

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

+ C M (MAIN) NO.369/2009

Date of Decision: January 06, 2010

MAMEET KAUR ANAND Petitioner
Through: Mr. Ketan Malhotra, Adv.

versus

PAWANDEEP SINGH Respondent
Through: Mr. Vijay K. Sondhi, Adv.
with Mr. Saleem Hasan,
Adv. with Respondent in
person.

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**CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH**

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Respondent Pawandeep Singh has filed a petition for divorce under Section 13 (1) (i-a) of the Hindu Marriage Act (hereinafter referred to as 'Act'). In pursuance of the summons received by the

Petitioner Manmeet Kaur, appearance was put by her in the court on 11.12.2008 through her attorney Anil Kansal. However, petitioner failed to file her written statement on 29.01.2009 and thereafter. The trial court vide its impugned order dated 18.03.2009 struck off the defence of the petitioner for non filing of the written statement within the period of limitation. Aggrieved by the said order of the trial court, this petition has been filed.

2. Mr. Ketan Malhotra, learned counsel for the Petitioner has submitted that Petitioner could not file her written statement within the period of limitation and also within the extended time granted by the court because, her passport was kept in the High Court of Justice, Family Division London, UK in pursuance of the location order passed by the said Court in the petition filed by the respondent seeking return of the minor children to the jurisdiction of India. For want of passport, Notary Public was not authorized to attest the

Affidavit as the same was required to be produced before him by the Petitioner as per the local system prevalent in UK. He has further submitted that under the circumstances, trial court did not exercise its power within the ambit of law when it struck off the defence of the Petitioner vide impugned order dated 18.03.2009.

3. Mr. Vijay Sondhi, learned counsel for the respondent has submitted that this petition is signed by the Petitioner herself, though the enclosed Affidavit is that of Mr. Pankaj Malik Advocate. The Court had permitted the Petitioner to represent her through her attorney Mr. Anil Kansal. The Court even permitted him to file the written statement on behalf of the Petitioner. Despite this, Petitioner failed to comply with the directions of the Court and failed to file the written statement within the period of limitation. He has further argued that any other identification document could have been produced before the Notary Public in UK, beside, passport

like; driving licence, national identity card, the armed forces pass, firearms licence, other government issued ID, residential permit and benefit book or original notification letter from Benefits Agency along with the proof of residence. If the Petitioner was incapacitated in producing her passport before the Notary Public for attestation of the Affidavit, she could have produced any of the aforesaid documents before him for identification purposes. He has urged that Petitioner has been adopting delaying tactics with ulterior motives to delay the proceedings of the divorce petition.

4. On 3.10.2008, the trial court, on receipt of fresh petition, was pleased to issue notice to the respondent, returnable on 11.12.2008 on filing of PF, RC, courier, as well as through e-mail. On 11.12.2008 Mr. Anil Kansal appeared before the Court as an authorized power of attorney holder of the respondent and sought an adjournment for filing the vakalatnama of the counsel engaged by the

Respondent. The Court was pleased to adjourn the case for 29.01.2009 for filing of vakalatnama as well as written statement. On 29.01.2009 none had appeared on behalf of the Respondent at the call but at 11:30 AM Mr. Ketan Malhotra Advocate who is also representing the Petitioner in this petition put in appearance before the Court and filed his vakalatnama. The matter was listed for 19.02.2009. On 19.02.2009 another adjournment was sought for filing the written statement as the same had not been received from the Petitioner from UK. Mr. Malhotra informed the Court that written statement was sent to the Petitioner by e-mail on 16.02.2009. In the interest of justice, Court adjourned the matter to 18.03.2009 with costs of Rs.500/- for the delay with the directions to the Petitioner to file her written statement with copy to the Respondent in the meanwhile. On 18.03.2009, when written statement was not filed by the Petitioner, following order was passed by the trial court:-

"HMA No.534/08

18.3.2009

Present: Shri Saleem Hasan,
counsel for the Petitioner.

Shri Pankaj Malik, counsel
for the respondent.

Cost of Rs.500/- paid by
Ld.counsel for respondent to
Ld.counsel for the petitioner who has
accepted the same.

WS not filed even today. The
Ld.counsel for the respondent seeks
adjournment submitting that certain
documents are yet to be received
from the respondent who is in London.
Counsel for the petitioner is opposing
adjournment being sought on behalf
of the respondent. Appearance was
put in on behalf of the respondent on
11.12.2008. WS is available with the
Ld.counsel for the respondent, but it
does not even bear the signatures of
the respondent. Ld.counsel further
submits that WS sent to the
respondent is yet to be got attested
from Notary Public in London. On
19.2.2009, it was submitted that WS
had been sent to the respondent by E-
mail. Sufficient time has been given to
respondent but WS has not yet been
filed.

Since sufficient time has already
expired, but WS has not yet been filed
this court has no option but to order
for striking of defence of the

respondent. It is ordered accordingly.

