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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 19.08.2026**# **CNR No. DLHC010904712025**+ **CM(M) 2204/2025 & CM APPL. 71990/2025 (Stay)****WG CDR RETD RAKESH LAL KAPUR**PetitionerThrough: **Mr. Nishant Kisore, Advocate**
through vc
Petitioner in person

versus

SMT SUMEETA TULI KAPUR & ANR.RespondentsThrough: **Mr. Anmol Mathur, Mr. Sunny**
Manchanda and Ms. Vidushi
Chaturvedi, Advocates with
Respondent in person**CORAM:****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN**
SHANKAR% **JUDGEMENT (Oral)**

1. The present Petition, filed under Section 227 of the **Constitution of India, 1950¹**, seeks to assail the **Orders dated 02.04.2025 and 21.08.2025²**, passed by the **learned Family Court-02, South District, Saket Courts, Delhi³**, in the **Divorce Petition, bearing HMA No. 1634/2024⁴**, titled as “*Wg. Cdr. Rakesh Lal Kapur vs. Sumeeta Tuli Kapur & Anr.*”

SUBMISSIONS ON BEHALF OF THE PARTIES:

2. Learned counsel appearing on behalf of the Petitioner submits

¹ Constitution

² Impugned Orders

³ Learned Family Court

⁴ Divorce Petition



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that the challenge to the Order dated 02.04.2025 is necessitated principally on the ground that the said Order is non-speaking in nature. He submits that despite there being a delay in filing the Written Statement on behalf of the Respondents, the learned Family Court proceeded to take the same on record without recording any reasons for condoning such delay.

3. Learned counsel further submits that, subsequent to the passing of the Order dated 02.04.2025, the Petitioner filed an Application under Order VIII Rule 1 of the **Code of Civil Procedure, 1908**⁵, seeking closure of the right of the Respondents to file their Written Statement on the ground that the same had been filed beyond the period prescribed under the said provision. Order VIII Rule 1 of the CPC is reproduced herein under for ready reference:

“ORDER VIII

Written statement, set-off and counter-claim

1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.”

4. Learned counsel for the Petitioner submits that the delay in

⁵ CPC



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filing the Written Statement was far beyond the period prescribed under Order VIII Rule 1 of the CPC and, therefore, the Written Statement could not have been taken on record in the absence of a sufficient explanation warranting extension of the prescribed period, when there was an inordinate delay of 313 days.

5. In support of aforesaid submission, learned counsel places reliance upon the Judgment of the Hon'ble Supreme Court in *M/s Aditya Hotels (P) Ltd. v. Bombay Swadeshi Stores Ltd. & Ors.*⁶, wherein the principles laid down in *Kailash v. Nanhku & Ors.*⁷, were reiterated. The relevant portion, relied upon, read 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 rafting his defence and filing of written statement on the appointed date of hearing without waiting for the arrival of the date appointed. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case maybe, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expire, 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 under 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 defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

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 cost for dual purpose: (i)

⁶ (2007) 5 SCC 200

⁷ (2005) 4 SCC 480



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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.

7. Since neither the trial court nor the High Court have indicated any reasons to justify the acceptance of the written statement after the expiry of time fixed, we set aside the orders of trial court and that of the High Court.”

6. Learned counsel submits that the aforesaid Judgments delineate the parameters governing the exercise of discretion for extending the time prescribed under Order VIII Rule 1 of the CPC and that the said parameters have not been satisfied in the present case. It is, therefore, submitted that the Written Statement could not have been taken on record and that the present Petition accordingly warrants interference.

7. Learned counsel for the Petitioner further submits that the Order dated 21.08.2025 is also unsustainable, inasmuch as the Application filed under Order VIII Rule 1 of the CPC has not received due or proper consideration. He submits that the Written Statement could not have been treated as having been taken on record merely by inference, particularly when the Petitioner had specifically objected to its being taken on record and had sought closure of the Respondents’ right to file the same. Accordingly, learned counsel submits that the Orders under challenge are liable to be set aside.

