

(2003) 05 P&H CK 0185
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 6254 of 2002

The New India Assurance Company Ltd.	APPELLANT
Vs	
Surinder Kaur and Others	RESPONDENT

Date of Decision : 19-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 166

Citation : (2005) ACJ 155 : (2003) 135 PLR 690 : (2003) 3 RCR(Civil) 828

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Kamal Kant Verma and R.K. Bashamboo, for the Appellant; Sanjeev Sharma, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This petition filed under Article 227 of the Constitution of India challenges the order dated 31.8.2002 passed by the Motor Accident Claims Tribunal, Nawanshahar (for brevity, "the Tribunal") striking of the defence of the petitioner-Insurance Company on the ground that already number of opportunities have been availed by it and period of more than 90 days has expired as provided by Order VIII Rule 1 of the Code of Civil Procedure, 1908. A perusal of interlocutory orders passed on 13.5.2002, 1.6.2002 and 16.8.2002 would show that opportunities have been afforded to the petitioner-Insurance Company to file the written statement. On 16.8.2002 cost of Rs. 350/- was also imposed for adjourning the case to 31.8.2002 making it clear that no further opportunity shall be granted. The impugned order was passed on 31.8.2002 and the defence of the petitioner-Insurance Company was struck off.

2. Mr. Kamal Kant Verma, learned counsel for the petitioner-Insurance Company has argued that Mr. C.S. Bhalla, who was the Divisional Manager, has died and the new incumbent was not vested with the power to sign the written statement

on behalf of the petitioner-Insurance Company. For that reason delay, in filing the written statement has occurred. Therefore, the learned counsel requests for one opportunity to file the written statement which has now been signed by the successor of Mr. C.S. Bhalla.

3. Mr. Sanjeev Sharma, learned counsel for the claimant-respondents has argued that for no fault of the claimants they have been dragged to this Court and have been made to suffer financially. The learned counsel has also pointed out that even time has been wasted which would cause delay in disposal of the claim of the claimant-respondents which would have been avoided by the petitioner-Insurance Company.

4. After hearing learned counsel for the parties, I am of the considered view that his petition deserves to be allowed because in the facts and circumstances of this case, a lenient view is required to be taken. It has been established as a fact before the Tribunal that Mr. C.S. Bhalla, the Divisional Manager who was entrusted with the power to sign the written statement had expired. The new incumbent although was appointed as Divisional Manager, yet he was not vested with the power of signing the written statement on behalf of the petitioner-Insurance Company. Moreover, the written statement would be necessary for adjudication of the controversy raised before the Tribunal which will serve the interest of justice. The petitioner-Insurance Company can be saddled with costs on account of delay occasioned by it for filing the written statement belatedly.

5. It is true that under Rule 1 of Order VIII of the Code of Civil Procedure, 1908 (as amended) (for brevity, "the Code"), a provision has been made for filing of written statement of his defence within period of 30 days from the date of service of summons on the defendant. The proviso to Rule 1 of Order VIII of the Code makes it mandatory that if period of 30 days has expired and no written statement has been filed, then the defendant may be permitted to file the same for the reasons to be recorded in writing on any later date i.e. after 30 days. However, in no case, the written statement could be filed after the period of 90 days from the date of service of summons. The aforementioned provision has come in force w.e.f. 1.7.2002 as Section 18 of the CPC (Amendment) Act, 1999 (for brevity, "1999 Act") and Section 9 of the CPC (Amendment) Act, 2002 (for brevity, "2002 Act") have been notified from that date. It has further has been made clear by the 2002 Act that the written statement filed before 1.7.2002 would not be affected by the amendment. In other words, the written statement which has been filed before 1.7.2002 would not be hit by the period of 90 days stipulated in Rule 1 of Order VIII of the Code. In the instant case, the claim petition was filed on 22.11.1999 and name of the petitioner-Insurance Company was impleaded on 1.9.2000 and issues were framed on 31.8.2002. Obviously, the period of 90 days from the date of service stood expired and ordinarily the maximum period of 90 days provided would have applied and the defence of the petitioner-Insurance Company was bound to be struck off. Under Article 227 of the Constitution, this Court is clothed with the power to exercise revisional

