

(2005) 05 KL CK 0036

In the High Court Of Kerala

Case No : O.P. No. 6422/03, W.P. (C) No's. 25302 and 26424 of 2003, 2049, 2396, 10427 and 19232 of 2004 and C.R.P. No's. 1021, 1028 and 1618 of 2003

Elamkunnapuzha Panchayat

APPELLANT

Vs

Dinkar

RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Civil Procedure Code Amendment Act, 2002 — Section 9

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 20 Rule 4, Order 47 Rule 1, Order 8 Rule 1(1), Order 8 Rule 1(2)

Citation : (2005) 05 KL CK 0036

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : T. Krishnan Unni, O. Ramachandran Nambiar, S. Sreekumar, Babu Karukapadath, George Abraham, Philip Mathew, Sajan Varghese, Deepu Thankan, Dilip Mohan, N.N. Sugunapalan, R. Lakshmi Narayan, Rajesh Kormath, Anil Kumar, A. Shafeek and V.A. Pradeep Kumar, for the Appellant; A.T. Anil Kumar, Rajan P. Kaliyath, T.H. Abdul Azeez, T. Sethumadhavan, J. Omprakash, Philip Mathew and P.B. Sahasranaman, for the Respondent

Final Decision : Allowed

Judgement

K. Padmanabhan Nair, J.—The core question arising for consideration in all these proceedings is the power of Civil Courts to grant further time beyond the time limit prescribed under Order VIII, Rule 1 of the CPC to file the written statement. The answer to the above said question depends upon the interpretation of Rules 1, 9 and 10 of Order VIII of the Code of Civil Procedure.

I have to state the facts briefly:

O.P. No. 6422 of 2003:

2. Elamkunnapuzha Panchayat, which is the Defendant in O.S. 455 of 2002 on the file of Additional Munsiff, Kochi is the Petitioner. The Respondent instituted

the suit. Summons in the suit was served on the Petitioner on 28-9-2002. The Petitioner appeared and the case was posted to 4-1-2003 for written statement. On that day, the counsel appearing for the Petitioner appeared and sought for two days time to file the written statement; According to the counsel, he misplaced the statement of facts furnished by the Secretary of the Defendant--Panchayat to prepare the written statement and, therefore, he could not prepare the written statement. The learned Munsiff set the Petitioner--Defendant ex parte on the ground that the written statement was not filed within ninety days and posted the case for ex parte evidence to 7-1 -2003. On 6-1 -2003, the Petitioner filed the written statement along with I.A. 49 of 2003 to accept the written statement. The Petitioner filed I.A. 48 of 2003 under Order IX Rule 7 to set aside the order declaring the Petitioner ex parte. The learned Munsiff dismissed I.A. 49 of 2003 on the sole ground that the Defendant failed to file the written statement within ninety days and I. A. 48 of 2003 on the ground that since the Petitioner did not file any written statement and without filing a pleading, the Defendant cannot be allowed to participate in the proceedings.

The suit was decreed ex parte. The Petitioner has filed this writ Petition challenging the two orders passed by the learned Munsiff in LA. Nos. 48 of 2003 and 49 of 2003 and also the Judgment passed in the suit. It is specifically contended that though the Petitioner has alternate remedy of filing an appeal against the decree, in view of die fact that the orders passed by the learned Munsiff were without jurisdiction and also on assuming non-existence of jurisdiction the Original Petition is maintainable. The Respondent has not filed any counter.

W.P. (C) No. 25302 of 2003:

3. The Defendant in O.S. No. 474 of 2002 on the file of Munsiff?s Court, Aluva is the Petitioner. The Respondent filed a suit for a decree of permanent prohibitory injunction. Summons in the suit was ordered and the case was posted for first appearance of the Defendant to 22-1-2003. But before that date, the Petitioner entered appearance as the Respondent/Plaintiff filed an injunction application which was subsequently dismissed on 13-12-2002. The Petitioner did not file the written statement within one month from 22-1-2003. The case was adjourned to 20-5-2003. The Petitioner filed the written statement on the re-opening day along with I.A. 948 of 2003 to accept the written statement. The learned Munsiff dismissed that application. This writ Petition is filed challenging that order.

W.P. (C) No. 26424 of 2003:

4. The Defendants in O.S. No. 84 of 2003 on the file of Munsiff s Court, Aluva are the Petitioners. The Respondent filed the suit for injunction and consequential reliefs on 25-2-2003. The suit was posted for the appearance of the Petitioners on 27-5-2003. According to the Petitioners, they engaged Advocate Sri Bose K. Thachil and they were under the impression that Advocate Sri Bose K. Thachil will appear before the Court on 27-5-2003. It is averred that on 26-5-2003 the

Advocate informed them that he will not appear for them and gave a No Objection Certificate. They engaged another lawyer on that day itself, who appeared on 27-5-2003 and filed I.A.988 of 2003 seeking time for filing written statement. The learned Munsiff dismissed I.A. 988 of 2003 and set the Defendants ex parte. The Petitioners filed written statement on 6-6-2003 along with I.A. No. 1054 of 2003 praying that the ex parte order may be set aside. The Court below did not accept the written statement, but allowed LA. 1054 of 2003 and permitted the Petitioners to contest the proceedings from the date of that order. The Petitioners have filed this writ Petition challenging the order passed by the learned Munsiff dismissing I.A. 988 of 2003.

