

(2004) 03 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 4787 of 2003

Smt. Ujawala Athare (Patil)

APPELLANT

Vs

Dr. (Mrs.) Asha Ravindra Paranjape

RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Section 1(2), 15, 18, 32, 32(2)
Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1, Order 8 Rule 1, Order 8 Rule 10,
Order 8 Rule 1A, Order 8 Rule 1A

Citation : (2004) 3 ALLMR 856 : (2004) 6 BomCR 434 : (2004) 2 MhLj 1126

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : P.S. Dani and Gauri Godse, for the Appellant; A.K. Abhyankar and Monica D'Souza, for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—Rule, returnable forthwith. Respondents waive service. By consent, taken up for hearing and final disposal.

2. On 14th February, 2002 the Respondent instituted a suit in the Court of Small Causes at Pune against the Petitioner for the recovery of arrears of rent and for possession of immovable property bearing Block No. 1 situated on the ground floor of a bungalow on Plot No. 94 of Shri Shivaji Co-op. Housing Society, Off Senapati Bapat Road, Pune. The summons in the suit was served on 4th March, 2002. The date fixed for filing the written statement in the suit was 9th July, 2002. On that date, the Trial Judge passed an order of "no written statement" and directed that the suit shall proceed without a written statement. The suit was adjourned to 23rd July, 2002. On 24th July, 2002 an application was filed on behalf of the Petitioner for setting aside the no written statement order that had been passed on 9th July, 2002. The Respondent objected to the application in a reply dated 3rd September, 2002. By the impugned order dated 22nd January, 2003, the Trial Judge dismissed the application. The learned Trial Judge held that

upon the amendment effected by Parliament to the provisions of Order 8 Rule 1 of the CPC the discretion of the Court to accept a written statement, filed after a period of 90 days of the service of summons in a suit had been taken away. In the circumstances, the application was dismissed.

3. The controversy which has been raised in these proceedings rums on the question as to whether the amended provisions of Order 8 Rule 1 of the Code would apply to a situation such as the present where the suit had been instituted prior to the Amending Act of 2002 which came into force on 1st July, 2002. Parliament enacted the CPC (Amendment) Act, 1999 on 30th December, 1999. The Act was, however, not brought into force since, in pursuance of the provisions of Section 1(2) no notification was issued by the Central Government bringing into force the provisions of the Amending Act. Subsequently, Parliament enacted the CPC (Amendment) Act 2002. The Statement of Objects and Reasons of the Amending Act of 2002 took note of the fact that after the Amending Act of 1999 was enacted and before action could be initiated for the enforcement of the Act, the Bar Council of India and various Bar Associations had called upon the Government to have a fresh look at various provisions which could cause hardship to litigants. Accordingly after the Government had reconsidered the matter Parliament enacted the Amending Act of 2002. The Amending Act of 2002 was brought into force with effect from 1st July, 2002. Before the Amending Act of 2002 was enacted Parliament had already enacted the Amending Act of 1999 though it had not been brought into force. As the provisions of the Amending Act of 2002 would demonstrate Parliament has in certain instances amended the principal provisions contained in the CPC 1903 while, in other cases, the provisions of the Code as substituted by the Amending Act of 1999 have been amended or modified.

4. In order to consider the controversy that is involved in the present proceedings, it would be necessary for the Court to have regard to the provisions of Order 5 and Order 8 of the Code.

Order V C. P. C.

5. Order 5 deals with the issue and service of summons, while Order 8 contains provisions relating to the filing of the written statement, a set off and counter claim. Order 5 Rule 1 relates to the issuance of a summons in a suit. By and as a result of the CPC (Amendment) Act, 1976 which was brought into force with effect from 1st February 1977 the following provision came to be made in Order 5 Rule 1 :-

"(1) When, a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiffs claim:

Provided further that where a summons has been issued, the Court may direct

the defendant to file the written statement of his defence, if any, on the date of his appearance and cause an entry to be made to that effect in the summons."

6. Rule 5 stipulated that the Court shall determine at the time of issuing the summons whether it shall be for the settlement of issues only or for the final disposal of the suit and the summons was to contain a direction accordingly. The proviso to Rule 5 laid down that in every suit heard by a Court of Small Causes the summons shall be for the final disposal of the suit. Rule 8 then provided that where the summons is for the final disposal of the suit it shall also direct the Defendant to produce on the day fixed for his appearance every witness upon whose evidence he intends to rely upon in support of his case.

