

**S a vs.m A**

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**Court :** Delhi

**Decided On :** Dec-01-2017

**Appellant :** S a

**Respondent :** M A

**Judgement :**

# 31 IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

01. 12.2017 MAT.APP.(F.C.) 209/2017 & CM Nos.43478-43479/2017 S A M A versus ..... Appellant ..... Respondent Advocates who appeared in this case: For the Appellant For the

... RESPONDENTS

: Mr. J.K. Bhola, Advocate : None CORAM: HON'BLE MR. JUSTICE SIDDHARTH MRIDUL HON'BLE MS. JUSTICE DEEPA SHARMA

**JUDGMENT**

SIDDHARTH MRIDUL, J (ORAL) 1. The present appeal under Section 19(1) of the Family Courts Act, 1984, impugns an order dated 18.11.2017 passed by the Principal Judge, Family Courts, South-East, Saket, Delhi.

2. The issue that has been raised by the appellant wife in the present appeal is predicated on the submission that in a matrimonial proceeding under the Hindu Marriage Act, 1955 (hereinafter referred to as the said MAT.APP.(F.C.) 209/2017 Page 1 of 5 therein) the appellant wife (respondent is entitled to have an Act),

application under Section 24 of the said Act determined before filing a written statement in the divorce proceedings.

3. wife, we consider it appropriate to extract 18.11.2017 in full, which is reproduced hereinunder:-

"In order to appreciate the submissions made on behalf of the appellant the impugned order dated HMA No.5

M A Vs. S A1811.2017 Fresh petition received by way of transfer. It be checked and registered. Present:

... Petitioner

with counsel Sh. Subhash Tanwar. Respondent with counsel Sh. J.K. Bholia. Counsel for respondent submits that his application U/s 24 of HMA be decided first and thereafter, he shall file the written statement. Perusal of record shows that the litigation expenses as well as cost have already been paid to the father of respondent vide order dated 16.03.2017. Perusal of in this case put that respondent in her appearance on 14.05.2013 but till date written statement has not been filed on record. On the pretext of maintenance, respondent cannot be allowed to hold the proceedings for four years & that too when the litigation charges have already been paid to her. record further shows the This is last opportunity granted to the respondent to file the written statement within on week and supply the advance copy of the same to the petitioner who shall file the replication on the next date of hearing, failing which, adverse order shall follow. for replication/documents/admission/denial & issues as well matter List MAT.APP.(F.C.) 209/2017 Page 2 of 5 as arguments on the application U/s 24 of HMA on 30.11.2017. Copy of order be given dasti. sd/- (Madhu Jain) JUDGE FAMILY COURT, SOUTH EAST, SAKET, NEW DELHI/18.11.2017 4. A plain reading of the above extracted impugned order reveals that although the appellant wife put in her appearance in the divorce proceedings instituted on behalf of the respondent husband, as far back as on 14.05.2013; and even though litigation expenses, as well as, cost having already been received by her, she has delayed the filing of the written statement till date.

5. Learned counsel appearing on behalf of the appellant wife would invite our attention to the following decisions, in order to buttress his submission, that the appellant wife cannot be directed to file a written statement in the divorce proceedings prior to the disposal of her application under Section 24 of the said Act:-

"(i) (ii) Nidhi Banga vs. Mohinder Bir Singh, in MAT.APP.(F.C.) 53/2014, decided by this Court on 15.10.2014. Pramod Saigal vs. Amrita Sanghi, reported as 204 (2013) DLT454 (iii) Gaurav Sondhi vs. Diya Sondhi, reported as 12 (2005) DLT426 6. The decisions relied upon by the appellant wife do not come to her aid. In Nidhi Banga (supra), the court whilst considering the passing of an ex parte judgment by the trial court stated that ..in a given MAT.APP.(F.C.) 209/2017 Page 3 of 5 case without provision for the necessary expenses of the proceedings, it would be impracticable to insist upon the defending spouse even to file a written statement. In Pramod Sehgal (supra) a learned Single Judge of this Court whilst 7. disposing off the petition albeit not on the merits, directed disposal of an application under Section 24 of the said Act, whilst observing as follows:-

"10. Considering the overall facts and circumstances of the case and without deciding anything on merits of the case, the present petition is disposed of with the following directions:-

"(i) (ii) It is not in dispute that the pleadings in the pending application under Section 24 of Hindu Marriage Act, 1955 filed by the petitioner are complete. Both the parties were directed to file the affidavits as mentioned above. Let the same, if any, be filed within two weeks from today. The said application of the petitioner be disposed of at an early date as Court hopes that at least the said application would be disposed of by the learned trial court on or before 31st December, 2013 As soon as the above said application is decided, the petitioner is granted four weeks time to file the written statement as last opportunity irrespective of findings which would be arrived at by the learned trial court. In Gaurav Sondhi (supra), another learned Single Judge of this Court 8. directed the trial court to follow a prescribed procedure while granting an interim maintenance/maintenance in proceedings under the said Act and inter alia, observed as follows:-

"(vii) In case interim maintenance is being paid and adequate litigation expenses have been awarded to the wife, it should MAT.APP.(F.C.) 209/2017 Page 4 of 5 be ensured that the written statement/reply is filed within a reasonable time. the principle, 9. A perusal of the dictum of this Court in the above extracted decision clearly and unequivocally predicates that that a written statement shall be filed expeditiously and within a reasonable period of time; enshrined in the said judgments, does not in any manner come to the aid of the appellant wife, who has delayed filing of the same for over four years. Even otherwise, as observed by the learned trial court, litigation expenses have already been disbursed to the appellant wife.

10. In view of the foregoing, the present appeal seems to be an obvious attempt to further delay the disposal of the proceedings under the said Act, pending adjudication before the learned Family Court.

11. stand disposed of. The appeal is accordingly dismissed. The pending applications also SIDDHARTH MRIDUL (JUDGE) DEEPA SHARMA, J (JUDGE) DECEMBER01 2017 dn MAT.APP.(F.C.) 209/2017 Page 5 of 5

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