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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.997 of 2009 & C.M. Appl. No.13261 of 2009

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13.04.2010

M/S. OPERA GLOBAL PVT. LTD. & ANR.

.....Petitioners

Through: Mr. Rajesh Gupta, Advocate.

Versus

TRAVEL PLANNERS PVT. LTD.

.....Respondent

Through: Mr. Ashutosh, Advocate.

Date of Reserve: 4th March, 2010

Date of Order: 13th April, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

1. By this petition, the petitioners have assailed order dated 17th August, 2009 whereby an application under Order VIII Rules 1 and 10 CPC filed by the plaintiff was allowed and the written statement filed by the defendant after about 270 days of the service of summons was taken off the record.

2. The effort to serve defendant through ordinary process did not succeed as defendant was evading process. Ultimately, defendant was served by publication of notice in newspapers on 7th September, 2008. The defendant thereafter entered appearance and got filed *vakalatnama* of his counsel. Neither written statement was filed within 30 days nor an application for extension of time was made to the trial court. The matter was taken up by the court below first on 25th September, 2008 and then on 5th December, 2008. No written statement was filed. The written statement was filed on 1st May, 2009, that is, after about nine months of the service. The plaintiff made an application under Order VIII Rule 1 CPC for taking this written statement off the record

since it was filed beyond the period prescribed in Civil Procedure Code and no leave of the court was sought. The learned trial court found that there was nothing on record to show that defendant had faced any exceptional hardship and there was no reason to allow the defendant to file written statement after 270 days. He, therefore, allowed the application.

3. It is submitted by counsel for defendant that defendant had got written statement ready on 5th December, 2008 for filing in the court, however, on that date, the case got transferred to the court of Sh. Rajiv Mehra, Additional District Judge. At 2 p.m. when the case was taken, the written statement was ready but there was no appearance from the plaintiff side. The Presiding Officer was on leave and written statement was not taken on record and the case was simply renotified for 1st May, 2009. Under these circumstances, the written statement came to be filed before the trial court on 1st May, 2009. Therefore, counsel for defendant states that there was no negligence on the part of the defendant. It is submitted that the order passed by the trial court was arbitrary and harsh.

4. It is admitted that the petitioner/defendant was served through publication and the date of appearance in the court was given as 25th September, 2008. The law required petitioner to file written statement within 30 days of service. Since the service was affected on 7th September, 2008, written statement was to be filed by the defendant by 7th October, 2008. Filing of written statement in the court does not require the case to be fixed before the court. Written statement can be filed with the Reader or with the Ahlmad of the trial court even if the date is not there. The plea taken by the respondent that Reader refused to receive written statement cannot be truthful. Day in and day out applications, pleadings, documents are filed before Readers and Ahlmads and the Readers and Ahlmads accept them and then put them before the Presiding Officer after affixing

stamp of filing. The defendant, who was supposed to file written statement in normal course upto 7th October, 2008, did not file written statement nor filed an application for extension of time. Time of 90 days' expired on 6th December, 2008. No application was made by defendant seeking leave of the court to file written statement after expiry of 90 days. Merely preparing written statement or keeping it in file of advocate and not filing in the court only shows the *malafide* intention on the part of the defendant to prolong the case. If the intention of the defendant had been *bona fide*, the defendant would have forwarded a copy of the written statement within 30 days or at least on 5th December, 2008 to the plaintiff or his counsel. The very fact that neither copy of the written statement was given to counsel for the plaintiff nor sent to them by post nor filed in the court shows that the plea that the written statement was lying ready was not a *bona fide* plea.

5. The Supreme Court in *Kailash Vs. Nanhku and Ors.*; AIR 2005 SC 2441 had laid down law as under :-

“(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.”

6. It is apparent that the period of 90 days can be extended only under exceptional circumstances and the petitioners have failed to bring out any exceptional circumstances in this case. The petitioners have relied upon *Sambhaji Vs. Gangabai; 2009 (240) E.L.T. 161 (SC)*. In this case, the Supreme Court had observed that the grounds given by the appellant were not trivial or without substance and, therefore, set aside the order of the High Court affirming order passed by the trial court refusing to accept the written statement. However, this judgment does not help the petitioners as the grounds given by the petitioners in this case are not only trivial but no grounds in the eyes of law. There has been deliberate attempt on part of the petitioners to delay the proceedings right from the beginning. The petitioners avoided normal summons and had to be served through publication in two newspapers at considerable expense of the plaintiff. Thereafter, the petitioners did not file written statement deliberately within time provided by law.

7. There is no doubt that procedure is handmaid of justice but the procedure as laid down by Legislature is handmaid of justice and the courts are bound by this procedure. Individual courts do not have liberty to throw Civil Procedure Code into dustbin and formulate their own procedure in the name of justice. The parties cannot be given liberty to prolong the trial as per their wishes and a case which should be decided normally -- within six months to one year cannot be allowed to be prolonged for decades. If the procedure as laid down by Legislature has to be ignored by the courts for such trivial reasons, a total anarchy shall prevail and this shall make the Legislature irrelevant.

8. I find no force in this petition. The petition is hereby dismissed.

APRIL 13, 2010
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SHIV NARAYAN DHINGRA J.