W.P. (C) No. 2049 of 2004:

5. the Petitioner is the Plaintiff in O.S. No. 262 of 2002 on the file of Munsiff's Court, Manjeri. The suit was filed on 9-10-2002. Summons were served on the Respondent on 24-10-2002. The summons were issued to the Respondent through post were served on them on 29-10-2002. The suit was posted for the appearance of the Respondent--Defendant to 8-11-2002. On that day, there was no sitting and the suit was posted to 30-1-2003 and then to 5-3-2003. On 3-3-2003, the Defendant filed the written statement along with I.A. No. 672 of 2003 with a prayer to accept the written statement. The learned Munsiff overruling the objections raised by the Petitioner, allowed that LA. The writ Petition is filed challenging the order passed by the Court below allowing I. A.672 of 2003.

W.P. (C) No. 2396 of 2004:

6. The Defendants in C.S. No. 365 of 2003 on the file of Additional Munsiff's Court, Kochi are the Petitioners. Summons were served on the Petitioners on 29-9-2003 and the case was posted for their appearance on 27-10-2003. The Petitioners appeared and sought for time for filing written statement. The case was adjourned to 29-11-2003. According to the Petitioners, a written statement was prepared and entrusted the same with the Clerk of the Advocate for filing the same in the Court. Due to an inadvertent omission on the part of the Clerk, he failed to file the written statement on that day as it was misplaced. But the Clerk was under the bona fide impression that the same was filed. So, the Clerk informed the Petitioners as well as their counsel that the written statement was filed. A representation was also made in the Court to that effect. Based on that submission, the Court posted the case for framing issues to 16-12-2003. On 16-12-2003, it was noted by the Court that no written statement was filed and the case was posted to 13-1-2004. According to the Petitioners, then only the counsel for the Petitioners came to know that the written statement was not filed. A search was made and the written statement was traced out. The same was filed in the Court on 5-1-2004. On 13-1-2004, the learned Munsiff passed an order to the effect that the written statement filed on 5-1-2004 cannot be accepted as it was filed beyond the time provided under Order VIII Rule 1. The writ Petition is filed challenging that order.

W.P. (C) No. 10427 of 2004:

7. The Plaintiff's in O.S. No. 3 of 2003 on the file of Munsiff's Court, Manjeri are the Petitioners. The Petitioners filed the suit for declaration and consequential reliefs. The suit was posted for the appearance of the Defendants on 4-1-2003. On that day, the Defendants appeared. The learned Munsiff adjourned the suit to 11-6-2003 with a direction to the Defendants to file the written statement within thirty days. No written statement was filed before the expiry of ninety days. The 1st Defendant filed the written statement on 4-6-2003 along with I.A. 1148 of 2003 with a prayer to receive the written statement. The prayer was opposed. The learned Munsiff allowed that application and permitted the 1st Defendant to file the written statement after the lapse of ninety days. The Petitioners thereafter filed LA. 1558 of 2003 under Order XLVTI, Rule 1 read with Section 114 of the CPC for reviewing the order passed by the learned Munsiff on 11-6-2003. That application was dismissed by the learned Munsiff on 16-2-2004. The writ Petition is filed challenging that order.

W.P. (C) No. 19232 of 2004:

8. The Plaintiffs in O.S. No. 783 of 2003 on the file of Principal Munsiff, Cherthala are the Petitioners. The Petitioners filed the suit for redemption of a mortgage. Summons was issued to the Respondent with a direction to file the written statement on or before 9-1 -2004. The summons was served on the Respondent on 10-12-2003. On that day the case was adjourned to 17-3-2004 with a direction to the Respondent to file the written statement on or before 9-2-2004. The Respondent did not file the written statement on 17-3-2004. On that day he was set ex parte. The Respondent filed LA. 992 of 2004 for setting aside the order declaring him ex parte and also to accept the written statement to file. The prayer was opposed by the Petitioners. The Petitioners filed their objections to that application. The learned Munsiff allowed that application as per order dated 7-6-2004. The writ Petition is filed challenging that order.

C.R.P. No. 1021 of 2003:

9. The Defendant in O.S. 262 of 2002 on the file of Sub Court, Mavelikkara is the revision Petitioner. The revision Petitioner was served with summons on 18-10-2002. The case was posted for the appearance of the Defendant to 24-10-2002. On 24-10-2002, the Petitioner could not appear before Court. So, she was set ex parte and the case was posted for the evidence of the Plaintiff to 25-1-2003. On 25-10-2002 itself, the Petitioner filed LA. 2000 of 2002 for setting aside the ex parte order. That application was posted to 25-1-2003. On that day, the learned Sub Judge heard the LA. and dismissed the same holding that even if the Petition is allowed, the Petitioner cannot be allowed to file the written statement as the period fixed for filing the written statement was over. The Petitioner filed I. A. 531 of 2003 on 31-1-2003 with a prayer to review the order and also to accept the written statement filed by her. The written statement was also filed on 31-1-2003 along with LA. 531 of 2003. That application was also

dismissed. This Civil Revision Petition is filed challenging the order passed by the Sub Judge dismissing the Petition to set aside the ex parte order.