8. **Per contra**, learned counsel appearing on behalf of the Respondent submits that the present Petition is yet another attempt on the part of the Petitioner to delay the proceedings before the learned Family Court. It is submitted that the HMA Petition, being HMA No. 458/2024, was initially instituted on 27.04.2024 before the learned Patiala House Courts, New Delhi, and was subsequently transferred to the learned Saket Courts, New Delhi on 05.07.2025.

9. Learned counsel further submits that the Written Statement had



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already been taken on record by the learned Trial Court *vide* Order dated 02.04.2025. He submits that although there was some delay in filing the Written Statement, the same stood condoned by the learned Trial Court in exercise of the discretion vested in it. He, therefore, submits that the question of condonation of such delay lies within the discretionary jurisdiction of the learned Trial Court and no interference is warranted in exercise of the supervisory jurisdiction of this Court.

10. Learned counsel further submits that the subsequent Order dated 21.08.2025 came to be passed in the backdrop of the Application filed by the Petitioner seeking closure of the right of the Respondents to file the Written Statement, despite the Written Statement having already been permitted to be taken on record *vide* the earlier Order dated 02.04.2025. He submits that the said Application was, therefore, misconceived and that the learned Family Court committed no error in declining the relief sought therein.

ANALYSIS:

11. This Court has heard the learned counsel appearing on behalf of the parties and, with their able assistance perused the material available on record and the Judicial precedents passed across the Bar.

12. At the outset, it would be apposite to notice Section 21 of the **Hindu Marriage Act, 1955⁸**, which provides that, subject to the other provisions contained in the Act and to such rules as the High Court may make in this behalf, proceedings thereunder shall, “*as far as may be*”, be regulated by the procedure prescribed under the CPC. The said provision reads as under:

⁸ HMA



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“Section 21. Application of Act 5 of 1908.— Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.”

13. The expression “*as far as may be*” is of significance and indicates that the provisions of the CPC are not to be applied to proceedings under the HMA with inflexible or mechanical rigour. The procedural framework of the CPC is, therefore, applicable to matrimonial proceedings to the extent compatible with the nature and object of such proceedings and subject to the discretion of the Court to advance the cause of substantive justice.

14. The aforesaid principle assumes particular significance in matrimonial proceedings, where the Courts have consistently recognised the need for a degree of procedural flexibility. While procedural timelines cannot be disregarded as a matter of course, their application cannot also be divorced from the nature of the proceedings or the consequences which may follow from shutting out a party from effectively placing its defence before the Court. The governing consideration remains whether the procedure is being applied in aid of a fair and effective adjudication, or in a manner which occasions prejudice disproportionate to the procedural default.

15. This approach finds specific recognition in the catena of decisions of this Court, *inter alia*, in **Komal Gupta v. Amrendra Kumar Gupta**⁹. In the said Judgement, this Court, while considering the closure of the right of a party to file a Written Statement in a Divorce Petition, observed that “*in such matters of family disputes, the Family Courts have to be a little liberal and the stringent test, as*

⁹ 2023:DHC:6784



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may be applicable to commercial disputes, cannot be applied". The Court further emphasized that closure of the right to file a Written Statement may have grave personal consequences and that the approach of the Family Court ought to be guided by the object of the Family Courts rather than technicality of law. The relevant portions of the said Judgement, read as under:

"7. Though the respondent may be correct in his submission that the petitioner having being served with a notice of the Divorce Petition on 16.01.2021 should have filed her Written Statement, at the same time, keeping in view the peculiar facts of the present case and especially the fact that the Divorce Petition has been transferred by the Supreme Court to the learned Family Court, Patiala House Courts, and on such transfer, notice had earlier been issued to the parties to enter appearance and thereafter, by the order dated 22.12.2022, a period of thirty days had been granted to the petitioner to file her written statement, in my opinion, it was a fit case for the learned Family Court not to close the right of the petitioner to file her written statement, but to impose conditions for ensuring that the petitioner does not cause further delay in the adjudication of the Divorce Petition.

