
(1984) 05 DEL CK 0074

In the Delhi High Court

Case No : Civil Suit No. 318 of 1981

Pandit Narain Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-05-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 1, Order 10 Rule 2, Order 27 Rule 4, Order 27 Rule 5, Order 5 Rule 5
Delhi High Court (Original Side) Rules, 1967 — Rule 1, 2, 3, 4
General Clauses Act, 1897 — Section 22

Citation : AIR 1985 Delhi 163

Hon'ble Judges : D.P Wadhwa, J;D.K. Kapur, J

Bench : Division Bench

Advocate : Diwan Naubat Rai and D.N. Nijhawan, for the Appellant; U.L. Watwani, for the Respondent

Judgement

D.K. Kapur, J.—The facts relating to this reference to a Division Bench have been detailed in the referring order. It is not necessary to set out many details here. The plaintiff has filed a suit in which the Union of India and the Delhi Development Authority are the defendants. The Union of India has been praying for time to file its written statement and has been granted adjournments for this purpose. On 6-9-1981, it was urged by learned Counsel for the plaintiff that the time to be granted to the Union of India for filing its written statement could not be extended for more than two months because of the amendment to Order 27, Rule 5, Civil P.C. in 1976. In any event, both the Union of India and the Delhi Development Authority have filed their written statements along with applications praying for condoning the delay in filing the same.

2. According to the plaintiff, the time cannot be extended in the case of the Union of India, so the matter has been referred to this larger bench for deciding the following four points:

1. Whether the provisions contained in Rule 5 of Order 27, Civil P.C., bar the

jurisdiction of the Court to extend time to the Union of India for filing the written statement for a period beyond two months in the aggregate after the first date fixed for the filing of the written statement?

2. Whether the time could be extended for filing the written statement in exercise of the powers u/s 148 or Section 151, Civil P.C., even though the jurisdiction of the Court is specifically barred under Rule 5 of Order 27, Civil P.C.?

3. Whether the time for filing the written statement could be extended under Rule 4 of Chapt. VI, Delhi High Court (Original Side) Rules, even if it was held that Rule 5 of Order 27 barred the jurisdiction of the Court to extend such time?

4. Whether Rule 4 of Chap. VI Delhi High Court (Original Side) Rules, stands abrogated because of the amendment of the Civil P.C. by Act 104 of 1976, in view of the provisions contained in Section 22, General Clauses Act?

In the referring order, some reference has been made to two decisions of Talwar J., in I.A. No. 1743 of 1980 in Suit No. 1431 of 1979, *Dewan Naubat Rai v. Dalbir Singh* and I.A. 3096 of 1982 in Suit No. 7067 of 1980 *Rani Shaver Poultry Breeding Farm Pvt. Ltd. v. Directorate of Animal Husbandry* wherein Talwar J. expressed the opinion that Order 27 Rule 5 did not bar the extension of time for filing the written statement.

3. We have examined the various provisions of law and we think that it would be useful to recall that Order 27, Rule 5 has been in the Code from the beginning and has presented no difficulty in interpretation. The only addition made in 1976 were the words : "but the time so extended shall not exceed two months in the aggregate". This has led to the contention that the time for filing the written statement cannot be extended by more than two months. If the other provisions of the Code are examined along with this provision, the provision may not appear to give rise to such a controversy.

4. Order 5, Rule 5 of the Code shows that the Court can issue summons either for settlement of issues or for final disposal of the Suit. Rule 6 of Order 5 states that the Court fixes a date for this purpose according to the current business of the Court, the place of residence of the defendant and the time necessary for serving the summons. The particularly important words of this Rule are : "and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day".

5. If a summons is issued to a party other than the Government, the criterion for fixing the date is to be found in this Rule. However, there is a departure in the case of Government because of Order 27, Rule 5. In the case of a Government, the service is not to be on the party, but on the Government pleader. Rule 4 of Order 27 states:

4. Agent for Government to receive Process.

The Government pleader in any Court shall be the agent of the Government for

the purpose of receiving processes against the Government issued by such Court.