C.R.P. No. 1028 of 2003:

10. The Petitioner in C.R.P. 1021 of 2003 has filed this Civil Revision Petition also. On 18-10-2002, the Petitioner was served with summons. The Petitioner failed to appear. So, she was set ex parte. The Petition filed by her to receive the written statement was also dismissed. The Petitioner filed an application to review that order. The learned Sub Judge dismissed that application also. Challenging that order, this Civil Revision Petition is filed.

C.R.P. No. 1618 of 2003:

11. The Defendants in O.S. 2135 of 2002 on the file of Principal Munsiff, Irinjalakuda are the revision Petitioners. The case was posted for the appearance of the Petitioners to 20-3-2003. On that day, the Petitioners appeared and the case was posted to 31-5-2003 for filing the written statement. On that day, the written statement was not filed. So, the Petitioners were set ex parte. The Petitioners filed LA 1741 of 2003 fix-setting aside the order declaring them ex parte. That application was dismissed. This Civil Revision Petition is filed challenging that order.

12. In view of the importance of the matter, in O.P. No. 6422 of 2003 notice was given to the Bar Association and a number of lawyers in addition to the Advocates appearing for the parties in that writ Petition appeared before this Court and argued the matter. A large number of decisions were cited by both sides. The teamed Advocates who argued that the Courts have power to extend the time beyond the period of ninety days have argued that the provision contained in Order VIII is procedural in content. It is argued that though the word used is "shall", the provision is directory and not mandatory. It is also argued that while considering the jurisdiction of the Court to grant more time, this Court shall not consider the provisions contained in Order VIII, Rule 1 in isolation, but the same has to be considered along with the provisions contained in Rules 9 and 10 of Order VIII and also Sections 148 and 151 of Code of Civil Procedure. It is argued that the purpose of amending Order VIII, Rule 1 is to avoid undue and unnecessary delay, but no penal consequence is prescribed in case no written statement is filed within ninety days.

13. The counsel who opposed that argument, submitted that the word in Order VIII, Rule 1 is very clear. It is also argued that the Court shall consider the legislative history of the changes brought to Rule 1 of Order VIII. It is argued that a comparison of the amendments brought to Rule 1 of Order VIII in the year 1999 and 2002 make the legislative intent clear. It is argued that legislative intent was to take away the power of the Court to grant more than ninety days time to file the written statement. It is argued that the very purpose of introducing the new amendment was to cut short undue and unnecessary delay and also the dilatory tactics adopted by the Defendants to protract the matter by

seeking time for filing written statement It is argued that the provisions contained in Order VTA, Rule 1 is mandatory and since there is specific provision in the Code, the Court cannot invoke the powers conferred on it u/s 148 or Section 151 of the Code of Civil Procedure. It is argued that the provisions of Section 148 can be applied only when the Court grants time for doing a particular act and not when the CPC prescribes a time-limit for performing a particular act. It is also argued that the provisions of Section 151 cannot be invoked when there is express and clear provision in the Code.

14. The learned Counsel who argued in support of the proposition that the Court has power to enlarge the time has argued that the Court shall not forget the fact that the provisions contained in the CPC are procedural. The procedure is designed to facilitate justice and it is not a penal enactment which prescribes punishment or penalties. It is further argued that the laws of procedure are governed by the principles of natural justice, which requires that no man shall be condemned unheard. It is argued that there may be cases in which a person who receives the summons may be prevented from filing the written statement within thirty days from the receipt of the summons due to genuine reasons which are beyond his control. It is pointed out that a person who receives a summons asking him to appear on a future day may get himself involved in an accident and due to the injury sustained in the accident he may go into deep coma and remain in that state for more than ninety days from the date of receipt of summons. It is argued that if the Court takes a view that even in such a case the time cannot be enlarged and extended beyond ninety days, it will render the Courts impotent. It is argued that sometimes the Defendant may be prevented by sufficient cause on the date on which the case posted for his first appearance and he may appear within one or two days from that date and file a Petition under Order IX, Rule 7 to set aside the order declaring him ex parte and also a Petition to receive the written statement. It is argued that if that Petition is posted beyond ninety days and then rejected, it will cause undue hardship to the Defendant. It is argued that due to the failure on the part of the Court to take up a Petition filed under Order IX, Rule 7 within a period of ninety days, the party will lose opportunity to contest the case. It is pointed out that no action of the Court shall cause prejudice to the party. It is argued that a Defendant may be prevented from filing a written statement within ninety days from the date of receipt of summons due to various reasons beyond his control and hence the Court shall not take a hyper technical view. It is also argued that the provisions of Order VIII, Rule 1 cannot be read in isolation and that has to be read along with the provisions of Rules 9 and 10 of Order VIII and the harmonious construction of these three rules will show that Courts are having power to grant time to file written statement beyond the period of ninety days.

