

**JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT**

Writ Petition no. 195 of 2022

Imtiaz Ahmed

Versus

Judge Family Court, Islamabad-West and another

Petitioner by:	Malik Irfan Asif, Advocate
Respondent no.2 by:	Rai Muratib Ali Kharal, Advocate
Date of Decision:	<u>11.03.2022</u>

SARDAR EJAZ ISHAQ KHAN, J:- This writ petition assails the order dated 23.10.2021 striking off the petitioner's right to file his written statement in the family suit for maintenance and the order dated 11.01.2022 dismissing the application for recalling the striking off order.

2 On 11.02.2020, the petitioner/defendant (the husband) was ordered to file his written statement. On 11.03.2020, the defendant applied questioning the jurisdiction of the family Court and, on rejection of his application, filed an appeal and resultantly the family Court proceedings remained stayed. The appeal was dismissed and the trial resumed. On 12.10.2021, that is, almost 2 years after the family suit was filed, the trial court gave another last opportunity for the defendant to file his written statement. The order sheet notes that counsels for both the parties were present. On the next date of hearing on 23.10.2021, the defendant's right to file the written statement was struck off. The order sheet again notes that the parties' counsels were present. The petitioner's counsel contends that neither the petitioner nor his counsel were present on the aforesaid two dates and refers to the attendance on the cause list of the trial court where the petitioner's attendance is not marked. The respondent's counsel asserts that the cause list attendance sheet is not a reliable document because the attendance is marked in lead pencil, is not a certified copy, and above all contradicts the order sheet of the learned trial court which notes both the parties' counsels as present.

3 The petitioner's application for recalling the order striking off his right to file the written statement was dismissed by the family Court vide order dated 11.01.2022 for the reason that many opportunities had been granted to the defendant.

4 In the petition before me, as was the case in the application for recalling the impugned order, the ground for absence is taken as the petitioner's counsel being out of station for more than a month when the first impugned order was passed. He states that instead of striking off his right to file the written statement, the court should have ordered to proceed *ex parte* against him and cites *2015 YLR 2220* to claim that his right to due process and fair trial has been impinged by the impugned order. However, not only the facts of that case are different, the direction to the defendant in that case to file the written statement was not a speaking order, nor was that a family Court case.

5 Section 9 of the Family Courts Act 1964 (**FCA**) requires the defendant to file its written statement "*...on the date fixed under section 8.*" Section 8 of FCA provides for 15 days for the appearance of the defendant after the plaint is presented. Section 9(1) stipulates that the family Court may allow the defendant to submit the written statement on the next date which shall not exceed 15 days only where sufficient reason which prevented the defendant from submitting the written statement on the first date of appearance was shown. Reading sections 8 and 9 of the FCA together dovetails with the expedited trial process envisaged under the FCA, with the defendant being required to file its written statement within a maximum period of 30 days instead of the customary period of 30 days plus at least two (if not more) further opportunities (the latter with costs) for a regular trial under section 26A of the Code of Civil Procedure 1908.

6 Learned counsel's submission that he should have been proceeded against *ex parte* instead of his right to file the written statement being struck off appears to be a submission only in aid of further prolonging the trial, for in that case he would have moved an application to set aside the *ex parte* order giving effectively the same reasons as he is giving now for not filing the written statement, that is, the counsel's disappearance from the

station for more than a month. The net result would be the same, further prolonging the trial and defeating the object of the FCA of concluding the family Court proceedings as expeditiously as possible. The petitioner has already partly succeeded in that objective by contesting the jurisdiction of the family Court on frivolous grounds which has already consumed more than a year since it was filed. His right to file the written statement has been struck off but he can still cross-examine and make final arguments; he is not entirely bereft of the ability to conduct his defence. His being hampered somewhat in his defence due to the absence of a written statement is for reasons entirely attributable to him, for the impugned order clearly notes that there was no request for a further opportunity to file the written statement. He asks me to choose between the learned trial court's order sheet noting his presence and a photocopy of the attendance sheet on the cause list showing the petitioner as not present. I naturally choose the former.

7 In view of the foregoing, this petition is without merit and is therefore dismissed.

(SARDAR EJAZ ISHAQ KHAN)
JUDGE