7. By the Amending Act of 1999 and as a result of Section 15 thereof the provisions of Rule 1 of Order 5 were sought to be amended in the following terms :

"(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, on such day within thirty days from the date of institution of the suit as may be specified therein:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of the plaint and admitted the plaintiffs claim:

Provided further that where the defendant fails to file the written statement on the said day, he shall be allowed to file the same on such other day which shall not be beyond thirty days from the date of service of summons on the defendant, as the Court may think fit."

8. Section 32 of the Amending Act of 1999 dealt with repeals and savings and Clause (j) of Sub-section (2) thereof provided inter alia that the provisions of Rule 1 of Order 5 as amended shall not apply to any summons issued immediately before the commencement of Section 15.

9. By the Amending Act of 2002 the provisions of Order 5 Rule 1 (as substituted by the Amending Act of 1999) were modified thus :

"(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiffs claim:

Provided further 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."

10. The difference between Order 5 Rule 1 as amended in 1999 and as substituted in 2002 is that: (i) whereas in the Amending Act of 1999 the summons would call upon the Defendant to appear and answer the claim and file his written statement on such day within 30 days from the date of the institution of the suit as may be specified, the Amending Act of 2002 allows to the Defendant a period of 30 days from the date of the service of the summons to appear and answer the claim and to file the written statement; (ii) Under the second proviso to Sub-rule (1) as amended in 1999, the Defendant, when he fails to file a written statement within the time prescribed would be allowed to file it on such other day not beyond 30 days from the date of the service of the summons as the Court prescribed. By the Amending Act of 2002 the second proviso to Sub-rule 1 now stipulates that where the Defendant fails to file the written statement within a period of 30 days from the service of the summons he shall be allowed to file it on such other day specified by the Court not later than 90 days from the date of service of the summons. Thus, unlike the Amending Act of 1999 the initial period of 30 days for the filing of the written statement commences from the date of the service of the summons and not the date of the institution of the suit and the period under the second proviso is upto 90 days from the date of the service of the summons as opposed to 30 days under the 1999 amendment.

11. Section 15 of the Amending Act of 2002 is also material. Section 15(b) amends the provisions of Section 32(2) of the Amending Act of 1999. Sub-clause (ii) of Clause (b) of Section 15 provides thus:

"15. Amendment of the CPC (Amendment) Act, 1999 - In the CPC (Amendment) Act 1999, -"

"(b) in Section 32 in Sub-section (2), -"

"(ii) for Clause (j), the following clause shall be substituted, namely:-

"(j) the provisions of Rules 1, 2, 6, 7, 9, 9-A, 19-A, 21, 24 and 25 of Order V of the First Schedule as amended or, as the case may be, substituted or omitted by Section 15 of this Act, and by Section 6 of the CPC (Amendment) Act, 2002, shall not apply to in respect of any proceedings pending before the commencement of Section 15 of this Act and Section 6 of the CPC (Amendment) Act, 2002;"

12. Hence, what Section 15(b)(ii) provides inter alia is that the aforesaid Rules of Order 5 including Rule 1 as amended shall not apply in respect of any proceedings pending before the commencement of Section 15 and Section 6 of the Amending Act of 2002. Here again, it would be material to contrast the original provisions of Section 32(2)(j) as they were inserted by the Amending Act of 1999. Those provisions stipulated that the provisions inter alia of Rule 1 of Order 5 shall not apply to summons issued before the commencement of Section 15. As contra distinguished from this, the Amending Act of 2002 now lays down that the provisions inter alia of Rule 1 of Order 5 shall not apply in respect of any proceedings pending on 1st July, 2002.

ORDER VIII, C.P.C.

13. In so far as Order 8 is concerned, Sub-rule 1 of Rule 1 as inserted by the Amending Act of 1976 laid down that the Defendant shall on or before the first hearing or such time as the Court may permit, present a written statement of his defence. Under a Bombay amendment that was brought into force on 1st October, 1983 the following provisions had been inserted for Rule 1 of Order 8 :

"1. Written statement - The defendant may, and if so required by the Court, shall within such time as may be specified in this behalf or within such extended time as the Court may permit, present a written statement of his defence after serving a copy thereof on the plaintiff or his pleader on or before the date fixed for presenting the same in Court, or file in Court for the use of the plaintiff a copy of the written statement while presenting the same in Court :

Provided that the first adjournment for filing the written statement shall not ordinarily exceed four weeks and no further adjournment shall be granted except for reasons to be recorded in writing." - (1-10-1983)"

The Amending Act of 1999 substituted the following provisions in Order 8 Rule 1:

"1. Written statement - The defendant shall at or before the first hearing or within such time as the Court may permit, which shall not be beyond thirty days from the date of service of summons on the defendant, present a written statement of his defence."