15. If the provisions contained in Order VIII, Rule 1 is interpreted to be mandatory, the only conclusion possible is that the legislative intent was to take away the power of the Court to grant time beyond the period of ninety days after the amendments effected to Order VIII, Rule 1 of C.R Code in the years 1999

and 2002. But, the suits filed prior to 1-7-2002 stands on a different footing. According to me, for a proper understanding of the intention of the legislature and also for taking proper decision, it is necessary to consider various amendments brought to Rules 1,9 and 10 of Order VIII.

16. Order VIII of the CPC deals with written statement The heading of that Order originally stood as "Written Statement and Set-off". The same was amended in the year 1976. The heading was amended as "Written Statement, Set-off and counter-claim". Rule 1 of Order VIII originally stood in the Code of Civil Procedure, 1908 was as follows:

Rule 1. The Defendant may, and if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

In Kerala State, the rule was amended from 9-6-1959 onwards. It reads as follows:

1. Written statement.--(1) The Defendant may, and, if so required by the Court, shall, at OT before the first hearing or within such time as the Court may permit, present a written statement of his defence and with such written statement shall produce in Court all documents, in his possession or power on which he bases his defence or any claim for set-off.

(2) Where he relies on any other documents as evidence in support of his defence or claim for set-off, he shall enter such documents in a list to be added or annexed to the written statement.

(3) A document which ought to be produced in Court with the written statement under Sub-rule (1) or to be entered in the list referred to in Sub-rule (2), but which has not been so produced or entered accordingly, shall not without the leave of the Court, be received in evidence on file Defendant's behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents produced for cross-examination of the Plaintiff's witnesses or handed to a witness merely to refresh his memory.

The rule originally stood gave the Defendant a discretion to file written statement unless the Court required him to do so within a particular time-limit He could have exercised his discretion at any time before the first hearing or upto some date fixed by the Court. The word "first hearing" means the day on which the Court goes into the pleadings in order to understand the contentions of the parties. Rule 6 of Order VTH deals with "set-off". Rule 8 deals with "new ground of defence". Rule 8 provides that any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the Defendant or Plaintiff, as the case may be, in his written statement Rule 9 deals with "subsequent pleadings". It reads as follows:

Rule 9. No pleading subsequent to the written statement of a Defendant other

than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

Rule 10 originally stood as follows:

Rule 10. Where any party from whom a written statement is required fails to present the same within the time fixed by the Court, the Court may pronounce Judgment against him or make such order in relation to the suit as it thinks fit.

17. Order VIII underwent changes in the year 1976. Rule 1 was amended by CPC (Amendment) Act, 1976 (Act 104 of 1976). It reads as follows:

1. Written statement.--(1) The Defendant shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

(2) Save as otherwise provided in Rule 8A, where the Defendant relies on any document (whether or not in his possession or power) in support of his defence or claim for set-off or counter-claim, he shall enter such documents in a list, and shall,

(a) if a written statement is presented, annex the list to the written statement:

Provided that where the Defendant, in his written statement, claims a set-off or makes a counter-claim based on a document in his possession or power, he shall produce it in Court at the time of presentation of the written statement and shall at the same time deliver the document or copy thereof to be filed with the written statement;

(b) if a written statement is not presented, present the list to the Court at the first hearing of the suit

(3) Where any such document is not in the possession or power of the Defendant, he shall wherever possible, state in whose possession or power it is.

(4) If no such list is so annexed or presented, the Defendant shall be allowed such further period for the purpose as the Court may think fit

(5) A document which ought to be entered in the list referred to in Sub-rule (2), and which is not so entered, shall not, without the leave of the Court, be received in evidence on behalf of the Defendant at the hearing of the suit.

(6) Nothing in Sub-rule (5) shall apply to documents produced for the cross-examination of Plaintiff's witnesses or in answer to any case set up by the Plaintiff subsequent to the filing of the plaint, or handed over to a witness merely to refresh his memory.

(7) Where a Court grants leave under Sub-rule (5), it shall record its reasons for so doing, and no such leave shall be granted unless good cause is shown to the

satisfaction of the Court for the non-entry of the document in the list referred to in Sub-rule (2).

Rule 1 was changed with intent to make it obligatory on the part of the Defendant to file written statement before the first hearing date. Rules 6A to 6G were introduced to enable the Defendant to make a counter-claim. Rule 8A was added, which dealt with duty of Defendant to produce documents upon which relief is claimed by him along with the written statement Rule 9 was amended by incorporating the words "or counter-claim" after the word "set-off". Rule 10 was also amended, which reads as follows:

10. Procedure when party fails to present written statement called for by Court.-- 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, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up.

