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

Date of decision: 18th July, 2023

+ **CM(M) 752/2023 & CM APPL. 23729/2023**

BABITA Petitioner
Through: Mr.Nitish Chaudhary,
Mr.Saurav Joon, Mr.Shaurya
Aditya Singh, Adv.
versus

MANISH SHOKEEN Respondent
Through: Mr.Prateek Maheshwari, Adv.

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA**

NAVIN CHAWLA, J. (ORAL)

1. The present petition has been filed challenging the orders dated 21.12.2022 and 21.03.2023 (hereinafter referred to as the 'Impugned orders') passed by the learned Principal Judge, Family Court, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Family Court') in HMA No.1027/2019, titled *Babita v. Manish Shokeen* (hereinafter referred to as the 'Divorce Petition').
2. By the Impugned order dated 21.12.2022, the learned Family Court was pleased to close the right of the petitioner herein to file her written statement and also struck off the defence of the petitioner. By the Impugned order dated 21.03.2023, the learned Family Court dismissed the application of the petitioner seeking recall of the order dated 21.12.2022.
3. It is the case of the petitioner that she is a resident of a village in



Jhajjar District, Haryana. She had earlier filed proceedings against the respondent herein in the Courts at Jhajjar. She was served with the summons in the Divorce Petition filed by the respondent and had appeared before the Court on 30.05.2022. She engaged a counsel practicing at the Tis Hazari Courts, Delhi to defend her in the Divorce Petition. She further states that she had filed a petition before the Supreme Court seeking transfer of the Divorce Petition from the learned Family Court at Tis Hazari Courts, Delhi, to the learned Principal Family Court at Jhajjar, Haryana, being TR.P.(C) 2395/2022, titled ***Babita v. Manish Shokeen***. In the meantime, and in spite of the imposition of costs of Rs.1,000/-, vide order dated 02.09.2022, her written statement could not be filed and the proceedings of the Divorce Petition were adjourned on 02.09.2022 and 09.11.2022, while granting her further time to file the written statement. On 20.12.2022, she tried to contact the counsel whom she had engaged for representing her before the learned Family Court, however, he was not reachable on his phone. The petitioner, therefore, travelled to Delhi and appeared in person before the learned Family Court and sought further time to file her written statement. The said prayer was rejected by the learned Family Court vide the Impugned order dated 21.12.2022. The petitioner states that she thereafter contacted the lawyer who was representing her in the proceedings before the Courts at Jhajjar, who advised her to prepare her written statement along with the application seeking recall of the order dated 21.12.2022, and file the same on 21.03.2023. The learned Family Court, however, has been pleased to dismiss the said application seeking recall of the order and refused to take her written statement on



record.

4. The learned counsel for the petitioner submits that during the pendency of the present petition, the Supreme Court vide order dated 10.05.2023, has been pleased to transfer the Divorce Petition to the learned Principal Family Court, Jhajjar, Haryana. He submits that the petitioner would suffer grave prejudice in case the present petition is not allowed. He submits that the petitioner is an uneducated lady staying in a village in Jhajjar District, Haryana with her 7 years old minor daughter. She is not being paid any maintenance by the respondent and finds it difficult to defend the case at Tis Hazari Courts, Delhi. He submits that in such matters, the Court should take a lenient view. He submits that the written statement was duly prepared and was to be filed on 21.03.2023.

5. On the other hand, the learned counsel for the respondent submits that the petitioner deserves no indulgence of this Court. He submits that the Impugned orders deserve no interference from this Court inasmuch as the petitioner has filed a false and frivolous complaint against the respondent, based whereon, an FIR bearing No.218/2022 dated 22.11.2018 has been registered against the respondent. He submits that the petitioner had filed the transfer petition before the Supreme Court in September, 2022, however, chose not to file her written statement before the learned Family Court. He submits that the assertion of the petitioner that she is an illiterate and uneducated person, is also false. In this regard, he makes a reference to a copy of the Identity Card of the petitioner issued by the MD University, Rohtak for a B.A. 3rd year course in 2013. He submits that the petitioner has also been filing proceedings before



various courts in English and it is only a false excuse now being taken by the petitioner of her not being conversant with the English language. He submits that the petitioner is motivated only to delay the adjudication of the Divorce Petition and, therefore, the present petition deserves to be dismissed. He further submits that the petitioner did not file her written statement from 30.05.2022 to 21.03.2023, that is, for a period of nine months, though, she was prosecuting her other litigations against the respondent.

6. I have considered the submissions made by the learned counsels for the parties. It is not denied that the petitioner has been residing at a village in Jhajjar District in Haryana with her minor child aged 7 years. It is also evident from the record that a counsel had appeared on her behalf before the learned Family Court on 02.09.2022 and 09.11.2022, clearly evidencing that she has engaged a counsel to represent her interest in the divorce petition. Though, it is correct that by merely filing a transfer petition before the Supreme Court, the petitioner could not have assumed by herself that she is not to file her written statement in the Divorce Petition, in my view, the above circumstances would act in mitigating the default that the petitioner has committed in not filing the written statement in time.

7. It is also to be kept in view that the petition pending before the learned Family Court was not commercial in nature, and valuable social/family rights of the parties are to be determined therein. The divorce petition already stands transferred to the Court of the learned Principal Family Court at Jhajjar, Haryana by the Supreme Court on the plea of the petitioner. In fact, it is worth noting that the divorce petition was filed in the year 2019, however, the respondent was



served only around 30.05.2022. The petitioner, therefore, had taken three years to serve the respondent. In view of these circumstances, the petitioner could have been shown one last indulgence by taking her written statement on record.

8. Accordingly, the present petition is allowed. The petitioner shall file the written statement, as was proposed to be filed on 21.03.2023, before the learned Family Court, Jhajjar, Haryana, within a period of one week from today. It is made clear that the petitioner shall not be shown any further indulgence in case of a default made in defending the Divorce Petition.

9. The petition, along with the pending application, is disposed of in the above terms.

NAVIN CHAWLA, J

JULY 18, 2023/Arya/AS

Click here to check corrigendum, if any