



2026:DHC:3804-DB



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

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Reserved on: 17.03.2026
Date of decision: 05.05.2026

+ MAT.APP.(F.C.) 63/2026 & CM APPL. 12509/2026

SH. NIKHIL BHATIYAAppellant

Through: Mr. Aman Chawla, Adv.

versus

MS. SONAM SINGH BHATIYARespondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

1. The present appeal assails the Order dated 05.02.2026 (“impugned order”) passed by the learned Principal Judge, Family Court, South-West District, Dwarka Courts, Delhi (“Family Court”) in HMA No. 64/2024, whereby, the application filed for respondent was allowed and the Order of the Family Court dated 20.09.2024 was set aside *vide* which the defence of the respondent had been struck off.

2. As per the case of the appellant, the marriage between the appellant and the respondent was solemnized on 08.02.2019 as per Hindu rites and ceremonies. Out of the said wedlock, one male child was born who is presently residing in the care and custody of the respondent. Due to matrimonial discord and differences between the parties, the respondent left the matrimonial home along with the minor child in the latter part of 2023. The appellant filed a petition for divorce under Section 13(1)(ia) of the Hindu



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Marriage Act, 1955 (“HMA”) before the Family Court being HMA No. 64/2024.

3. On 18.04.2024, the respondent entered appearance before the Family Court. By an order passed on the same date, the appellant was directed to pay litigation expenses of Rs. 11,000/- within a week to the respondent, and the respondent was granted a period of four weeks to file her Written Statement. The next date of hearing was 05.08.2024. The litigation expenses were not paid within the aforesaid time. The respondent failed to file her Written Statement within the time provided. On 05.08.2024, although the then Presiding Officer had retired, and the successor had not taken charge, the respondent was duly represented through a Delhi Legal Services Authority (DLSA) counsel. In view of the respondent’s continued failure to file her Written Statement, the appellant moved an application seeking to strike off the defence of the respondent. The matter was thereafter listed on 20.09.2024, when the Family Court struck off the respondent’s right to file Written Statement. It is pertinent to mention here that the litigation expenses of Rs. 11,000/- were paid to the respondent after 20.09.2024 only, as is also recorded in the impugned order.

4. Subsequent to the order dated 20.09.2024 striking off the defence of the respondent, the matter was listed on 21.01.2025, on which date the then Presiding Officer stood transferred. Thereafter, the matter was adjourned to 15.04.2025; however, on the said date as well, no Presiding Officer was holding the Court. A successor Presiding Officer took charge, and the next effective date of hearing was 23.07.2025 on which Local Commissioner (“LC”) was appointed for the recording of the evidence on the request and the willingness of the appellant to bear the entire cost of the LC. Thereafter,



before the LC, the appellant was also cross-examined through the respondent's DLSA counsel and the appellant completed his evidence after due process.

5. On 14.10.2025, the respondent filed an application seeking setting aside of the Order dated 20.09.2024 and revival of her right to file Written Statement. Along with the said application, respondent also filed an application under Section 24 of the HMA, seeking maintenance.

6. The Family Court *vide* the impugned Order dated 05.02.2026 set aside the Order dated 20.09.2024 and revived the respondent's right to file a Written Statement. The Family Court *inter alia* held that by Order dated 18.04.2024, the litigation expenses of Rs. 11,000/- were to be paid within a week i.e., by 25.04.2024 and thereafter the Written Statement was to be filed within a period of 4 weeks i.e., by 16.05.2024, and the appellant himself is to be blamed for not filing of the Written Statement, as he did not pay litigation expenses within time.

7. Aggrieved thereby, the present appeal has been filed.

8. Learned counsel for the appellant submits that the respondent's application for setting aside the Order of the Family Court dated 20.09.2024 was highly belated and not maintainable, having been filed after nearly one year without any application for condonation of delay. It is contended that the statutory timeline under Order VIII Rule 1 CPC stood completely defeated, as the Written Statement was not filed within the permissible period. Reliance is also placed upon a judgment of Co-ordinate Bench of this Court in ***Smt. K.S. Sumi Mol v. Suresh Kumar E.K.***, MANU/DE/6494/2023. It is further submitted that the respondent, having participated in the proceedings and cross-examined the appellant without seeking recall of the order for a



considerable period, had waived her right.

9. As already noted above, the Family Court *vide* Order dated 18.04.2024 directed the appellant/petitioner to pay the litigation expenses of Rs. 11,000/- to the respondent within a week and the Written Statement was to be filed within a period of four weeks. The respondent, however, did not comply with the said order of the Family Court and paid litigation expenses after 20.09.2024 only. The appellant also did not dispute the direction to pay litigation expenses.

10. So far as the judgment in *Smt. K.S. Sumi Mol* (supra) is concerned, the same is misplaced. The said judgment lays down guidelines for speedy disposal of cases relating to marriage and family affairs; however, it does not deal with a situation where the party seeking to enforce such timelines has itself failed to comply with directions of the Family Court.

11. It is pertinent to note Section 23 of the HMA: -

“23. Decree in proceedings.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that

(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub- clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and”

(emphasis added)

12. Section 23 of the HMA embodies the principle that a party cannot be permitted to take advantage of its own wrong. Though the provision applies at



the stage of final adjudication, the underlying principle is one of equity and should apply to the conduct of parties throughout the proceedings.

13. In the present case, the appellant, despite a specific direction, failed to pay the litigation expenses within time. Thereafter, on 05.08.2024, the Presiding Officer had retired and the successor had not assumed charge. On 20.09.2024, the appellant sought striking off the defence of the respondent, and the Family Court passed the said order. However, the fact that the litigation expenses in compliance of its earlier direction had not been paid by the appellant to the respondent, was not duly considered at that stage. It was incumbent upon the appellant to pay the litigation expenses directed by the Family Court in time to enable the respondent to conduct her case properly. Appellant cannot be permitted, by his conduct, to put the respondent at a disadvantage and thereafter claim benefit of the same.

14. It is apposite to note that the Supreme Court in *Salem Advocate Bar Association, T.N. v. Union of India*, (2005) 6 SCC 344, held that the upper limit for filing of the Written Statement is directory and Written Statement filed beyond the upper limit can be condoned by the Court in appropriate cases. Further, in *Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd.*, (2021) 7 SCC 313, the Supreme Court held that there is no absolute bar on the Court in exercising its discretion to condone delay even in the absence of a formal application, where the facts so warrant.

15. In such circumstances, the Family Court rightly exercised its discretion in setting aside the earlier Order dated 20.09.2024 and permitting the Written Statement to be taken on record, particularly when the appellant himself had failed to comply with the direction regarding litigation expenses.

16. The equitable principle reflected in Section 23 squarely applies. The



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appellant, having failed to comply with the Court's direction, cannot be permitted to contend that the respondent should suffer the consequences of delay. To permit such a course would amount to allowing the appellant to take advantage of his own default. The impugned order of the Family Court dated 05.02.2026 was passed in equity, recording that appellant-petitioner is himself to be blamed for not filing of the Written Statement due to non-payment of litigation expenses.

17. In view of the above, we find no infirmity in the impugned Order dated 05.02.2026 of the Family Court.

18. It is clarified that the observations made herein are confined to the present appeal and shall not prejudice the merits of the case pending before the Family Court. The Family Court shall also proceed to decide the matter as expeditiously as possible.

19. The present appeal is accordingly dismissed.

20. Pending applications, if any, also stand disposed of.

**VIVEK CHAUDHARY
(JUDGE)**

**RAJNEESH KUMAR GUPTA
(JUDGE)**

MAY 5, 2026/nc