In the object and reasons of the Amending Act (Act 104 of 1976) it was stated that Rule 10 was amended to provide for the consequences of non-filing of a written statement

18. Order VIII underwent drastic amendments in the year 1999 and also in the year 2000. Section 18 of the Act 46 of 1999 by which the CPC was amended in the year 1999 it was proposed to amend the rule by limiting the time-limit to file written statement to thirty days from the date of summons. The main change brought out was to add the following words "which shall not be beyond thirty days from the date of service of summons on the Defendant" after the words "within such time as the Court may permit". Rule 1A is also provided to be introduced Rules 8A, 9 and 10 were to be deleted. The amendments were proposed to ensure disposal of cases within a fixed time frame. The written statement accompanied by all documents shall be filed within thirty days. The amendment was opposed on the ground that it was unreasonable. The Bar Council of India and certain local Bar Associations asked the Government to relook into certain provisions which could cause hardship to the litigants. The Government reconsidered the matter and based on the outcome of the deliberations, brought further amendments to CPC consistent with the demand of fair play and justice. Further amendments to Order VIII were brought out by Section 9 of CPC (Amendment) Act, 2002 (Act 22 of 2002). Rule 1 of Order VIII was amended, which reads as follows:

1. Written statement--The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the Defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

After deleting Rule 9A, Rule 1A was added. Rules 9 and 10 which were proposed to be deleted by Act 46 of 1999 were reintroduced.

19. Learned Counsel who argued that the Courts have power to grant time beyond the period of ninety days had relied on the decisions reported in Nachipeddi Ramaswamy Vs. P. Buchi Reddy, Topline Shoes Ltd. v. Corporation Bank AIR 2002 S.C. 2487 Gundamaraju Sravan Kumar v. Yedudodla Narsi Reddy (2004) 16 I.L.D. 152 (A.P.) Dr. Shailaja v. S.G. Patil (2004) 15 I.L.D. 600 (Bomb.) and Ponnammal v. Subburaman and Anr. 2003 (4) C.C.C. 375(Mad.) in support of their argument

20. The learned Counsel who argued that the Court has no power to extend the time relied on the decisions reported in A. Sathyapal v. Yasmin Banu Ansari AIR 2004 KARN 246 Sukhdeo Rai v. Ashok Kumar Rai 2004 18 I.L.D. 143 Sham Kapoor Vs. Suraj Prakas Kapoor and Others, and Dr. J.J. Merchant and Others Vs. Shrinath Chaturvedi, .

21. I do not think it is necessary to discuss the various decisions cited at Bar by counsel appearing for both sides in view of the latest pronouncement by the Supreme Court in Kailash v. Nanhku and Ors. J.T. 2005 (4) S.C. 204 : 2005 (3) SC 603 the decision is rendered by a Bench of three Judges of the apex Court. Their Lordships considered a number of decisions rendered by the apex Court in the matter including the decisions rendered by a Bench of two Judges in Topline Shoes's case (supra) and J.J. Merchant's case (supra). After an elaborate survey of the legal position it was held as follows:

The CPC which consolidated and amended the laws relating to the procedure of the courts of Civil Judicature in the year 1908 has in the recent times undergone several amendments based on the recommendations of the Law Commission displaying the anxiety of Parliament to secure an early and expeditious disposal of civil suits and proceedings but without sacrificing the fairness of trial and the principles of natural justice in-built in any sustainable procedure.

The apex Court took note of the amendment brought out by Act 46 of 1999 and Act 22 of 2002. After considering the provisions contained in Order VIII, Rule 1, it was held as follows:

Three things are clear. Firstly, a careful reading of the language in which Order VIII, Rule 1 has been drafted, shows that it 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. Secondly, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Thirdly, the object behind substituting Order VIII, Rule 1 in the present shape is to curb the mischief of unscrupulous Defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of 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. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

The apex Court held that all the rules of procedure are the handmaid of justice.

It was held as follows:

Considering the object and purpose behind enacting Rule 1 of Order VIII 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 directory 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 nor proverbial as they do stand to gain by delay. There is more so in election disputes because by delaying the trial of election petition, the successful candidates may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may loose the battle at the end. Therefore, the judge trying the cast 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.

It was also held as follows:

(iv) The purpose of providing the time schedule for filing the written statement under Order VIII, Rule I of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the Defendant it does not impose an embargo on the power of the court to extend the time. Though, the language of the proviso to Rule 1 of Order VIII of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order VIII, Rule 1 of the CPC is not completely taken away.

(v) Though order VIII, Rule 1 of the CPC is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the Defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the Defendant and also be placed on record in writing, howsoever

briefly, by the court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the Defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the Defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.

In view of the principles laid down by the Apex Court in Kailash's case (supra), the position is very clear. Though in a normal case the Defendant has to file his written statement within thirty days, the Court has got power to grant further time in exceptional cases. For that purpose, the Defendant shall file a Petition explaining the reasons why he is seeking time and adduce evidence in support of that claim. The Trial Court shall consider the same and pass appropriate orders after hearing the objections of the other side.

