
(2009) 02 CHH CK 0005
In the Chhattisgarh High Court

Bhagwan Prasad Kushwaha and Others	APPELLANT
Vs	
Narayan Prasad Kushwaha and Another	RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148, 151

Citation : (2009) 2 MPHT 73

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioners/defendants impugn the order dated 4-1-2005 (Annexure P-5), whereby the written statement filed by the petitioners/defendant Nos. 1, 2, 3 and 5 was declined to be accepted on the ground that the same have been filed beyond the prescribed time.

2. The indisputable facts, in brief, are that the respondent No. 1/plaintiff filed a suit for declaration and permanent injunction on 3-9-2003 (3-8-2003) (Annexure P-I). The defendant No. 4 caused his appearance on 7-4-2004. Notices were served for appearance on 29-10-2003. The last date for filing of the written statement was given on 7-4-2004. As the defendants/petitioners could not file their written statement, the case was fixed on 15-5-2004 for hearing. On 15-5-2004 the petitioners/defendants made an application u/s 148 read with Section 151 of the Code of Civil Procedure, 1908 (for short, "the CPC") along with their written statement for taking the written statement on record beyond the prescribed time. It was stated in the application that the written statement could not be filed on or before 7-4-2004 as the petitioners/defendants' Counsel had undergone eye operation. On 4-1-2005 after hearing both the parties, learned Civil Judge, Class II, Surajpur, declined to "accept the written statement filed by the petitioner/defendant Nos. 1,2,3 and 5 on 15-5-2004. Thus, this petition seeking quashing of the order dated 4-1-2005 (Annexure P-5).

3. Despite service of notice, none appeared for respondent No. 1.

4. I have heard learned Counsel for the petitioner, perused the pleadings and documents appended thereto. The question involved in this case as to whether the written statement of the petitioners/defendants can be accepted after a period of 90 days.

5. The Supreme Court (three Hon'ble Judges) in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , while dealing with the newly amended provisions of Order VIII Rule 1 of the CPC held that the provision is directory, however, the order extending time to file written statement cannot be made in routine. Para 21 reads as under:

21. In construing this provision, support can also be had from Order 8 Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word "shall", the Court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if the written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Order 8 Rule 10, the Court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the Legislature has fixed the upper time-limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1.

6. The Supreme Court (three Hon'ble Judges) Kailash Vs. Nanhku and Others, , observed as under:

40. We find some merit in the submissions made by the learned Counsel for both the parties. In our opinion, the solution - and the correct position of law-lie somewhere midway and that is what we propose to do placing a reasonable construction on the language of Order 8 Rule 1.

41. Considering the object and purpose behind enacting Rule 1 of Order 8 in the

present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directly and not mandatory. In exceptional situations, the Court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact-the entire life and vigour-of the provision. The delaying tactics adopted by the defendants in Law Courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because by delaying the trial of election petition, the successful candidate may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may lose the battle at the end. Therefore, the judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence.

42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the Court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

7. Subsequently, the Supreme Court in R.N. Jai and Brothers and Others Vs. Subhashchandra, (two Hon''ble Judges - Hon''ble Dr. Arijit Pasayat & Hon''ble D.K. Jain, JJ.) approved the observations made by the High Court as under:

6. -14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

6. - 15. It is also to be noted that though the power of the Court under the Proviso appended to Rule 1 of Order 8 is circumscribed by the words "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided for though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The Courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to

be directory though worded in the negative form.

Hon"ble Shri P.K. Balasubramanyan, J. concurring with Hon"ble two Judges observed as under:

11. It is notorious that suits were being dragged on by the defendants in suits by not filing their written statements within a reasonable time. We are not unaware of cases where written statements were not filed even within two or three years of the filing of the suits. The control expected to be exercised by Courts, by the scheme of the Code, was not being exercised leading to slackness in the matter of filing of pleadings in defence. It was in that context that the relevant provisions of the CPC were amended, the laudable object being to avoid delay in the disposal of suits. The amended Order 8 Rule 1 fixes a time-limit for the filing of written statements. But, Parliament did not stop with amending Order 8 Rule 1 alone, i.e., introducing a time-limit for filing written statements and restricting the power of the Court to grant extension of time for filing written statements as 90 days from the date of service of summons. The power for extension of time granted to the Court u/s 148 of the Code was curtailed by introducing an outer time-limit of 30 days from the date originally fixed or granted. Thus, the Legislative intent to limit or curtail the power of the Court to extend the time for filing a written statement is obvious from a conjoint reading of these provisions.

14. It is true that procedure is the handmaid of justice. The Court must always be anxious to do justice and to prevent victories by way of technical knockouts. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in *Kailash v. Nanhku* which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the Court, in an appropriate case, to exercise a jurisdiction to take out the rigour of that provision or to mitigate genuine hardship. It was in that context that in *Kailash v. Nanhku*, it was stated that the extension of time beyond 90 days was not automatic and that the Court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time-limit fixed by the Code and the power inhering in the Court in terms of Section 148 of the Code. *Kailash* is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

8. In *Bollepanda P. Poonacha and Another Vs. K.M. Madapa*, , the Hon"ble Supreme Court observed as under:

13. The Court in such matters has a wide discretion. It must, however, subserve the ultimate cause of justice. It may be true that further litigation should be endeavoured to be avoided. It may also be true that joinder of several causes of action in a suit is permissible.

The Court, must, however, exercise the discretionary jurisdiction in a judicious

manner. While considering that subservance of justice is the ultimate goal, the statutory limitation shall not be overstepped. Grant of relief will depend upon the factual background involved in each case. The Court, while undoubtedly would take into consideration the questions of serious injustice or irreparable loss, but nevertheless should bear in mind that a provision for amendment of pleadings are not available as a matter of right under all circumstances. One cause of action, cannot be allowed to be substituted by another. Ordinarily, effect of an admission made in earlier pleadings shall not be permitted to be taken away. See State of A.P. and Others Vs. Pioneer Builders, A.P., and Steel Authority of India Ltd. Vs. Union of India (UOI) and Others, and Himmat Singh and Others Vs. I.C.I. India Ltd. and Others, .

9. A common thread running in the above cited cases is that though the provision of Order VIII Rule 1 of the CPC is procedural and directory, however, filing of written statement after a period of 90 days may be permitted for cogent reasons in order to facilitate the administration of justice and not in routine.

10. In the present case, the petitioners/defendants were granted time to file written statement on or before 7-4-2004. The written statement could not be filed on 7-4-2004, but the same was filed on 15-5-2004 along with an application for taking the written statement on record. The ground that the Counsel of the petitioners/defendants on account of his eye operation could not prepare and file the written statement is sufficient and weighty ground which can be held as beyond control of the petitioners/defendants.

11. It is well settled that for filing of the written statement, the upper time-limit is 90 days. However, the discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1 of the CPC. This is a case where the ground were such which necessitated extension of time.

12. For the reasons mentioned hereinabove, this petition is allowed and the written statement filed by the defendants/petitioners on 15-5-2004 shall be taken on record. For causing delay, the respondent No. 1/plaintiff shall be compensated by imposing a cost of Rs. 10,000/- payable by the petitioners/defendants within a period of three weeks from the date of this order.