14. Section 32(L) of the Amending Act of 1999 laid down that the provisions of Rule 1 and Rule 1(a) of Order 8 as substituted shall not apply to a written statement filed and presented before the Court immediately before the commencement of Section 18.

15. In so far as the 2002 Act is concerned, Order 8 as now substituted lays down 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."

16. An analysis of these provisions would show that under Order 5 of the Code prior to the Amending Act of 1999 once a suit was instituted a summons had to be issued to the Defendant to appear and answer the claim on a day to be specified therein. No summons was required to be issued where the Defendant had appeared at the presentation of the plaint and admitted the claim. Under the second proviso of Sub-rule 1 of Order 5, however, the Court was empowered to direct the Defendant, where a summons had been issued, to file a written statement of his defence if any on the date of his appearance and cause an entry

to be made to that effect in the summons. The summons, therefore, could either be to appear and answer the claim on a day to be specified under the main part of Sub-rule (1) or in addition to file his written statement of defence on the date of his appearance by virtue of the second proviso. Under Rule 5 the Court was empowered to determine while issuing summons whether the summons would be only for settlement of issues or for the final disposal of the suit. The summons instituted in a suit before the Court of Small Causes had to be for the final disposal of the suit. In that case, under Sub-rule 8 the Defendant had to be directed to produce on the date fixed for his appearance the witnesses upon whose evidence he intended to rely. The modification which was sought to be made by the Amending Act of 1999 in Order 5 Rule 1 was that upon the institution of a suit a summons would be issued to the Defendant to appear and answer the claim and to file the written statement. Moreover, the time that would be allowed to the Defendant to file the written statement would be upto 30 days from the date of the institution of the suit. That period could be extended upto a date which would not be beyond 30 days from the date of the service of the summons on the Defendant. By and as a result of the Amending Act of 2002 the principle that the summons to be issued to a Defendant upon the institution of the suit is to appear and answer the claim and to file a written statement of his defence is maintained. However, the time that is granted to the Defendant to file the written statement of his defence is within 30 days from the date of the service of the summons and not merely 30 days from the institution of the suit as originally envisaged in 1999. Moreover, the second proviso to Sub-rule (1) now allows a further period not exceeding 90 days from the date of the service of the summons for the filing of the written statement. Under the provision as it stood in 1999 upon the enactment of the amendment, the further period was only 30 days from the date of the service of the summons.

17. The provision for the filing of a written statement cannot be read in isolation from the provisions for the issuance of a summons under Order 5. Under the provisions of Order 5 Rule 1 as they stood prior to the amendment of 1999, the summons to the Defendant could either be to appear and answer the claim or, in addition, to file his written statement of defence on the date fixed for his appearance. Correspondingly, Order 8 Rule 1 provided that the Defendant shall at or before the first hearing or within such time as the Court may permit present a written statement of defence. The Bombay Amendment of 1983 contained a provision to the effect that the Defendant may and if so required by the Court, shall within such time as specified or within, such extended time as may be permitted present his written statement. The Bombay Amendment was stricter because the proviso laid down that the first adjournment for filing a written statement shall not ordinarily exceed four weeks and no further adjournment shall be granted except for reasons to be recorded in writing. However, both Order 8 Rule 1 as amended in 1976 and the Bombay Amendment of 1983 did contemplate a situation where the time for the filing of a written statement could be extended by the Court. These provisions as they existed underwent a sea

change in 1999. The 1999 Amendment to Order 5 required the Defendant to file his written statement within 30 days of the institution of the suit and allowed a further period not beyond 30 days from the service of the summons. That provision was, however, not brought into force. The provision as enacted in 2002 lays down that the Defendant has a period of 30 days from the date of the service of the summons to file his written statement and that there will be a further period which shall not be later than 90 days from the date of the service of the summons as specified by the Court. Correspondingly, Order 8 has been amended so as to reflect that the Defendant has a period of 30 days from the date of the service of the summons to file his written statement and a further period which shall not be later than 90 days from the service of the summons as may be specified by the Court.