22. In *Krishnan Nair v. Sivasankara Pillai* ILR 2005 (2) Ker 26, this Court considered the question whether the Defendant in a suit decreed ex parte can be permitted to file the written statement after the expiry of the ninety days while setting aside the ex parte decree. This Court held as follows:

Under Order IX, Rule 13, the Court can look into the ground and allow or reject the same. According to me, even if the written statement is not filed within 90 days, the Court can under Order IX, Rule 13, set aside the ex parte decree and grant time to file written statement.

This Court relied on the decision reported in *N. Ramaswamy's* case (supra).

23. In *Abdul Nazar v. Mariam Beevi* W.P. (C) No. 4542 of 2005 decided on 9-2-2005 Anr. learned Single Judge of this Court held that the amendment to Order VIII, Rule 1 cannot be construed as a fetter on the ground to allow the party to file a written statement beyond the time prescribed for filing the written statement. In *Abdul Nazar's* case (supra) the question arose for consideration was whether the Court can permit the Defendant to file the written statement beyond the period of ninety days while allowing a Petition filed under Order X, Rule 7 of the Code of Civil Procedure.

24. There may be cases in which the Defendant fails to appear on the date on which the case was posted for his first appearance. In such cases, the Court may set him ex parte and adjourn the case for hearing. In such cases, the Defendant may appear before the expiry of ninety days from the date of receipt of summons and file a Petition under Order IX, Rule 7 to set aside the order declaring him ex parte and permit him to contest the suit. If such Petition is heard and disposed of within a period of 90 days, the Defendant will get an opportunity to file written statement within the time-limit. So, the Court shall make every endeavour to dispose of the Petition before the expiry of ninety days. If an application filed within ninety days from the date of receipt of summons is posted after the expiry of ninety days, then the Court shall not dismiss that

application on the sole ground that the 90 days time prescribed for the filing of the written statement from the date of service of summons is over. It is well-settled position of law that no litigant shall suffer on account of an action of the Court. So, it is only just and proper that the period from the date on which the Defendant was set ex parte till the date of allowing the application is excluded while calculating the ninety days period. The question to be considered in a Petition filed under Order IX, Rule 7 of the CPC is whether the Defendant has shown sufficient cause for his non-appearance on the date on which the case was posted for his appearance. If the Defendant shows good cause for his previous non-appearance, he can be heard in answer to the suit "as if he had appeared on the day fixed for his appearance". If he does not show good cause, he cannot be relegated to the position he would have occupied if he had appeared. Even if he fails to show-cause, he has a right to take part in the proceedings from that stage. He cannot be stopped from participating in the proceedings, but he cannot put in a written statement unless he is allowed to do by the Court (See Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, In such cases, the reason for not filing the written statement within the time-limit may be incidental. The Court shall consider the reasons stated in the application and pass appropriate orders.

25. There may be cases in which the Defendant may fail to appear on any day to which the hearing is adjourned. In such cases, the Court may dispose of the suit in one of the modes directed in that behalf by Order IX of the CPC in view of the provisions contained in Order XVII, Rule 2 of the Code of Civil Procedure. In such cases, the Defendant may fail to file the written statement also within the time-limit. In such cases, the reason for his non-appearance and the reason for not filing the written statement may be different. In such cases, the Defendant shall plead and prove the reason for not filing the written statement and also show sufficient cause for his non-appearance.

26. There are cases in which the Defendant is set ex parte on the sole ground that he did not file the written statement within ninety days. That procedure is illegal. The consequence of not filing the written statement within the time-limit is provided under Order VIII, Rule 10 of the CPC and not under Order IX of Code of Civil Procedure. It is also to be noted that the mere fact that there is failure on the part of the Defendant" to file written statement does not confer power on the Court to decree the suit ex parte. In Balraj Taneja and Another Vs. Sunil Madan and Another, it was held that Rule 10 of Order VIII governs the situation where a written statement is required under Rule 1 and also the situation where it has been demanded under Rule 9. It was further held that Rule 10 gives a discretion to the Court not to pronounce the Judgment against the Defendant and instead pass such order as it may feel in relation to the suit. Even in such cases the Court can very well direct the Plaintiff to prove the case pleaded by him. So, it is not just and proper to set the Defendant ex parte on the sole ground that he has not filed the written statement within ninety days from the date of receipt of summons.

27. In view of the legal principles discussed above, I shall now proceed to consider each case on its merits.

O.P. No. 6422 of 2003

28. In this case, the specific case pleaded by the Petitioner is that the Defendant, which is a local body, furnished necessary statement of facts to the lawyer for preparing the written statement. But, due to an inadvertent omission on the part of the lawyer statement of facts were misplaced. So, he sought two days time to file written statement. That prayer was rejected on the sole ground that the Court has no jurisdiction to grant further time. After rejecting the prayer to grant time to file written statement, the Court below passed an order declaring the Petitioner-Defendant ex parte and the case was posted for the evidence of the Plaintiff. The Court below acted illegally in setting the Defendant ex parte on the mere ground that the Defendant failed to file the written statement