Then comes Rule 5, fixing a day for appearance on behalf of Government. Rule is in the following terms:

5. Fixing of day for appearance on behalf of Government.

The Court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the Government, and may extend the time at its discretion but the time so extended shall not exceed two months in the aggregate.

As will be presently plain, this Rule can be read in many ways because it is ambiguously worded.

6. We can now contrast this with the language of Order 5, Rule 6. That Rule states:

6. Fixing day for appearance of defendant. The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Both these provisions, Order 5, Rule 6 and Order 27, Rule 5 are concerned with the fixing of dates for appearance of defendants. In normal cases, Order 5, Rule 6 applies. In the case of a Government as service is on an agent and not on the principal, some extra time has to be allowed which is provided for in Order 27, Rule 5. In practice, what it means is that if the defendant is not a Government, then the Court shall have regard to its own business and the place where the defendant resides and the time likely to be taken for service. In the case of Government, the service is to be effected on the Government pleader and so not much time is required to serve the summons but at the same time, when a Government Pleader has to communicate with the Government to get instructions, and for this purpose, some time has to be granted, the Court can take this into consideration, and the time can also be extended by a period of two months.

7. Neither Order 5, Rule 6, nor Order 27, Rule 5 is concerned with the filing of a written statement. The first stage in a suit is to effect service on the defendant in such a way, as to enable him to appear and answer the claim in suit. The Court is not concerned with what the defendant may do. He may admit the claim, or he may deny the same, or he may partly admit the same and partly deny the same; he may choose to remain absent and not to defend the suit. This is not the Court's business. The Code has been designed to give the defendant a reasonable opportunity of defending the suit if he wants to. Neither of these provisions, therefore, is concerned with the filing of the written statement.

8. It may be seen that the language used in the two, provisions is very similar. The defendant under Order 5, Rule 6 is to be given sufficient time to appear and answer. Similarly, the Government Pleader is to be given sufficient time to appear and answer on behalf of the Government.

9. The provision dealing with the filing of the written statement is in Order 8, Rule 1, which is quite differently worded. This provision reads, under the amended Code, 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....

Therefore, the defendant need not file a written statement till the first hearing of the suit. It may be noted here that the provisions applicable to the Original Side are somewhat different as far as the Civil P.C. is concerned. Order 8, Rule 1 has been amended in Punjab and Delhi to say that "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". It is not mandatory under the amended Code in Punjab and Delhi to file a written statement by the first date of hearing, but if the Court directs it, then the written statement has to be filed.

10. There has been much controversy among the High Courts and in the reported cases as to which is the real first hearing of the suit for the purpose of filing a written statement. The law states that the last day for filing the written statement is the first hearing, but the Courts have held that the first day of hearing is that which is specified in Order 10, Rule 1. It is the date when the Court actually takes up the case and asks each party whether he admits or denies allegations. Order 10, Rule 1 reads:

1. Ascertainment whether allegations in pleadings are admitted or denied.

At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Then Rule 2 also states that on the first hearing of the suit, the Court has to examine orally such of the parties as are appearing in person. This provision indicates that the first hearing of the suit is the date on which the suit is taken up by the Court for settling the issues. If we read Order 8, Rule 1 with Order 10, Rules 1 and 2, we find that the written statement can be filed right up to the date of first hearing. Now, there does not appear to be any reason why the written statement of a Government cannot be filed up to the first date of hearing as in the case of other parties. Order 8, Rule 1 has no other meaning. As far as we can ascertain from the record of the present suit, the first hearing of the suit

has not taken place. So, if the Code is to apply, the time for filing the written statement has not expired. The question of extending the time will only arise when the initial time expires. The initial time is fixed by Order 8, Rule 1. Whether we take the provisions of Order 8 Rule 1 or we take the position as under the Punjab and Haryana amendment which is applicable to Delhi, wherein the word "shall" has been replaced by "may" the time for filing the written statement has not expired. So, the question of extension of time has not yet arisen.

