



2026:DHC:1650-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 18.02.2026

+ MAT.APP.(F.C.) 358/2025 & CM APPL. 62518/2025
SIMPY SINGHAppellant

Through: Mr. Pranesh Marshan, Adv.
versus

RAHUL SINGHRespondent
Through: Dr. Rakesh Singh, Mr.
Satyendra Kr. Singh, 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 (CPC) assailing the Order dated 11.07.2025 passed by learned Principal Judge, Family Courts, South-West District, Dwarka Courts, New Delhi in GP No. 33/2024 (impugned order), titled as “*Rahul Singh Vs. Simpy Singh*”, whereby, the learned Family Court has dismissed the appellant’s application seeking condonation of delay in filing the written statement and consequently, the appellant’s defence was struck off.

2. The relevant facts are that the marriage between the appellant and the respondent was solemnised on 28.06.2010. Twin daughters were born out of the wedlock on 03.10.2011. Owing to matrimonial discord, the parties have been living separately since 06.07.2018, and the children have continued to remain in the custody of the appellant.



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3. After around 6 years of separation, a guardianship petition i.e., GP No. 33/2024, was instituted by the respondent/husband. The summons in that case were served upon the appellant on 22.04.2024. Owing to financial constraints, the appellant engaged a counsel only on 18.10.2024, and the written statement was e-filed on 24.10.2024 and a hard copy of the same was filed before the learned Family Court on 28.10.2024.
4. An application for condonation of delay in filing the written statement was also filed on 04.01.2025, subsequent to the objection regarding the limitation. The Family Court held that there was a delay of 65 days beyond the permissible limit of 120 days, relying upon the judgment of a Co-ordinate Bench of this Court in ***Smt. K.S. Sumi Mol vs. Suresh Kumar E.K.***, 2023:DHC:5963-DB, dismissed the said application.
5. Aggrieved thereby, the Appellant has preferred 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. Learned counsel for the appellant submits that the rejection of the appellant's application for condonation of delay has serious consequences, as it affects not only the appellant but also the welfare of the minor children in a guardianship proceeding, which ought not to be treated on the same footing as other adversarial matrimonial disputes. It is emphasized that the delay was neither deliberate nor intentional, but was occasioned by compelling circumstances,



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including non-payment of maintenance and the appellant's severe financial constraints as an unemployed mother responsible for the upbringing of twin minor daughters. It is contended that these factors constituted sufficient cause for the delay and deserved a liberal and justice-oriented approach.

8. He submits that it should be considered that whether there is a deliberate and intentional attempt by a party to delay the proceedings. It is further submitted that the learned Family Court failed to adopt a harmonious and balanced approach while considering the two judgments passed by Co-ordinate Bench this court in ***K.S. Sumi Mol (supra) & Nidhi Sawnani Vs. Harsh Sawnani***, 2023:DHC:9085-DB, as cited in the impugned order and instead applied the guidelines framed by this court in ***K.S. Sumi Mol (supra)*** in a rigid and mechanical manner, resulting in grave prejudice and miscarriage of justice.

9. *Per Contra*, learned counsel for respondent supports the impugned order passed by the learned Judge, Family Courts. He submits that, in the absence of any justifiable reasons being tendered by the appellant for failure to file the written statement within prescribed time, the learned Family Court rightly declined to take the written statement on record.

10. Reliance is placed on ***K.S. Sumi Mol (supra)***, wherein specific guidelines were framed for the expeditious disposal of cases relating to marriage and family disputes, to be followed by all Family Courts within the territorial jurisdiction of Delhi. Particularly, emphasis is laid on the observation that the learned Family Court has no power to



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condone the delay beyond 120 days from the date of service of summons for filing the written statement.

11. However, in that case it was also recorded that the respondent therein had been lingering on the divorce petition and was not conducting trial diligently. Moreso, the respondent was playing hide and seek from the Family Court therein. In the present case, no such argument has been placed before us.

12. At the outset, it is necessary to take into consideration the relevant law, in the case of **Kailash v. Nanhku And Ors.** (2005) 4 SCC 480, the Supreme Court had occasion to interpret and construe the provisions of Order VIII Rule 1 of the 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



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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)

13. The Supreme Court in **Kailash** (supra) has also held that Order



VIII Rule 1 of the 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)

14. This Judgment was also relied upon by the Supreme Court in



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the case of ***Bharat Kalra v. Raj Kishan Chabra*** 2022 SCC OnLine SC 613, wherein, a delay of 193 days in filing of the written statement delay in filing of the written statement was condoned in a suit for injunction and held that:-

“3. Admittedly, the suit for injunction filed by the plaintiff is not the one which is governed by the Commercial Court Act, 2015. Therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of the judgment of this Court reported as ‘Kailash v. Nankhu’ reported in (2005) 4 SCC 480.”

15. It is a well-settled principle that, for the purposes of procedure and evidence, the Family Court adopts a less formal approach and is empowered to evolve its own procedure. Although Section 10 of the Family Courts Act, 1984 makes the provisions of the Code of Civil Procedure, 1908 applicable to such proceedings, the Court is not strictly bound by the technicalities thereof. The relevant sections of the Family Court Act, 1984, are reproduced herein below-

“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



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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.

xxxx

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)

16. Ordinarily, the timelines must be adhered to in order to ensure expeditious disposal of family disputes. Any departure from the said guidelines must be by way of an exception, for reasons to be specifically recorded, and only where denial of the opportunity to file the written statement would result in grave injustice. The time period for filing the written statement, being procedural in nature, can, in appropriate cases, be extended under the Family Courts Act, 1984, provided the party seeking such extension demonstrates a sufficient circumstance or genuine disability in filing the written statement within the prescribed period. This determination must necessarily depend upon the facts and circumstances of each case.

17. In the present case, summons were issued to the appellant on 03.04.2024 and, as per the process server's report, were served on 22.04.2024, which fact is not in dispute. Owing to acute financial constraints and the responsibility of upbringing of twin minor



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daughters, the appellant was unable to engage counsel and appeared in person before the learned Family Court on the next date fixed. However, as the Court was vacant due to the superannuation of the learned Presiding Officer, the appellant remained unaware that the written statement had not been filed on her behalf. It was only after she was able to engage counsel on a pro bono basis that the written statement came to be filed on 24.10.2024. While it is imperative for Courts to ensure adherence to procedural timelines so as to avoid delays, it cannot be overlooked that the future of twin minor daughters is at stake. Closure of the right to file a written statement would result in grave prejudice and will be unreasonable.

18. Having regard to the settled principle that the welfare of minor children is of paramount importance, disputes concerning such family matters ought, as far as possible, to be decided on merits rather than on procedural defaults. The matter is still at an initial stage and no prejudice is likely to be caused if the written statement is taken on record and the proceedings are allowed to continue.

19. Accordingly, in the facts and circumstances of this case, and adopting a balanced and lenient approach, this Court is inclined to set aside the impugned order and permit the written statement to be taken on record before learned Family Court, subject to payment of cost of Rs.5,000/- (Rupees Five Thousand Only) payable by the appellant to the respondent. However, the costs of Rs. 5,000/- payable to the respondent shall be adjusted from the amount due towards maintenance payable to the appellant.

20. For the foregoing reasons, the appeal is allowed. The Order



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dated 11.07.2025 passed by the Family Court is set aside and written statement is taken on record as duly filed before the Family Court.

21. Accordingly, the present appeal, along with pending applications stands disposed of.

22. Parties to appear before the Family Court on 10.03.2026.

VIVEK CHAUDHARY, J

RENU BHATNAGAR, J

FEBRUARY 18, 2026/p/Kz/nc