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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 15, 2010

Date of Order: January 25, 2010

+ CM(M) 1454 of 2009

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25.01.2010

Gautam Bhowmick

...Petitioner

Through: Mr. S.K. Bhaduri and Ms. Kiran Dharam, Advocates

Versus

Prem Chand

...Respondent

Through: Mr. Manjit Singh Chauhan, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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 judgment should be reported in Digest? Yes.

JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioner has assailed the order dated 20th April, 2009 passed by learned Rent Controller dismissing an application of the petitioner under Order 8 Rule 1 read with Section 151 of CPC.

2. Brief facts relevant for the purpose of deciding this petition are that the respondent filed an eviction petition against the petitioner herein under Section 14(1)(a) and (d) of Delhi Rent Control Act (DRC). The notice of the said eviction petition was served upon respondent on 30th July, 2008. In terms of Order 8 of CPC, respondent was supposed to file written statement within 30 days but no written statement was filed within the period of 30 days. No application was made for extension of time in filing written statement after 30 days. The matter was listed before the trial court on 13th October 2008. On that day, instead of filing written statement an adjournment was sought by the petitioner herein on the ground that his counsel was out of station. The trial court observed that two and a half months had passed since service of summons on the petitioner and no written statement had been filed and no application had been made for extension of time. He closed the

right of present petitioner to file the written statement. After this order was passed, the petitioner made an application under Order 8 Rule 1 read with Section 151 CPC seeking leave to file the written statement and in that application the petitioner took the ground that he could not file written statement within the statutory period since he had to frequently visit Kolkata in connection with other cases being faced by him and because of this he was facing financial crisis. The learned trial court considered the application and observed that since the trial court had already closed the right of the petitioner herein to file the written statement, the application for condoning delay, giving reasons for not filing the written statement and seeking leave to file the written statement would not be maintainable since the Court had proceeded under Order 8 Rule 10 CPC and dismissed the application.

3. It is submitted by counsel for the petitioner that the trial court was wrong in saying that it could not entertain an application under Order 8 Rule 1 CPC after it had already acted under Order 8 Rule 10 CPC and closed the right of the present petitioner to file written statement. The counsel for the petitioner relied upon *Arya Orphanage v Bimla Bedi* 118(2005) DLT 152 and *Smt. Rani Kusum v Smt. Kanchan Devi and others* AIR 2005 SC 3304.

4. In *Arya Orphanage (supra)* case, counsel for the petitioner placed reliance on paragraph 30 of the judgment. This paragraph of the judgment is not the ratio of the judgment. A reading of this judgment would show that this Court had observed that in many cases where defendant has no substantial defence, either filing of written statement is evaded or no written statement is filed and all kinds of applications pop up to delay the trial. The Court also observed that defendant in that case had failed to show good cause for enlargement of time in filing the written statement.

5. In *Kailash v. Nankhu*, 2005 IIR SCW 2346, the Supreme Court had considered the provisions of Order 8 Rule 1 CPC and observed as under:-

"... (iv) the purpose of providing the time schedule for

filing the written statement under Order VIII, Rule 1, CPC is to expedite and not to scuttle the hearing. The provisions 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 VIII, CPC is couched in negative form, it does not specify any penal consequences following 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 VIII, Rule 1 CPC is not completely taken away.

(v) Though Order VIII, Rule 1, CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil cases, which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provisions 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."

(emphasis added)

6. The scheme of Order 8 CPC would show that a person is supposed to file written statement within 30 days of receipt of the summons. If he fails to file the written statement within a period of 30 days, he is to be allowed to file the same on

such other day as the Court may direct for reasons to be recorded in writing. The extension of 60 days may be granted by the Court. Thus, written statement has to be filed within 90 days from the date of service of summons. As observed by the Supreme Court, the purpose behind amendment made by Parliament was to expedite the trial.

7. It had become a tendency of the defendants to prolong the trial of the case and to drag the proceedings as long as possible, since prolonging of the proceedings itself results in defeating justice. In order to curb this tendency, amendments were made in Civil Procedure Code and the Supreme Court after considering the legal position took a view that while the written statement should be filed within 30 days. Extension of time for filing written statement beyond 30 days but within 90 days should be given if reasonable grounds are shown by defendant and the Court is satisfied with those grounds. Beyond 90 days, the Court is not powerless in extending the time for filing written statement, but this discretion must be exercised only in exceptional cases so that the procedure does not defeat the substantive justice.

8. In the present case, after receipt of summons no effort was made to file the written statement within 30 days. After 30 days, no application was filed for extension of time for filing written statement and on 13th October 2008 i.e. after 75 days of receipt of summons only a request for adjournment was made by the defendant on the ground that counsel was out of station. Since there was no request for extension of time for filing written statement or no application was made in this regard and no reasons were assigned as to why written statement could not be filed within 30 days, the trial court exercised its powers under Order 8 Rule 10 CPC and closed the right to file the written statement. An application for extension of time was made thereafter. The reasons given in the application for extension of time are also superfluous reasons viz. there were many cases pending against the petitioner in different courts.

9. Because of defendant facing many cases it can safely be presumed that he was very well aware of the law and still did not file written statement deliberately. Financial crunch the other ground taken is not an exceptional ground. At no point of time, the defendant had stated that he was not in a position to engage counsel or was not in a position to bear the burden of litigation and he had also not sought legal aid. Such grounds were very vague and general grounds given to the Court. Thus, even if the court had come to a conclusion that the application was entertainable, the Court could not have extended the time since no exceptional ground was made out by the petitioner before the trial court.

10. Another ground for dismissing this petition is that the order to the trial court was passed on 20th April, 2009 and the present petition was made on 3rd December, 2009 i.e. after about 8 months. At the time of admission of this petition, it was stated that the earlier counsel left Delhi and therefore delay occurred in filing the petition. I consider that throwing of burden of negligence on the counsel for not taking action in time and taking no responsibility in contesting the matter does not show the defendant as diligent, and this petition cannot be entertained by the Court on this ground alone. It has now become a normal practice that the parties change their counsels and throw burden of even filing false petitions on the previous counsels and allege having been misguided by the previous counsel.

11. In view of my foregoing discussion, I dismiss this petition being meritless and also on the ground of delay and laches. No orders as to costs.

January 25, 2010
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SHIV NARAYAN DHINGRA J.