29. The prayer of the Defendant to set aside the ex parte order was rejected by the Court below on the ground that without having pleadings, the Defendant cannot be allowed to participate in the proceedings by setting aside the order made the Defendant ex parte in the case. Thereafter the learned Munsiff decreed the suit. As rightly pointed out by the counsel for the Petitioner, the Judgment passed in this case is not in conformity with the provisions contained in Order XX, Rule 4 of the Code of Civil Procedure. In Balraj Taneja's case (supra), the Apex Court has held as follows:

Whether it is a case which is contested by the Defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under. Order 8, Rule 10, the Court has to write a Judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

It was further held that the Judgment should be a self contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner. It was further held that the process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the Judgment. A perusal of Exhibit P-5 Judgment shows that it does not satisfy the principles laid down by the Apex Court in Balraj Taneja's case (supra) at all. Further the suit was decreed on a misunderstanding of the law that the Court has no jurisdiction to extend the time limit Still further, the Decree and Judgment passed in the case are only consequential to the orders passed in I.A. Nos. 48 and 49 of 2003. The orders passed by the Court in I.A. 48 of 2003 and I.A. 49 of 2003 are liable to be set aside. Since the Judgment and Decree are consequential to the orders passed in the petition, the same are also liable to be set aside.

30. In the result, the writ Petition is allowed. The orders passed in I.A. Nos. 48 of

2003 and 49 of 2003 in O.S. 455 of 2002 and also the Judgment and Decree passed in O.S. 455 of 2002 are hereby set aside. The Court below is directed to take I.A. Nos. 48 of 2003 and 49 of 2003 back to file and dispose of the same afresh in accordance with law.

W.P.(C) No. 25302 of 2003

31. Here, the Trial Court rejected the prayer of the Petitioner to accept the written statement on the sold ground that the Court has no power to extend the time. That order is also liable to be set aside. The Court has to reconsider I.A. 948 of 2003 and pass fresh orders.

32. In the result, the writ Petition is allowed. The order passed by the Court below dismissing I.A. 948 of 2003 is hereby set aside. The learned Munsiff is directed to take I.A. 948 of 2003 back to file and dispose of the same in accordance with law.

W.P. (C) No. 26424 of 2003

33. The only reason for rejecting I.A. 988 of 2003 seeking further time to file written statement was that the Court has no power to grant more than ninety days time. So, that order is also liable to be set aside.

34. In the result, the writ Petition is allowed. The impugned order passed in I.A. 988 of 2003 is hereby set aside. The learned Munsiff is directed to take I.A. 988 of 2003 back to file and dispose of the same afresh in accordance with law.

W.P. (C) No. 2049 of 2004

35. This writ Petition is filed by the Plaintiff challenging the order passed by the Munsiff in I.A. No. 672 of 2003. The Court below allowed the application by the following order

"Counter filed. Heard. Petition allowed."

There is absolutely no discussion. The learned Munsiff has not considered whether the Defendant had shown any valid reason for allowing the application. It is well-settled position of law that an order may be brief, but it shall not be a blank one. Since the impugned order is a blank one, I have no other option but to set aside that order.

36. In the result, the writ Petition is allowed. The order passed by the Court below allowing I.A. 672 of 2003 in O.S. 262 of 2002 is hereby set aside. The learned Munsiff is directed to take I.A. 672 of 2003 back to file and dispose of the same afresh in accordance with law.

W.P.(C) No. 2396 of 2004

37. In this case, the summons was served on 29-9-2003. The written statement was filed on 5-1-2004. But, the Petitioners did not file any Petition to receive the same. Of course, the Petitioners in the writ Petition had stated reasons for not

filing the written statement within the time-limit prescribed. According to the Petitioners, the written statement was prepared in time and entrusted with the Clerk of the Advocate for filing the same in Court, but it could not be filed in time as it was misplaced. It is only just and proper that another opportunity be given to the Petitioners to file a proper application stating the reasons for not filing the written statement within the stipulated time. If such a Petition is filed, the Court below shall consider the same and dispose of it in accordance with law after giving an opportunity to the Respondents/Plaintiffs to file their objections. For that purpose, the order passed by the Court below in C.S. 365 of 2003 on 13-1-2004 rejecting the written statement is to be quashed.

38. In the result, the writ Petition is allowed. The order passed by the learned Munsiff on 13-1-2004 in C.S. 365 of 2003 rejecting the written statement filed on 5-1 -2004 is hereby quashed. The Petitioner is given two weeks" time from the date of receipt of a copy of the judgment to file a proper application explaining the reasons for not filing the written statement in time. If such a Petition is filed, the Court below shall hear and dispose of the same after giving a reasonable opportunity to the Plaintiffs to file their objections.