18. These provisions show that both before and after the amendment there is a consistency in the scheme of Order 5 and Order 8. Order 5 provides for the issuance of a summons to the Defendant. The summons constitutes an intimation to the Defendant of the institution of the suit and of the opportunity which he has to enter appearance, contest the claim and file his written statement. Prior to the amendment of 1999, it was in the discretion of the Court as to whether the Defendant must be directed to file a written statement of his defence on the date of his appearance. Order 8 correspondingly therefore, provided that the Defendant had to file his written statement before the first hearing or within such extended period as the Court would allow. After the amendment of 2002 the consistency in the statutory scheme is maintained, with the modification that the Defendant has to be intimated, when the summons is issued that he must file his written statement within 30 days of the service of the summons. The further period that is prescribed is not exceeding 90 days from the receipt of the summons as the Court may specify. The Defendant to whom a summons has been issued in terms of Order 5 Rule 1 as amended is granted a corresponding period by Order 8 Rule 1 to file his written statement. The Amending Act of 1999 contained a repealing and saving provision in Section 32. Section 32(2)(j) provided that Order 5 Rule 1 shall not apply to any summons issued immediately before the commencement of Section 15. Section 32(2)(L) provided that the provisions of Order 8 Rule 1 shall not apply to a written statement filed and presented before the Court immediately before the commencement of Section 15. Therefore, by and as a result of Section 32(2)(j) as it originally stood in 1999, it would have been construed that summons need not have been served as required under the Act of 1999 in respect of pending suits. Section 32(2)(j) could therefore have been construed to mean that the provisions of Order 5 Rule 1 would apply to pending suits but would not so apply if the summons had already been issued. Therefore, conceivably, it could have been argued that the provisions of Order 5 Rule 1 would apply to pending suits under the Amending Act of 1999 but not where the summons was issued. On the other hand, Section 15(b)(ii) of the Amending Act of 2002 lays down that Order 5 Rule 1 shall not apply in respect of any proceeding pending before the

commencement of Section 15. Whereas Section 32(2) (j) as enacted in 1999 laid down that the amended provision shall not apply to any "summons issued" prior to its commencement, Section 15(b)(ii) now lays down that Order 5 Rule 1 as amended shall not apply in respect of "any proceeding pending" before the commencement of Section 15 of the Amending Act of 2002. Moreover, in so far as the filing of the written statement is concerned, Section 32(2)(L) of the 1999 amendment laid down that the provisions of Rules 1 and 1A of Order 8 shall not apply to a written statement filed and presented before the Court prior to the commencement of Section 18. The Amending Act of 1999 had omitted Rules 8A, 9 and 10 of Order 8. The Amending Act of 2002 substitutes new Rules 9 and 10. In view thereof Section 15(b)(iv) lays down that the provisions of Rules 1, 1A, 8A, 9 and 10 shall not apply to a written statement filed and presented before the commencement of Section 18 and Section 9 of the Amending ACT of 2002.

19. The provisions of Section 15(b)(ii) of the Amending Act 2002, therefore, clearly demonstrate that the amended provisions of Order 5 Rule 1 shall not apply to proceedings which were pending before the commencement of Section 6 and Section 15. In the present case, the suit was instituted prior to 1st July, 2002 and therefore, the amended provisions of Order 5 Rule 1 would not apply to such a suit. The summons in the present case was served on 4th March, 2002. Now undoubtedly Section 15(b)(iv) lays down that the provisions of Order 8 Rule 1 as substituted in 2002 shall not apply to a written statement filed and presented before the commencement of the amending provision. However, unless the summons which has been issued to the Defendant is in terms of the modified provisions of Order 5 Rule 1, there would have been no occasion to limit the time period that is prescribed for the filing of a written statement to the period laid down by the modified provisions of Order 8 Rule 1. This interpretation must necessarily be adopted. In cases where the suit had been instituted prior to 1st July, 2002, the summons which is required to be issued is in terms of Order 5 Rule 1 as it stood prior to the amendment, this being the clear intent and consequence of Section 15(b)(ii). That being the position, it cannot conceivably be submitted that though the summons that was required to be issued to the Defendant does not require him to file his written statement within 30 days of the service of the summons, the Defendant must necessarily be held down to the period of 30 days for the filing of the written statement in terms of the amended provision of Order 8 Rule 1.