Be put up on 29.4.2009 for
evidence of the petitioner.

Sd/-
ADJ/01/West/Delhi
18.3.2009”

5. As per the provisions contained under order VIII Rule 1 CPC, Petitioner was required to file her written statement within 30 days from the date of service of summons on her. The Court had the power to allow the Petitioner to file her written statement on some other day to be fixed by the court, for reasons to be recorded in writing. However, the Court could not have extend this period beyond 90 days from the date of service of summons. The date of service of summons upon the Petitioner is not known. However, the appearance was made by the Petitioner in the Court on 11.12.2008 through her authorized power of attorney holder, Anil Kansal. Petitioner was required to file her written statement within 30 days which ended on 10.01.2009. It seems that Court granted

some more time to the Petitioner to file her written statement and vakalatnama when it fixed the case for 29.01.2009 for filing of written statement. This period was further extended by the Court on 29.01.2009 to 19.02.2009 when the Petitioner failed to appear on the first call and subsequently her Advocate filed his vakalatnama in the Court. On 19.02.2009, another adjournment was sought. For the reasons stated in the order, Court further granted time to the Petitioner to file her written statement before 18.03.2009 and burdened the Petitioner with costs of Rs.500/- for delay in filing the written statement. Despite this, Petitioner failed to file her written statement. The Court, therefore, granted more than ninety days to the Petitioner to file her written statement.

6. On 18.03.2009, counsel sought adjournment on the grounds that some documents were yet to be received from the Petitioner who was in London and also that the written statement sent to the

Petitioner was yet to be got attested from the Notary Public. Nowhere, counsel for the Petitioner informed the trial court that passports of the Petitioner and the children were deposited in the High Court of Justice, Family Division in pursuance of the location order made on 22.09.2008. It is for the first time that in this petition this ground has been raised by the Petitioner. Be that as it may, admittedly, Petitioner never moved the High Court of Justice, Family Division to release her passport temporarily for the purpose of getting her written statement and Affidavit attested by the Notary Public as it was needed for identification purpose. As per the photocopy of the Notary Public Norwich, Margaret Masterson, containing information about the Notary Public, any of the following documents can be produced before the Notary Public for identification:-

“Each person whose signature they are to certify must provide one of the following original identification documents at the time of the

appointment.

- Valid passport
- Driving licence (paper copy with photo card)
- National identity card (EEA state members)
- An armed forces pass (with photo and signature)
- Firearms licence (with photo and signature)
- Other government issue ID (with photo and signature)
- Residence permit
- Benefit book or original notification letter from Benefits Agency.”

7. Thus, it is clear that if Petitioner was not in possession of the passport having been deposited in the High Court of Justice, Family Division, she could have produced any of the other documents before the Notary Public for identification to enable him to attest her Affidavit and written statement. However, she failed to do the needful.

8. This petition is signed and attested by the Petitioner herself, though the accompanying Affidavit is that of Pankaj Malik, her counsel. If she could sign the petition, she could have also sworn in Affidavit to be

annexed with the petition. The vakalatnama executed by the Petitioner is also signed by her. If the petitioner could sign his petition and also the vakalatnama executed in favour of her Advocate, she could have also signed the written statement and the affidavit to be annexed with the same. However, no explanation is forthcoming from the petition as to why and under what circumstances when she could sign this petition, she could not sign the written statement and the affidavit. Her signatures appearing on the petition before me and the vakalatnama is not notarized by the Notary Public, London, UK nor her signatures are identified and attested by the Indian Consulate at London. Under these circumstances, presumption would be that petition was here in India when she signed this petition and the vakalatnama. In case, she had not visited the India, then there is no proper petition before this Court.

9. Besides, the trial court had permitted the Petitioner

to file her written statement, signed by attorney or the Advocate, as the case may be, annexed with an Affidavit sworn in by her Advocate. Under these circumstances, nothing stopped the Petitioner to file her written statement annexed with the Affidavit of her lawyer or attorney, as the case may be, within the period of limitation or even during the extended period.

10. It seems that Petitioner has been playing for time with a view to prolong the disposal of the petition, as number of cases are pending adjudication inter se the parties. It is pertinent that even with this petition which was filed on 25.04.2009 and refiled on 27.04.2009, Petitioner did not care to file the written statement and her affidavit duly attested by the Notary Public. Conduct of the Petitioner, under the circumstances, clearly reflect that at no point of time Petitioner took any steps to get her written statement and affidavit prepared and attested by the Notary Public.

11. As pointed out above, when the Court had permitted the Petitioner to file her written statement through her attorney, she could have done the needful at the earliest but she failed for the same for the reasons best known to her. Hence, I find no merits in the petition, the same is accordingly dismissed.

12. CM APPL. No.5978/2009 for stay also stands dismissed.

**(ARUNA SURESH)
JUDGE**

JANUARY 06, 2010
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