8. In such matters of family disputes, the Family Courts have to be a little liberal and the stringent test, as may be applicable to commercial disputes, cannot be applied. It is to be remembered that closing of the right to file written statement would result in grave personal consequences to the party concerned. The approach of the learned Family Court, therefore, has to be guided by the object of the Family Court, rather than the technicality of law. At the same time, in case the learned Family Court finds that the party is intentionally delaying the adjudication/progress of the proceedings pending before it, it must pass orders stipulating conditions to ensure that such party does not succeed in its attempt to delay the proceedings."

16. Turning now to the facts of the present case, it is noticed that the Order dated 02.04.2025, though it does not expressly record reasons for condoning the delay in filing the Written Statement, nevertheless proceeded on the basis that the Written Statement filed by Respondent No.1 was being taken on record. Significantly, on the same date, the Petitioner was directed to file replication, if any,



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thereto.

17. The subsequent Impugned Order dated 21.08.2025 specifically considered this aspect and concluded that, notwithstanding the absence of an express recital regarding condonation, the conduct of the learned Family Court in directing the Petitioner to file replication demonstrated that the Written Statement had been accepted on record. The learned Family Court, noticing the nature and effect of the relief sought, observed as under:

“5. I have considered the submissions from both the sides alongwith record.

6. Record shows that present petition was filed by the petitioner in May, 2024 in New Delhi district and vide order dated 06.05.2024, notice thereof was issued to both the respondents for 14.08.2024. It appears that R-1 had appeared in person on 14.08.2024 before Ld. Court concerned however by then, an order dated 05.07.2024 of Hon’ble Delhi High Court had been received directing the transfer of petition to Family Court (South), Saket where connected matter bearing no. 3017/2011 titled as Sumeeta Tuli Kapur Vs. WG CDR Retd Rakesh Lal Kapur was also pending. Accordingly, the matter was transferred from New Delhi district to South district and vide order dated 09.09.2024 of Ld. Principal Judge, Family Court (South), the case was transferred to this Court for 10.09.2024. On 10.09.2024, no proceedings could take place as Ld. Presiding Officer was not available (specific reason thereof is not there in the noting done by Ahlmad). On the next date i.e., 16.11.2024, Ld. Predecessor of this Court directed R-1 to file WS within 4 weeks with an advance copy thereof to the opposite party. Same was not so done. On 22.02.2025, R-2 was also reported as having been served on 30.11.2024 and both the respondents were directed to file their WS within 4 weeks with an advance copy to the opposite party. Matter was listed for 02.04.2025. It is an admitted fact that no WS was filed by R-2, so his right to file WS was closed on 02.04.2025. On the other hand, WS was filed by R-1 on that day. This fact has not been expressly so mentioned in the order. It appears that same was left out inadvertently. Vide same order, petitioner was directed to file replication, if any with advance copy to the opposite party. Interestingly, on that day when the petitioner was present alongwith his Counsel, no objection was taken regarding delay in filing the WS. Though, it is correct that no express observation regarding condonation of delay is there in the order dated 02.04.2025 still considering the fact that petitioner was



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directed to file replication by NDOH, it can be safely said that Ld. Court had condoned the delay in filing the WS. In any case, WS having been filed by R-1 and having formed part of record, this Court is unable to see as to how the right of R-1 to file WS can be closed now because she has already exercised that right. The judgment being relied upon by Ld. Counsel for petitioner is distinguishable on facts.

7. Considering the above discussion, this Court is unable to see any ground to allow the application. Same is accordingly dismissed.”

18. The learned Family Court further noticed that, when the Order dated 02.04.2025 was passed, the Petitioner was represented by learned counsel and no objection was raised to the filing of the Written Statement on the ground of delay. It was only subsequently that the Petitioner sought closure of the right of Respondent No.1 to file the Written Statement. The learned Family Court accordingly held that, once the Written Statement had already been filed and had formed part of the record, it was unable to see how the right of Respondent No.1 to file the Written Statement could thereafter be closed.

