaded to overcome the difficulty. This court is not inclined to accept the plea that special child obstructed the respondent in getting written statement prepared and filed, therefore, application is hereby dismissed.

Ld. counsel for respondent submits that demand draft given towards litigation expenses by petitioner has become stale, therefore, he is handing back to the petitioner to get it renewed.

Let petitioner get the DD canceled and remit the amount of Rs. 11,000/- directly into the bank account of respondent.

It is submitted by petitioner that he is regularly paying the ad-interim maintenance granted vide order dated 10.04.2023 apart from the fact that he is also depositing Rs. 5,000/- per month in Sukanya Samriddhi Yojna.

Ld. Counsel for respondent submits that petitioner has not paid maintenance for the month of April and May, 2023.

Petitioner submits that details of the respondent's account was provided in the month of May, 2023 and therefore, he has deposited the maintenance for the month of June, 2023 and July, 2023 and he



will clear the arrears in installment along with regular monthly maintenance.

Today, petitioner has filed his affidavit in examination-in-chief. Copy supplied.

Put up for disposal of application of respondent u/s 24 of HMA as well as for PE on **30.10.2023.**”

6. Learned counsel for the petitioner submits that the learned Judge Family Court, Patiala House Courts, New Delhi, had erred in striking off the defence of the latter on 10.04.2023 and has not taken into consideration that the non-appearance on the said date was on account of the fact that her previous counsel was indisposed on account of death of his uncle and the proxy counsel appearing on his behalf did not apprise the learned Family Court regarding the same. Attention of this Court was drawn towards the death certificate of Late Sh. Bharat Singh reflecting the date of death as 10.04.2023. It is further the case of the petitioner that their child is suffering from *Down Syndrome* and in February-March 2023, the petitioner had to look after her child everyday and take the child to the hospital for routine checkups. It is submitted that the uncle of the previous counsel of the petitioner was also not keeping well during the said time period, and on account of the same, he did not get time to prepare and file a written statement within time. It is, therefore, submitted that learned Judge Family Court did not take into account the aforesaid circumstances and dismissed the application seeking recall of order dated 10.04.2023 on 04.08.2023 and the same is to be set aside.

7. In pursuance of the notice issued to the respondent *vide* order dated 19.10.2023, he has appeared through video conferencing and submitted that the impugned order passed by learned Judge Family Court is self-explanatory



and in view of the same, he does not wish to file response to the present petition. He further submitted that several opportunities were granted to the petitioner to file a written statement; however, the latter did not file the same and thereafter, the order dated 10.04.2023 was passed.

8. Heard learned counsel for the parties and perused the records.

9. The case of the petitioner is that their child is suffering from *Down Syndrome* and in February-March 2023, the petitioner had to look after her child everyday and take the child to the hospital for routine checkups. It has been further contended that the uncle of the previous counsel of the petitioner was also not keeping well during the said time period, and in view of the same, he did not get time to prepare and file a written statement within time.

10. Perusal of the order dated 04.08.2023 shows that the learned Judge Family Court has simply observed that the petitioner is looking for justification to justify her inability to file written statement and therefore, her plea that special child obstructed her in getting prepared and filed was not accepted. The petitioner has placed on record various test reports of the child of the parties in support of her case. Learned Family Court has not taken into consideration the said medical test reports which pertains to the same period, when time was given to the petitioner for filing written statement.

11. In matrimonial cases, the pleadings carry high evidentiary value and in case, the defence is struck off at early stage, serious prejudice would be caused to the party. In view of the aforesaid facts, if defence of the petitioner is struck off at this stage, serious prejudice would be caused to her in the proceedings before learned Family Court.

12. On a pointed query from the respondent, he has admitted that their child is suffering from *Down Syndrome*, and therefore, the plea of the petitioner



that she had to look after the child everyday and take the child to the hospital for routine checkups cannot be rejected.

13. It is pertinent to note that learned Predecessor Bench of this Court *vide* order dated 19.10.2023 had granted liberty to the petitioner, without prejudice to the rights and contentions of the respondent, to file written statement before the learned Family Court; however, whether the same is to be taken on record and be considered by learned Family Court, was kept to be considered by this Court on hearing learned counsels for the parties. Learned counsel for the petitioner, during the course of hearing, has informed this Court that in pursuance of the said direction, he has filed a written statement before learned Family Court.

14. In view of the aforesaid facts and circumstances of the case, the impugned order dated 04.08.2023 passed in HMA No.617/2022 is set aside. The application seeking recall of order dated 10.04.2023 filed on behalf of the petitioner is allowed. The defence of the petitioner is restored. Learned Family Court is requested to take on record the written statement filed on behalf of the petitioner and proceed in accordance with law.

15. In view thereof, the present petition is allowed and disposed of.

16. Copy of the order be sent to the learned Judge, Family Court, Patiala House Courts, Delhi, for necessary information and compliance.

17. Pending applications, if any, also stand disposed of accordingly.

18. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

JANUARY 07, 2026/sn/ns