20. A summons to the Defendant in a suit is an intimation of the institution of the suit. The Defendant is informed by the summons that he has an opportunity to appear and contest the claim. The Defendant is put to a notice that should he seek to defend the claim of the Plaintiff, he is entitled to put a written statement in defence of his case within the period which is allowed to him by law. The provisions relating to the filing of a written statement have, therefore, been dovetailed with the issuance of a summons. It is upon the issuance of a summons that the Defendant has notice of the claim which is instituted. It is the summons which furnishes an intimation to him of the period which the law

prescribes for the filing of a written statement. The period which is allowed to the Defendant for the filing of a written statement cannot therefore be at variance with what the summons informs him as the allowable period within which he must file his written statement. The period which the summons informs him to be the allowable period must necessarily be the period which the law prescribes for filing a written statement. Therefore, it is that Order 5 and Order 8 form one composite and consistent statutory scheme. Any construction of the provisions of Order 5 and Order 8 which breaks the consistency of the scheme will be contrary to the plain and grammatical meaning of the statutory provisions incorporated by the legislature in enacting those provisions. Apart from being inconsistent with the statutory language adopted by the legislature in Orders 5 and 8, a construction which will destroy the consistency of the scheme will lead to absurd results. In a suit which has been instituted prior to 1st July, 2002, the summons would have to be issued in accordance with the statutory provisions of Order 5 Rule 1 as they stood prior to the amendment and in fact even prior to the amendment of 1999 which was never brought into force. The summons in that case would not contain the stipulation that the Defendant must file his written statement within a period of 30 days of the receipt of the summons. In such a case it is quite conceivable that the period of 30 days may have even expired prior to 1st July, 2002 when the amended provisions of the Code were brought into force. The present case itself is an example in point because the summons was served on 4th March, 2002 and the period of 30 days would have expired much prior to 1st July, 2002. Indeed even the extended period of 90 days from the receipt of the summons would have expired prior to the enforcement of the Amending Act. Hence, it would defy logic if the Court were to hold that while on the one hand the summons contains no such stipulation requiring the filing of the written statement within 30 days of the receipt of the summons, the Defendant must be ousted from the right of filing his defence because the period of 30 days or, as the case may be of 90 days from the service of the summons has already expired prior to 1st July, 2002. Section 15(b)(ii) of the Amending Act of 2002 has been designedly introduced by the legislature. That provision as already noted is at variance with the repealing and savings provision that was incorporated in Section 32(2)(j) of the Amending Act of 1999. Section 32(2) (j) had provided that the amended provisions shall not apply to any summons issued prior to the amended provision being brought into force. Section 32(2) (j) did not deal with proceedings but the issuance of the summons was the critical factor. In contradistinction, u/s 15(b)(ii) what is relevant is not the issuance of the summons or for that matter the non issuance thereof, but the institution of the proceedings. Once a proceeding has been instituted prior to the enforcement of the Amending Act of 2002. Section 15(b)(ii) tells us that the amending provisions of Order 5 Rule 1 will not be applicable to such a proceeding. The clear intentment therefore is that the modified period which has been provided for filing a written statement shall also not apply to such proceeding. Section 15(b) (iv) then states that the provisions of Rules 1, 1A, 8A, 9 and 10 of Order 8 as substituted shall not apply to a written statement filed and presented before the

commencement of the Amending Act of 2002. Rule 1 of Order 8 has already been noted. Rule 1(a) provides that a document which ought to be produced by the Defendant in Court but which is not so produced shall not without the leave of the Court be received in evidence on his behalf at the hearing of the suit. Rule 9 deals with subsequent pleadings. Rule 10 provides that where a party from whom a written statement is required under Rules 1 or 9 fails to present it within the time permitted or fixed, the Court shall pronounce the judgment against him or make such order in relation to the suit as it thinks fit. Section 15 (b)(iv) lays down that the Rules of Order 8 referred to therein shall not apply to a written statement filed and presented before the commencement of the amended provision. The Court is duly conscious of the fact that the emphasis is on the filing and presentation of the written statement and not upon a proceeding as such. The provisions of Section 15(b)(ii) and Section 15(b)(iv) must be harmoniously construed to avoid absurdity. Once the legislature has laid down that the provisions of Order 5 relating to the issuance of a summons and the intimation therein to the Defendant of the time reserved for filing a written statement are not to apply to proceedings which were pending before the commencement of the amended provisions in 2002, it would not be possible to apply the amended provisions of Order 8 to such proceedings in relation to the time which is prescribed for filing a written statement.