jurisdiction in cases where interference by this Court would avoid miscarriage of justice. In a case where miscarriage of justice is likely to result, this Court can exercise revisional jurisdiction. Striking of defence itself in given facts and circumstances of a case, would result in miscarriage of justice because in our adversary system of administration of justice, one party sets up its claim and the other party is granted an opportunity to defend and demolish that claim. In the absence of setting up the defence by the other party in accordance with the procedure established by law, it would not be possible to reach a just and fair decision. Such a right can also be regulated by the provisions like Rules 1 and 1(a) of Order VIII of the Code. However, in case of the nature where the defendant has not been able to file the written statement because of death of the officer who was competent to sign the written statement and the one who came on transfer was not yet vested with the powers, to exercise of such jurisdiction would be to prevent miscarriage of justice. Therefore, the delay in filing the written statement beyond 90 days has to be considered in the light of aforementioned facts. In *Manmohan Kaur Vs. Surya Kant Bhagwandi*, , the Supreme Court took the view that delay in depositing the rent by the tenant as required by the statutory provisions was properly explained and, therefore, passing an order of striking of defence in a mechanical manner would result into miscarriage of justice. The observations of their Lordships read as under:-

"... The court must from a proper perspective judge the question whether the delay or failure to deposit the rent in terms of order u/s 13 of the Act has been properly explained and if that delay has been properly explained, then the Court has a discretion to excuse the delay, but if the delay has not been properly explained then the Court has no discretion. In our opinion, such a construction would be a harmonious rendering of the language of Section 13 of the claim for justice in each particular case. Therefore, the court should consider whether the delay has been reasonably explained or not. In construing that question the court in the scheme of the administration of justice must take a constructive and purpose oriented approach. If it does, then the element of discretion comes into play though not in the form of directory or mandatory provision but in considering whether the delay was properly explained or not. In the facts of this case, we find that there is good deal of jurisdiction for the delay and the delay has been properly explained in the background of the facts and the circumstances of the case. If that is the position, the court should consider the question in that light. The trial court did not took at if from that perspective. The court, therefore, committed an error resulting in miscarriage of justice. The High Court in not interfering with this miscarriage of justice too committed an error of jurisdiction.

In this connection, reference may be made to the observations of the Court of this Court in *B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and Another*, . There, the court was concerned with the default in payment under the West Bengal Premises Tenancy Act, 1956 (as introduced by Ordinance 6 of 1967). There, the court had to consider the expression "shall" in Section 17(3) of the

West Bengal Act. It was held that the court's power was discretionary and in that case the High Court was of the opinion that the delay of two months in payment of rent being of technical nature, the court should have exercised discretion and refused to strike off the defence. It was the view of the court that the words "shall order the defence against delivery of possession to be struck out" occurring in Section 17(3) of the West Bengal Act have to be construed as directory provision and not mandatory provision as the word "shall" should be read as "may". The court expressed the view that such a construction was warranted because otherwise the intendment of the legislation as judged from the whole scheme in the preamble would be defeated and the class of tenants for whom the beneficial provisions were made by the Ordinance in question in that case and the amending Act will stand deprived of them. This Court observed that the court is vested with the discretion either to order the defence to be struck out or not, depending upon the circumstances of the case in the interest of justice. There, the Court found that the delay was technical in nature."

Similar view has been taken in the case of Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, .

6. For the reasons recorded above, this petition is allowed. The impugned order dated 31.8.2003 in so far as it struck off the defence of the petitioner-Insurance Company is set aside. The Tribunal shall allow one opportunity to the petitioner-Insurance Company to file its written statement. However, the filing of the written statement shall be subject to payment of Rs. 10,000/- as costs. The costs shall be paid to the claimant-respondents before taking the written statement on record.