



1

MP-4263-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 5th OF AUGUST, 2024MISC. PETITION No. 4263 of 2024*SMT. JAYA RATHORE**Versus**MANGAL RATHORE*

.....
Appearance:

Ms. Abhijeeta Rathore, Advocate for petitioner.

None for the respondent.

.....

ORDER

This miscellaneous petition has been preferred by the petitioner under Article 227 of the Constitution of India being aggrieved by the order dated 22.07.2024 passed by learned Principal Judge, Family Court, Ratlam (MP) in HMA Case No.25 of 2022 (*Mangal vs. Jaya*), whereby the Family Court has dismissed the interim application to grant an opportunity to submit the reply/written statement to the petitioner.

(2) In brief, the marriage between the petitioner and respondent was solemnized according to Hindu rites and rituals on 24th May, 2015. Thereafter they both were blessed with a daughter. Respondent/husband has filed an application under Section 13(A) of Hindu Marriage Act, 1955, before the Principal Judge, Family Court, Ratlam (MP) which was registered as HMA Case No.25 of 2022 seeking divorce from the petitioner/wife.

(3) Thereafter due to failure of appearance even after service of notices to the



petitioner, the learned family court has declared her ex-parte and proceeded further on date 25.04.2022. Thereafter, on date 25.08.2022, the petitioner through her counsel appeared before the family court and has participated in the court proceedings. However, due to lack of knowledge regarding the correct hearing date, the petitioner and her counsel failed to appear before the family court as a result of which the family court has again declared the petitioner ex-parte. However, on 09.12.2023, the petitioner/wife through her counsel filed an application of Order 9 Rule 7 CPC which was allowed by the family court on a cost of Rs.2000/- and it was further directed to the petitioner to submit the written statement on the next date fixed as 25.01.2024. It is also submitted that on 25.01.2024, an application under Section 24 of Hindu Marriage Act was filed by the petitioner but on account of failure to submit the reply/written statement, the family court has closed the right of the petitioner. Hence the petitioner before this Court.

(4) Counsel for the petitioner submits that petitioner filed an application under Order 9 Rule 7 CPC which was allowed by the family court but on account of failure to submit the written statement, the family court has closed the right of her to cross-examine the respondent and his witnesses. He further submits that being aggrieved by the same, the petitioner has preferred a petition before the Hon'ble Court for setting aside of the said order. It is stated that liberty was granted to the petitioner to file appropriate application before the family court and in case, if the application is dismissed then she may again approach the Hon'ble Court. Thereafter vide order dated 03.07.2024, the petitioner has filed two separate applications one for granting opportunity to cross-examine the witnesses and the other for granting opportunity to submit the written statement or reply. Later on,



the respondent has submitted the reply of both the applications. Thereafter the family court has allowed the one of the application of petitioner to cross-examine the respondent and his witnesses but has denied the other application regarding submitting the written statement or reply in the matter. It is further submitted that in case the written statement is not allowed to be taken on record, the defence of the petitioner shall be prejudiced and would also impact the future of her young daughter. Reliance is further placed upon *Bharat Kalra vs. Raj Kishan Chabra, Civil Appeal No.3788 of 2022* decided by the Hon'ble Supreme Court of India on May 09, 2022.

(5) I have heard counsel for the petitioner and have perused the records of the case.

(6) For the purpose of procedure generally, the proceedings before the Family Court, subject to other provisions of the Family Courts Act, 1984 are governed by the Code of Civil Procedure, 1908 (CPC), other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973. A Family Court is accordingly deemed to be a Civil Court and has all the powers of such Court. However, it may be noticed that nothing in subsection (1) or sub-section (2) of Section 10 of the Family Courts Act, 1984 prevents 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 one party and denied by the other. It may also be noticed that Section 14 of the Family Courts Act, 1984 empowers the Family Court to receive as evidence any report, statement, documents, information or matter which in its opinion assists the Court to deal effectually with the dispute whether or not the same is relevant or admissible under the Indian Evidence Act, 1872. Also, Section 20 of the Family



Courts Act, 1984 provides overriding effect of the Act on other laws or instruments having effect of law. Thus, for the purpose of 'procedure' and for the 'purpose of evidence', the Family Court adopts a less formal procedure and is free to evolve its own procedure although Section 10 of the Act makes the procedure laid down under Code of Civil Procedure, 1908 applicable to the proceedings. The time period of filing written statement being in the realm of procedural law, can accordingly be extended under the Family Courts Act, 1984 if the applicant spells out exceptional circumstances or disability faced by him/her in filing the written statement, though ordinarily the time schedule for filing the written statement needs to be followed to deal with family disputes in an expeditious manner. The departure should be as an exception for the reasons to be assigned by the respondent and in case grave injustice would be incurred, if the opportunity to file the written statement is denied. The same depends upon the facts and circumstances of a given case.

(7) After hearing counsel for the petitioner and on perusal of the documents available on record as well as the aforesaid facts and circumstances of the case, this court is of the considered opinion that family court, Ratlam (MP) has committed error by not permitting the petitioner to submit the written statement. Therefore, it would be just and equitable to permit the taking of written statement on record subject to cost of **Rs.2000/-(Rupees Two Thousand Only)** to be paid by the petitioner to the respondent. The same would ensure the proper and effective adjudication of the petition filed by the petitioner.

(8) Accordingly, the order passed by the learned Principal Judge, Family Court, Ratlam (MP) denying the petitioner to submit the written statement is hereby set aside. Resultantly, the petition is allowed. No order as to costs.



- (9) Pending applications, if any, also stand disposed of.
- (10) Certified copy, as per Rules.

(HIRDESH)
JUDGE

Arun/-