21. A similar issue arose for consideration before a learned Single Judge of this Court (Mr. Justice F.I. Rebello) in Jerry Alex Braganza alias Jeronimo Oriculo Alex Braganza and Another Vs. Rajeshree alias Rayeshri Ramdas Borkar alias Shobhavati Ramdas Borkar and Others, . In that case the suit had been instituted in 1999 and the summons was directed to be issued on 3rd November, 1999. The Trial Court dealt with an application under Order 7 Rule 11 of the Code and after the disposal of that application, an application was filed by which the written statement was sought to be placed on the record. The Trial Court rejected the application relying upon the amended provisions of the Code. F.I. Rebello, J. held that the approach of the Trial Court was unsustainable. The learned Judge held thus :

"The rule as amended, therefore, provides for a mandatory duty on the Court to notify the defendant that he has to file a written statement within 30 days of service of summons and further provides that the Court has jurisdiction in such an event to extend it at any rate not beyond 90 days period. The reading of the provision would, therefore, show that unless summons in terms of Order 5, Rule 1 has been served on the defendant calling upon him to file written statement within 30 days, it will not be possible to read in Order 8 that the defendant has to file written statement within 30 days or within the extended period of 90 days from the date of service of summons. If that be so, it will be open to the Court to either call upon the defendant to file written statement within 30 days or extended period of 90 days and only after such direction, the Court would cease to have jurisdiction to exercise discretion to extend time. In other words, unless a party is notified by the Court that he has to file the written statement within 30

days or extended period of 90 days, there will be discretion in the Court to permit filing of the written statement even beyond the extended period of 90 days, if the suit was instituted before coming into force of the Amendment Act of 2002."

(emphasis supplied).

The learned Single Judge held that as the summons was not served in terms of the amended provisions of Order 5, Order 8 Rule 1 would also have no application.

22. Counsel appearing on behalf of the Respondent, however, urged that the view taken by Mr. Justice Rebello warranted reconsideration. The submission that was urged was that while the decision in Braganza's case (supra) took notice of the provisions of Section 32(j) and (l) of the Amending Act of 1999 and concluded therefrom that in terms thereof the summons need not have been served, the learned Judge then held that the Amending Act of 2002 does not provide for any such saving as was provided in the Act of 1999. The learned Judge held as follows :

"It is, therefore, dear that insofar as Act of 1999 is concerned it could have been construed that summons need not have been served as required under the Act of 1999, in respect of pending suits, but that would not be the position under the Act of 2002 as Section 32 of the Amendment Act of 1999 will not apply insofar as the amendment brought about by the Act of 2002."

23. Now from the judgment of the Court in Braganza's case, it does appear that, the provisions of Sections 15(b)(ii) and 15(b)(iv) of the Amending Act of 2002 were not brought to the attention of the Court. The provisions of Section 15(b)(ii) of the 2002 Act clearly evince an intention of the legislature that the amended provisions of Order 5 Rule 1 shall not apply to any proceeding pending on the date of commencement. That being the position, the construction that must be placed on the provisions of amended Order 8 Rule 1 must be in harmony with the statutory scheme that has been adopted by the legislature in relation to the issuance of a summons and the period which the Defendant is allowed to file the written statement. Hence, though it is true that the provisions of Section 15 were not cited before the Court in the aforesaid decision, I have as a matter of first principle reconsidered all the provisions including those that were not cited before the Court in Braganza's case. Having done so, I have come to the conclusion that the ultimate view which has been arrived at by F.I. Rebello, J. is correct and that it does not warrant any reconsideration.

24. In the present case, the application for taking the written statement on the record was rejected solely on the basis of the amended provisions of the Code. The learned Trial Judge has clearly misdirected himself in doing so. In her application dated 24th July, 2002, the Petitioner set out the circumstances in which the written statement could not be filed earlier and in fact stated that she was filing her written statement on the same date. There was, in my view, no

willful default, negligence or want of bonafides on the part of the Petitioner. The Small Causes Court has clearly erred in rejecting the application. In the circumstances, this Petition will have to be allowed. Rule is made absolute in terms of prayer Clause (a). In the circumstances of the case, there shall be no order as to costs.

25. The Respondent would be at liberty to apply before the learned Trial Judge for expeditious disposal of the suit.

Parties be given a copy of this order duly authenticated by the Sheristedar/ Personal Assistant.