11. If we take the position of the plaintiff as correct, namely, that Order 27, Rule 5 fixes the date for filing the written statement, then the operation of Order 8, Rule 1 in the case of [Government will become impossible. No Government will know when it has to file its written statement and we do not see how the express language of Order 8, Rule 1 can be modified by the somewhat inept and ambiguous language of Order 27, Rule 5. Similarly, Order 5, Rule 6 fixes the date of appearance of the defendant other than the Government and there also it is stated that the defendant has to appear and answer on such day. A similar argument could be advanced that the defendant must file the written statement on the day fixed. This interpretation has not so far been adopted by any Court as far as we are aware and we do not think we should apply the provisions of Order 27, Rule 5 in such a way. An argument somewhat like this was advanced before the Supreme Court in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, , where the Court referred to Sections 27, 30 and 32 of the Code. Section 27 says that where a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim. Section 30 refers to discovery, etc., and Section 32 to penalties. The Court noted as follows:

The antithesis that Section 32 draws between Section 27 and Section 30 is that an omission to appear in response to a summons u/s 27 carries no penalty in the strict sense while disregard of a summons u/s 30 may entail punishment. The spirit of this distinction must be carried over to the First Schedule, We deprecate the tendency of some Judges to think in terms of punishments and penalties properly so-called when they should instead be thinking of compensation and the avoidance of injustice to both sides.

These remarks are apposite to the present situation. The filing of a written statement by any defendant, whether it is a Government or not a Government, whether it is an ordinary person or a statutory body or a corporation or anybody else, is covered by the same provision, namely, Order 8 Rule 1. There is no other provision dealing with the filing of a written statement, except Order 8, Rule 9 which in addition to any Other power enables the Court to permit any party to file a written statement or additional written statement and fixes a time for presenting the same.

12. There is another point here which may be stated at once. If no written statement is filed, Order 8, Rule 10 comes into operation. It states:

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.

This is the Rule as amended in 1976. It states that if the written statement is not filed in accordance with Rule 1, within the permitted time or as fixed by the Court, the Court can pronounce judgment. For determining the time, only two provisions are referred to, i.e., Rules 1 and 9. Under Rule 1, the Code has itself fixed the time, but the Court may permit further time. Under Rule 9, the Court permits the written statement or additional written statement and itself fixes the time. In the event of failure to file the written statement, it can lead to the judgment being pronounced in favour of the plaintiff. If Rule 1 and Rule 9 do not apply to a Government, then the judgment can also not be pronounced under Rule 10 against the Government. Therefore, the inevitable result is that the time for filing the written statement has to be limited to Order 8 Rule 1 or Order 8 Rule 9, otherwise the trial of the suit will not be possible. It is not necessary to amplify this any further.

13. In our view, the provisions relating to the filing of a written statement have to be divorced and dichotomized from the provisions relating to the appearance of the defendant and the issue of the summons for that purpose.

14. The provisions relating to serving the defendant and fixing the date of appearance are the first stage in a suit. Once the defendant has been served, it is for him to put in appearance and to file a written statement, etc. But the first stage is effecting the service. Order 5, Rule 6 and Order 27, Rule 5 are both provisions regarding the service of the summons and the fixing of the date of appearance, in order to enable the defendant to answer the claim of the plaintiff. The words "answer the claim" used in this provision are not concerned with the filing of the written statement for which the time is prescribed by Order 8, Rule 1.

15. If the suit is taken up by the Court on the date fixed in the summons and it is treated as the first hearing by the Court, the Court can call upon the parties to make admissions and denials, etc., or to make statements as provided by Order 10, Rules 1 and 2. If the defendant happens to be a Government, the Government Pleader can say--"I have had not enough time" and the Court then has the power under Order 27, Rule 5 to extend the time by a maximum of two months. This is the meaning of Order 27, Rule 5. If it is the case of any other defendant, then there can be no excuse for getting instructions from others. So, this kind of extension is not available to any one except the Government, it is available to the Government only because the Government Pleader, though an agent of the Government is not actually the Government. He has to get instructions from some one and so an extra period of two months is allowed, but not more.

16. This is the position under the Civil P.C.

17. The position under the Original Side Rules of the High Court is somewhat different. Chapter VI, Rule 2 provides that if the summons is for appearance and filing written statement, then the defendant has to file the written statement on the date fixed for appearance. But, Rule 3 of Chap. VI provides as follows:

3. Extension of time for filing written Statement : Ordinarily, not more than one extension, of time shall be granted to the defendant for filing a written statement; provided that a second or any further extension may be granted only on an application made in writing setting forth sufficient grounds for such extension and supported, if so required, by an affidavit.

