

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ C.R.P. 15/2010 and CM 1707/2010

Decided on 26.05.2010

IN THE MATTER OF :

AMAR SINGH SHARMA AND ORS. Petitioners
Through: Dr. S.P. Sharma, Advocate

versus

ANAND KUMAR SHARMA Respondent
Through: Mr. Ajay K. Sharma, Advocate

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioners (defendants No.1 to 5 in the court below), assailing an order dated 10.12.2009 passed by the trial court, dismissing the application of the petitioners for extension of time to file the written statement.

2. In a nutshell, the facts of the case are that a suit for permanent and mandatory injunction was preferred by the respondent (plaintiff in the court below) against the petitioners (defendants No. 1

to 5 in the court below) on 24.01.2009. Summons were issued in the suit on 24.01.2009. As per the petitioners, they were served with the summons in the suit, on 28/29.03.2009. However, a perusal of the order sheets shows that the defendants No.1, 3, 5 and 6 (petitioners No.1, 3 and 5 herein) were duly served much earlier and had appeared in Court on 10.02.2009. On 01.04.2009, counsel for all the defendants/petitioners herein entered appearance and filed his *Vakalatanama* on their behalf. On the same date, an application was filed by them under Section 10 of the CPC and the matter was adjourned to 03.06.2009. However, the written statement was not filed by the petitioners/defendants within a period of 30 days from the date of service of the summons on them. As a result, on 03.06.2009, the defence of the petitioners/defendants was struck off. On the very next date, i.e., on 04.06.2009, the petitioners filed an application, seeking recall of the order dated 03.06.2009 and permission to file the written statement. The said application came to be dismissed by the impugned order dated 10.12.2009, with the observation that the petitioners had not been able to show any apparent error on the face of the record and had failed to give any adequate satisfactory reason for condonation of delay in filing the written statement. Aggrieved by the aforesaid order, the petitioners have filed the present petition.

3. Counsel for the petitioners/defendants states that the written statement was filed belatedly on 04.06.2009 as the

respondent/plaintiff did not furnish the documents, enclosed with the plaint and mentioned in the order dated 10.02.2009, till as late as on 01.04.2009. The aforesaid submission made on behalf of the petitioners/defendants is disputed by the counsel for the respondent/plaintiff, who insists that the documents in question were furnished to the petitioners/defendants on the very same date, i.e., on 10.02.2009. However, he concedes that he does not have the proof of having served the documents on the petitioners on 10.02.2009 itself.

4. Counsel for the respondent further states that even if it is assumed that some kind of an explanation was offered by the petitioners for explaining the delay caused in filing the written statement till 01.05.2009, i.e., for the period of 30 days from the date of receipt of the documents, there is no justification/explanation offered by the petitioners for not filing the written statement immediately thereafter and the period of delay from 02.05.2009 to 04.06.2009, remains unexplained.

5. After the amendment of Order 8 Rule 1 of Civil Procedure carried out by Act 22 of 2002 which came into operation w.e.f. 01.07.2002, it is mandatory for a written statement to be filed by a defendant within a period of 30 days from the date of receipt of summons. However, the proviso to the said Rule allows such a defendant, who fails to file his written statement within the stipulated period of 30 days, to file the same on such other day, as may be

specified by the Court, for reasons to be recorded in writing but requires that the written statement shall not be filed later than 90 days from the date of service of summons.

6. The object of providing a time frame to file the written statement is to achieve speedy disposal of cases and avoid unnecessary adjournments. However, in the process of expediting the proceedings, the principles of natural justice cannot be thrown to the winds. As observed by the Supreme Court in the case of Sangram Singh Vs. Election Tribunal, Kotah reported as **AIR 1955 SC 425:-**

“18. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to.”

7. Interpretation of law ought to be made in such a way that it advances the cause of justice and not defeat it. In the present context, strict interpretation shall defeat the cause of justice. The provision of Order VIII Rule 1 has been discussed by the Supreme Court in Salem Advocate Bar Association.(II) Vs. Union of India reported as **(2005) 6 SCC 344** in the following words:

“20. The use of the word 'shall' in Order VIII Rule 1 by itself is not conclusive to determine

whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are hand-maid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

21. In construing this provision, support can also be had from Order VIII Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order VIII, the court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order VIII Rule 1. There is no restriction in Order VIII Rule 10 that after expiry

of ninety days, further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'. **Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1.**" (emphasis added).

8. In the case of Kailash Vs. Nankhu reported as **(2005) 4 SCC 480**, the Supreme Court observed as below:

"30. Merely because a provision of law is couched in a negative language implying a mandatory character, the same is not without exceptions. The Courts when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form."

9. The scope of Order VIII Rule 1 has been discussed at length in the case of Kailash(supra), the relevant paras of which are extracted hereinbelow:-

- "46. i. xxx
- ii. xxx
- iii. xxx

iv. The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 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 Order 8 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 8 Rule 1 CPC is not completely taken away.

v. Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded 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 the 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 is needed to be given for 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."

10. Hence, in exercise of its discretion, the Court can condone the delay in filing the written statement, if filed within the prescribed period of ninety days, and even beyond the said period in the interest of justice. No doubt, the intention behind the amendment to Rule 1 of Order VIII of the Code was to expedite the trial and ensure that the prayer for extension of time for filing the written statement made by the defendant be not granted just for the asking. But in the present case, the written statement was filed by the petitioner/defendant well within the period of 90 days, if reckoned from 1.4.2009. Grave injustice would be caused to the petitioners if the delay in filing the written statement is not condoned, as their defence on merits would never come to light.

11. In these circumstances, having regard to the submissions made by the counsel for the petitioners, the impugned order is recalled. However, in view of the loss of time attributable to the petitioners in prosecuting the suit filed by the respondent/plaintiff, they cannot be permitted to be let off scot free. Therefore, while setting aside the impugned order dated 10.12.2009 and permitting the written statement filed by the petitioners to be taken on record, it is directed that they shall compensate the respondent for the delay caused on account of loss of time and an avoidable round of litigation by way of the present petition, by paying him costs of Rs.20,000/-. The said costs shall be paid to the respondent through counsel, within

one week from today. It is made clear that in case, the costs are not paid within the time granted, the written statement of the petitioners/defendants shall not be permitted to be taken on record.

12. The petition is disposed of, alongwith the pending application.

MAY 26, 2010
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(HIMA KOHLI)
JUDGE