

(2020) 02 J&K CK 0019
In the Jammu And Kashmir High Court
Case No : Civil Revisions No. 22 Of 2020

Amar Rice Mills & Another

APPELLANT

Vs

Union Bank Of India

RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 8 Rule 1

Citation : (2020) 02 J&K CK 0019

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Himanshu Beotra

Final Decision : Disposed Of

Judgement

1. The petitioners have approached this Court impugning the order dated 28.01.2020 passed by the learned Court below, vide which their right to file written statement has been closed and the case has been put up for evidence of the plaintiff-respondent herein.

2. Learned counsel for the petitioners submitted that a Civil Suit was filed by the respondent-Bank against the petitioners on 29.05.2019, in which

petitioners were served on 27.08.2019. However, copy of the plaint was not accompanying the notice. Hence, the petitioners were not able to prepare

and file their written statement. When the case was listed before the Court below on 01.10.2019, the petitioners had put in their appearance and the

copy of the Suit and the annexures were supplied to them at that time. Time was sought to file the written statement. The case was adjourned to

October 30, 2019. As the petitioner No. 2 is about 80 years of age and was not keeping good health and was even operated upon, though the written

statement was prepared, however, the same could not be signed and filed in the

Court. On 28.01.2020, the learned Court below rejected the application of the petitioners for extension of time to file written statement and their right to file the same was closed and the case was put up for evidence on 22.03.2020.

3. Referring to the judgment of the Hon'ble Supreme Court in case titled M/s Nahar Enterprises v. M/s Hyderabad Allwyn Ltd. and another

(2007) 9 SCC 466, it was submitted that when summons are sent requiring the defendants to appear and file written statement, it is obligatory on the

Court to send copy of the plaint and the documents annexed thereto. In the absence, the defendants cannot be said to at default.

4. Learned counsel further submitted that the provisions of Order VIII and Rule 1 of the Code of Civil Procedure have been held to be directory in

nature as the procedure is handmaid of justice which has to give way to the substantive rights of the parties. It is not the case where the petitioners

had been unnecessarily delaying the proceedings. First appearance of the petitioners was merely on 01.10.2019 and the right to file written statement

was struck off on 28.01.2020. Written statement is now ready. In case one more opportunity is granted, the petitioners shall file the same without

further delay. The case can also continue as per the schedule and proceed further on the date already fixed by the Court for the purpose.

5. For the view I am taking in the present petition, I do not deem it appropriate to issue notice to the respondents as the same would unnecessarily

further delay not only the disposal of the present petition but the Suit as well.

6. The stand taken by the petitioners is that though their service was effected on 27.08.2019, however, the summons were served without a copy of

the plaint and the documents accompanying the same. It was only on appearance of the petitioners on 01.10.2019 that the copies of the Suit and the

documents were supplied. Thereafter, the counsel for the petitioners had drafted the written statement. However, the same could not be signed as

petitioner No. 2 being a senior citizen of about 80 years of age was not keeping good health and had been operated upon. Now the same stands signed

and can be filed without any delay.

7. As far as the period prescribed for filing the written statement under Order 8 Rule 1 CPC, is concerned, the same has been held to be directory in

nature by judgments of Hon'ble the Supreme Court in Kailash v. Nanhku and

others, 2005(2) RCR(C) 379 and Surender Singh and others v. Omvati

and others, 2005(3) RCR(C) 786. It is further held therein that in exceptional circumstances the Court can extend time beyond 90 days for filing

written statement so as to avoid injustice being caused to the parties.

8. In M/s R. N. Jadi & Brothers & others v. Subhashchandra, 2007(2) RCR(C) 13,9 Hon'ble the Supreme Court considered the issue. Trial Court in

R. N. Jadi's case (supra) had granted time till a date which was beyond 90 days, however, written statement filed on that date was not accepted.

Hon'ble the Supreme Court, while accepting the plea of the defendant in that case directed the trial court to take note of the written statement already

filed by the defendant therein. The relevant observations of Hon'ble the Supreme Court are extracted below:-

â??8. Order VIII Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of

service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does

not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the

nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to

curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and

petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The

object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases

amount to justice buried.

9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but

the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be

denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the

provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet

extraordinary situations in the ends of justice.

10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. - Justice is the goal of jurisprudence-processual, as much as substantive??

9. Recently in *Atcome Technologies Limited v. Y. A. Chunawala and Company and others*, (2018) 6 SCC 639, the Honâ??ble Supreme Court

reiterated the aforesaid view holding that Court has discretion to allow filing of written statement beyond the period prescribed in exceptional case in case satisfactory reasons are forthcoming.

10. If the facts of the present case are examined in the light of enunciation of law as referred to above, I find merit in the submissions made by the

learned counsel for the petitioners. Reasons assigned by the petitioners for delay in filing of written statement deserve acceptance as the sole

proprietor of the petitioner No. 1 i.e. the petitioner No. 2, who is about 80 years of age and as claimed had been operated upon. The case has now

been fixed by the learned Court below for 23.02.2020 for evidence.

11. Considering the aforesaid facts, I deem it appropriate to grant one opportunity to the petitioners to file written statement on or before 02.03.2020

with copy in advance, against acknowledgement, to the learned counsel for the plaintiff-respondent. The plaintiff shall be entitled to file replication to

the written statement filed by the petitioners on or before the date already fixed by the learned Court below.

12. The idea being that the process of trial is not delayed any further and the same proceeds further in accordance with the procedure prescribed.

However, the petitioners are granted right to file written statement subject to payment of costs of ₹ 5,000/- to the plaintiff/respondent by way of bank

draft before filing of written statement. It is made clear that in case, the respondent is aggrieved of the order passed, it shall be at liberty to file

application before this Court for appropriate orders.

13. The revision petition is disposed of in the manner indicated above.