Rule 4 of Chap. VI provides that if the written statement is not filed within the time allowed or within the extended time, then the suit has to be set down for final disposal. But even then the Court has jurisdiction to extend the time.

18. Now taking up the case from the point of view of "first hearing" as far as the Original Side Rules are concerned, we have to refer to Chap. VIII, Rule 1, which reads:

1, Proceeding at the first hearing.

On the date fixed for defendant's appearance, the parties of their advocates shall produce before the Court all the documents in their power or possession upon which they intend to rely. On the first hearing the Court shall ascertain from each party or his advocate whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any), of the opposite party, and as are not expressly or by necessary implication admitted or, denied by the party, against whom they are made. The Court shall record such admissions or denials.

It will be seen that this Rule makes no distinction between a Government and a non-Government; whoever may be the defendant, the Rule is just the same. What the Original Side Rule visualises is that the written statement has to be filed on the date of appearance by everybody. There is no distinction between the defendant being a Government or a non-Government. The Court has power to extend the time for filing the written statement. This is provided by Chap. VI, Rule 3. As the Original Side Rules overrule the Civil P.C. so far as the first hearing is concerned, Order 27, Rule 5 of the Code does not apply to the Delhi High Court (Original Side) Rules at all.

19. It is useful to point out here the distinction between the procedure on the Original Side of this Court and the procedure in the Subordinate Courts. The Civil P.C. is divided into two parts--the First Schedule contains the Rules and the Sections are from Section 1 to Section 158. Section 122 of the Code allows the High Courts to amend, alter or add to any of the rules in the First Schedule. Thus, Order 27, Rule 5, or Order 5, Rule 6 or Order 8, Rule 1, etc., all can be amended by a High Court under the procedure prescribed in Section 122

onwards. In addition to this power, there is a special power available for the Original Civil Jurisdiction of High Courts which is set out in Section 129. This section provides power of High Courts to make rules as to their original civil procedure. It reads:

129. Power of High Courts to make rules as to their original civil procedure.

Notwithstanding anything in this Code, any High Court not being the Court of a Judicial Commissioner may make such rules not inconsistent with the Letters Patent or order or other law establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

The effect of this provision is to enable High Courts with Original Jurisdiction to make Original Side Rules which vary or abridge the procedure prescribed by the Civil P.C. It is not necessary to refer to many cases on this point, but reference may be made to the Full Bench decision of this Court in *Print Pak Machinery Ltd. Vs. Jay Kay Papers Converters*, wherein it was held that the High Court Rules will prevail over the provisions of the CPC because of Section 129 of the Code. Thus, on the Original Side the provision is contained in the Rules and is not contained in the Code.

20. We can now turn to the points which have been referred to us.

21. As far as the first point is concerned, it is necessary to note that the time for filing the written statement is not prescribed by Order 27, Rule 5, but by Order 8 Rule 1, and there is no limit to the time which can be granted by a Court as extended time for filing the written statement.

22. The second point regarding extension of time does not arise because the power is contained in Order 8, Rule 1 as well as in the Original Side Rules referred to above.

23. As far as point No. 3 is concerned, it is covered by the aforementioned Full Bench judgment of this Court because Rule 4 of Chap. VI overrules Order 27. Rule 5 even if it had the effect of limiting the time which it does not have.

24. As far as point No. 4 is concerned, we fail to understand how this point arises. All the High Court (Original Side) Rules prevail over the Code because of Section 129 of the Code so, any amendment to the Civil P.C. has no effect on the Original Side Rules.

25. Thus our conclusion is that Order 27, Rule 5 of the Code does not limit or even deal with the question of filing the written statement. That provision is Order 8, Rule 1. Order 27, Rule 5 is concerned only with the fixing of a date of appearance on behalf of the Government when service is effected through the Government pleader and with nothing else. There is no bar to the Court extending the time for filing the written statement in a case where the Union of

India or any Government is the defendant; such a defendant has to be treated exactly similar to any other defendant. The reference is answered accordingly.