19. The relief sought in the subsequent Application under Order VIII Rule 1 of the CPC was as follows:

“....

(a) Close the right to file WS by Respondent No.1, as being opposed to Order VIII Rule 1 of CPC, as per averments made in the Application”

20. However, by the time the said Application came to be considered, the Written Statement had already been taken on record pursuant to the Order dated 02.04.2025. The relief sought by the Petitioner was, in substance, to undo the consequence of the earlier Order and to deprive Respondent No.1 of the defence which she had already placed on record.

21. In these circumstances, this Court finds no infirmity in the



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conclusion of the learned Family Court that the subsequent Application could not be permitted to operate as a means of closing a right which had already been exercised by Respondent No.1 and accepted by the Court. The consequence of granting the relief sought by the Petitioner would have been to strike off the Written Statement already forming part of the record and thereby substantially curtail the Respondent's opportunity to contest the Divorce Petition.

22. Such an approach would also be inconsistent with the aforesaid principle governing the application of procedural law in matrimonial proceedings. The fact that the Written Statement was filed belatedly is undoubtedly a relevant circumstance which the learned Family Court was required to take into consideration. However, the procedural default could not be considered in isolation from the subsequent conduct of the proceedings, particularly when the learned Family Court had already exercised its discretion to take the Written Statement on record and had, contemporaneously, directed the Petitioner to file replication thereto. Once that course had been adopted, the question before the learned Family Court was no longer whether the Written Statement ought, in the first instance, to have been received on record, but whether the Respondent should thereafter be deprived of the defence already permitted to be placed on record.

23. The reliance placed by learned counsel for the Petitioner upon ***M/s Aditya Hotels (P) Ltd. (supra)*** and in turn, upon ***Kailash (supra)*** does not persuade this Court to take a different view. The said Judgments undoubtedly emphasise that the time schedule prescribed under Order VIII Rule 1 of the CPC is ordinarily required to be adhered to and that extension of time cannot be claimed as a matter of



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routine. However, the question in the present case is not whether procedural timelines are to be disregarded. The question is whether, after the learned Family Court had, in the facts obtaining before it, permitted the Written Statement to be taken on record and proceeded further with the matter, the Respondent's defence could subsequently be struck off at the instance of the Petitioner. The aforesaid authorities, therefore, do not mandate such a consequence in the circumstances of the present case.

24. It is also significant that the learned Family Court has not permitted the Respondent an open-ended indulgence to delay the proceedings. Rather, it has proceeded on the basis that the Written Statement had already been filed and taken on record and that the Petitioner had been directed to file replication thereto. The learned Family Court has thus balanced the requirement of procedural discipline with the need to preserve an effective opportunity of defence. Such an exercise of discretion, particularly in the context of matrimonial proceedings, cannot be characterised as perverse, arbitrary or contrary to law so as to warrant interference under Article 227 of the Constitution.

25. The supervisory jurisdiction of this Court under Article 227 of the Constitution is intended to ensure that the subordinate Court has acted within the bounds of its jurisdiction and in accordance with law. It is not an appellate jurisdiction permitting substitution of the view of the learned Family Court merely because another view may be possible on the exercise of procedural discretion. In the present case, the learned Family Court has considered the relevant circumstances, including the filing of the Written Statement, the subsequent direction



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to the Petitioner to file replication, the absence of any objection when the Order dated 02.04.2025 was passed, and the nature of the relief subsequently sought by the Petitioner.

26. Viewed in the aforesaid conspectus, this Court finds no jurisdictional error, perversity or material irregularity in either of the Orders under challenge. In particular, no ground is made out for directing that the Written Statement of Respondent No.1, which had already been taken on record, be struck off and her right to defend the Divorce Petition be consequently closed.

DECISION:

27. The present Petition is, accordingly, found to be devoid of merit and does not warrant interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, and thus, is dismissed.

28. The present Petition, along with pending Application(s), if any, is disposed of in aforementioned terms.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 19, 2026/rk/DJ