W.P. (C) No. 10427 of 2005

39. The writ Petition is filed by the Plaintiffs in the suit dismissing a review Petition filed by them to review an order passed by the Court below by enlarging the time beyond ninety days and accepting the written statement. The written statement was not filed within ninety days. The Defendant filed I.A. 1148 of 2003 for receiving the written statement. The Court below overruling the objections raised by the Petitioners allowed the same and accepted the written statement. Thereafter the Petitioners filed I.A. 1558 of 2003 under Order XLVII, Rule 1 of the CPC to review the order passed by the trial Court in I.A. No. 1148 of 2003. That I.A. was dismissed holding that there is no error apparent on the face of the records. In view of the principles laid down in Kailash"s case (supra), the Court has power to grant time. The view taken by the Court below that there is no error apparent on the face of the record is correct. If the Petitioners were aggrieved by the order passed in I.A. 1148 of 2003 by which the written statement was received, they ought to have challenged that order. So, I do not find any reason to interfere with the order impugned in this writ petition. So, the writ Petition is only to be dismissed.

40. In the result, the writ Petition is dismissed.

W.P. (C) No. 19232 of 2004

41. The Plaintiffs in the suit has filed this writ Petition challenging an order passed by the Court below in I.A. No. 992 of 2004 in O.S. No. 783 of 2003 by which the Court below set aside the ex parte order and accepted the written statement filed by the Respondent. The main ground urged in the writ Petition is that in view of the provisions contained in Order VIII, Rule 1, the Court has no power to grant more than ninety days time. The Petitioners rely on the decision

reported in A. Satyapal's case (supra) in support of that contention. In view of the legal principles stated above, I do not find any reason to interfere with the order passed by the learned Munsiff by which she set aside the order setting aside the Respondent ex parte and received the written statement. So, the writ Petition is only to be dismissed.

42. In the result, the writ Petition is dismissed.

C.R.P. Nos. 1021 & 1028 of 2003

43. The first Defendant is the Petitioner in both these Civil Revision Petitions. The Petitioner received notice on 18-10-2002. The date fixed for appearance was 24-10-2002. On that day, she could not appear. The learned Sub Judge declared the Defendant ex parte and posted the case to 25-1-2003. On 25-10-2002, that is to say on the 7th day of the receipt of summons, the Petitioner appeared before the learned Sub Judge and filed I.A. 2000 of 2002 under Order IX, Rule 7 to set aside the ex parte order passed against her. The learned Sub Judge could have considered the application without much delay. But, that application itself was posted to 25-1-2003 i.e. after ninety days from the date of service of summons on the Defendant. Thereafter the learned Sub Judge dismissed that application holding that even if that application is allowed, he has no jurisdiction to receive the written statement. The learned Sub Judge failed to take note that in view of the order passed by him on 24-10-2002 the Defendant need not file the written statement on 18-11-2002 or 18-1-2003 as she was set ex parte. In view of the principles laid down in Krishnan Nair's case (supra) and Abdul Nazar's case (supra), the view taken by the learned Sub Judge is unsustainable. In this case the Court could have posted the I.A. filed under Order IX, Rule 7 within one month and could have disposed of the same in which case the Defendant could have filed the written statement within a period of ninety days provided under Order VII, Rule 1. So the order passed by the learned Sub Judge on 25-1-2003 and the order dated 31-1-2003 are illegal. It is only just and proper that the said orders are set aside and the learned Sub Judge directed to reconsider the application afresh and dispose of the same in accordance with law.

44. In view of the fact that I am setting aside the order passed by the learned Sub Judge in I.A. 2000 of 2002, it is not necessary to consider whether the revision Petitioner has shown sufficient cause for reviewing that order. So, the C.R.P. filed against the order passed by the Court in I.A. 531 of 2003 has become infructuous and that is only to be dismissed.

45. In the result, C.R.P. 1021 of 2003 is allowed. The order passed by the Court below on 25-1-2003 and 31-1-2003 in I.A. No. 2000 of 2002 are hereby set aside. The learned Sub Judge is directed to take I.A. 2000 of 2002 back to file and dispose of the same afresh in accordance with law.

46. C.R.P. 1028 of 2003 is dismissed as infructuous.

C.R.P. No. 1618 of 2003

47. The Defendants are the revision petitions. Challenge in this Civil Revision Petition is an order passed by the Court below dismissing an application filed by the Petitioners under Order IX, Rule 7 by which they were set ex parte. The summons was served on the Petitioners and they entered appearance on 20-3-2003. Time was granted to them till 31-5-2003. The Petitioners failed to file the written statement within ninety days from the date of receipt of the service of summons. So, the Court below set them ex parte. They filed a Petition under Order IX, Rule 7 to set aside the order. That application was rejected on the sole ground that the period of ninety days fixed for filing the written statement was over and if the ex parte order is set aside, that would amount to granting time beyond the period of ninety days fixed under Order VIII, Rule 1. In view of the legal principles stated above, the order passed by the learned Munsiff is liable to be quashed. The Petitioners will be given a reasonable opportunity to establish their case for not filing the written statement in time.

48. In the result, the Civil Revision Petition is allowed. The order passed by the Court below on 24-6-2003 dismissing I.A. 1741 of 2003 is hereby set aside. The learned Munsiff is directed to take I.A. 1741 of 2003 back to file and dispose of the same afresh in accordance with law.

The writ petitions and civil revision petitions are ordered as above. No costs.