



2026:DHC:3393-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 17.04.2026***+ MAT.APP.(F.C.) 312/2024 & CM APPL. 56056/2024
DOLLY RAGHAVAppellant

Through: Ms. Samridhi Dohbal, Adv.

versus

UDAY SINGHRespondent

Through: *Appearance not given.***CORAM:****HON'BLE MR. JUSTICE VIVEK CHAUDHARY****HON'BLE MS. JUSTICE RENU BHATNAGAR****JUDGMENT**

1. The present appeal under Section 19 of the Family Courts Act, 1984 is directed against the order dated 03.09.2024 passed by the learned Principal Judge, Family Court, South West District, Dwarka Courts, New Delhi in HMA No. 3668/2023 titled *Uday Singh v. Dolly Raghav*, whereby the learned Family Court declined to take on record the written statement filed by the appellant and, consequently, struck off her defence on the ground that the same had been filed beyond the prescribed period.

2. The relevant facts, in brief, are that the marriage between the parties was solemnised according to Hindu rites and customs on 25.02.2006 and disputes thereafter arose between them, resulting in them living separately. The respondent/husband instituted a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter



2026:DHC:3393-DB



‘HMA’) before the learned Family Court.

3. In those proceedings, as per the report of the process server, summons was served upon the appellant/wife on 29.03.2024. Thereafter, on 04.05.2024, the learned Family Court directed filing of the written statement within a period of four weeks. The appellant ultimately filed her written statement on 02.09.2024.

4. However, by the impugned order dated 03.09.2024, the learned Family Court declined to take the written statement on record and struck off the appellant’s defence on the ground that the same had been filed beyond the permissible period reckoned from the date of service of summons. Aggrieved thereby, the appellant has preferred the present appeal.

5. Ms. Samridhi Dohbal, learned counsel appearing on behalf of the appellant submits that the appellant had appeared with her counsel only on 04.05.2024, on which date the learned Family Court directed her to file the written statement within a period of four weeks. It is further submitted that the appellant, being a layperson and unfamiliar with legal procedure, was under the *bona fide* impression that the written statement was required to be filed pursuant to such direction and was not aware that the same ought to have been filed earlier on the first date of appearance.

6. It is submitted that the written statement came to be filed on 02.09.2024, which, according to the appellant, fell within the period of 120 days counted from 04.05.2024, which is the day, the learned Family Court directed filing of the written statement within a period of four weeks. It is submitted that the appellant, being a layperson and



(hereinafter ‘CPC’) must ordinarily be honoured and extensions cannot be granted in a routine manner, the provision is nevertheless procedural and directory in nature.

11. The Court emphasized that departure from the prescribed schedule is permissible only by way of exception, upon reasons being assigned by the defendant and recorded by the court, where the circumstances are shown to be exceptional, beyond the party’s control and where refusal of extension would result in grave injustice. The relevant part of the aforesaid judgment is reproduced hereinbelow:

“42. Ordinarily, the time schedule prescribed by Order VIII, 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 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 VIII, 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.”

The Court further held:

“45. However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order VIII Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order



VIII Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law.”

12. The Supreme Court further held that the Court may impose costs for dual purpose, firstly, to deter the defendant from seeking any extension of time just for the asking and secondly, to compensate the plaintiff for the delay and inconvenience caused to him.

13. Having emphasized that the timeline for filing of a written statement must be ordinarily observed, the Court went on to clarify that procedural law cannot be interpreted so rigidly as to defeat substantive 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.”

14. While the Family Court may draw upon the procedural framework of the CPC, it is not rendered powerless to adopt a less formal and more facilitative procedure suited to the nature of family disputes. Section 10(1) of the Family Courts Act, 1984 makes the provisions of the CPC applicable to proceedings before the Family Court. However, Section 10(3) also clarifies that nothing in sub-sections (1) and (2) shall prevent the Family Court from laying down its own procedure in order to arrive at a settlement or at the truth of the facts alleged by one party and denied by the other. Section 20 of the Family Courts Act strengthens this position by giving overriding effect to the provisions of the Act. The abovementioned sections 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.*



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.

15. As a general rule, the timelines prescribed for filing a written statement are to be followed, so that proceedings are not unnecessarily delayed. Any extension beyond the stipulated period is not to be granted routinely and can be allowed only in exceptional circumstances, where sufficient cause is shown and reasons are recorded.

16. However, closure of the right to file the written statement has serious consequences, as it effectively deprives the appellant of placing her defence on record in a proceeding which concerns her marital rights and status. In such matters, an adjudication on merits is ordinarily to be preferred, unless the conduct of the defaulting party is such as to warrant denial of that opportunity altogether.

17. In the present case, it is not in dispute that the summons were received by the appellant on 29.03.2024 and the written statement came to be filed on 02.09.2024. The written statement was thus filed beyond the statutory period of 120 days from the date of service of summons and is time barred.

18. The appellant has pleaded that she is unemployed, has no independent source of income, and is dependent upon her father even for her rental expenses @ Rs. 18,000/- per month. She further pleaded that her father was hospitalised and as he was already incurring his medical expenses and her rental expenses, she could not ask her father



for more expenses for the legal proceedings. These circumstances, taken cumulatively, cannot be brushed aside altogether. In the given circumstances, closure of right to file written statement would result in grave prejudice and will be unreasonable. Financial constraints of a wife, precluding her to contest the case, effectively, are found to be sufficient cause by us, to condone the delay.

19. In these circumstances, this Court is of the view that while the delay is evident and cannot be overlooked, the ends of justice would be better served by permitting the written statement to be taken on record, subject to appropriate terms.

20. In the present case, the prejudice caused to the respondent on account of the delayed filing can be adequately compensated by imposition of costs, whereas refusal to take the written statement on record would result in far graver consequences for the appellant.

21. Accordingly, the impugned order dated 03.09.2024 passed by the learned Family Court in HMA No. 3668/2023 is set aside. The written statement filed by the appellant shall be taken on record, subject to payment of costs of Rs. 25,000/- to the respondent within a period of four weeks from today before the Family Court. Upon such costs being paid, the learned Family Court shall proceed with the matter in accordance with law.

22. The present appeal is accordingly allowed in the aforesaid terms. Pending applications, if any, stand disposed of. The parties are directed to appear before the Family Court on 18.05.2026.

23. It is clarified that this Court has not expressed any opinion on the merits of the claims and all rights and contentions of the parties are



2026:DHC:3393-DB



left open to be decided by the learned Family Court in accordance with law.

VIVEK CHAUDHARY, J

RENU BHATNAGAR, J

APRIL 17, 2026 *pr/ka/kep*