

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRP No.117/2014**

% **20th August, 2014**

IGNOU Petitioner

Through: Ms. Charu Dalal, Advocate.

VERSUS

M/S. BLUESTAR PVT LTD. Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Though this petition is filed under Section 115 of Code of Civil Procedure, 1908 (CPC), it actually ought to have been filed under Article 227 of the Constitution of India and therefore this petition is treated as a petition under Article 227 of the Constitution of India.

2. The Challenge by means of this petition is to the impugned order of the trial court dated 3.6.2014 by which the trial court has refused to recall its earlier order dated 15.4.2014 striking off the defence of the

petitioner/defendant for non-filing of the written statement. The subject suit was a suit for recovery of Rs.18,99,639/- filed by the respondent/plaintiff.

3(i) The admitted facts are that the petitioner/defendant was served with the summons of the suit on 19.2.2013.

(ii) As per Order 8 Rule 1 CPC, though it is directory and not mandatory, a period of 30 days is granted to file written statement and thereafter delay can be condoned upto 90 days. Delay beyond 90 days is also condoned not as a routine, but only in certain acceptable circumstances of the reasons of the delay. In spite of the fact that the provision of Order 8 Rule 1 CPC is only directory, however the same does not mean that the spirit of introducing this provision can be done away with. This has so been observed by the Supreme Court in the judgment in the case of ***Kailash Vs. Nanhku & Ors. AIR 2005 SC 2441.***

(iii) After being served on 19.2.2013, till 15.4.2014 i.e for over one year and two months through several dates of hearings, written statement was not filed. Hence the order dated 15.4.2014 was passed striking off the defence.

(iv) The first date for filing of the written statement was 19.3.2013 thereafter petitioner/defendant kept on seeking adjournments from time to

time for filing of the written statement. On 3.6.2013 further one month's time was given to the petitioner/defendant for filing of the written statement, and by which date not only the period of 30 days has expired but also the extended period of 90 days with a further period thereafter stood expired, but on 3.6.2013 also no written statement was filed. The respondent/plaintiff hence moved an application under Order 8 Rule 10 CPC on 19.8.2013. The matter was thereafter fixed for settlement before the National Lok Adalat for 23.11.2013 and by this date actually written statement ought to have been filed because referring of the matter to the Lok Adalat does not automatically mean stay of the period for filing of the written statement. However, even if we take the period during reference to the Lok Adalat as excluded, it is seen that on 6.3.2014 when the matter was listed it was again adjourned to 9.4.2014 on account of the Presiding Officer of the Court being on leave. On 9.4.2014, the matter was transferred to another court when at the request of the petitioner/defendant, time was given to it for filing its reply to the application under Order 8 Rule 10 CPC i.e even on this date petitioner/defendant did not file the written statement but only sought time to file the reply to the application under Order 8 Rule 10 CPC. On the next date being 15.4.2014, a request for pass over was made for moving an

appropriate application to file the written statement, and consequently the matter was taken up at 2.30 P.M. At the second call since nobody appeared on behalf of the petitioner/defendant nor the written statement or any reply to the application under Order 8 Rule 10 CPC was filed on behalf of the petitioner/defendant, hence the defence was accordingly struck off. The relevant observations of the trial court in the impugned order dated 3.6.2014 read as under:-

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After the decisions of the Hon’ble Supreme Court of India in Mohammad Yusuf (supra) and Kailash (supra) the law is very clear that provisions of Order 8 Rule 1 though couched in mandatory form, is directory being a provision in the domain of processual law. It is further held by the Hon’ble Apex court in Kailash (supra) as under:-

“The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, the defendant shall be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual process;

(i) to deter defendant from seeking any extension of time just for asking and

(ii) to compensate the plaintiff for the delay and inconvenience caused to him.”

As pointed out above, in the instant matter though some time was taken by the parties for exploring the possibility of settlement, but the position as regards the settlement was clear by the submission of learned counsel for plaintiff on 10.01.2014 when he rejected the

proposal of defendant for any kind of settlement and requested the Court to proceed with the case as per merits. Hence, at least after 10.01.2014 there was no reason for the defendant for not filing the WS on record especially in view of the fact that the plaintiff had already moved an application under Order 8 Rule 10 CPC for striking off the defence of the defendant. On both the subsequent dates i.e. 06.03.2014 and 09.04.2014, the representative of the defendant had appeared in the Court, but no WS was filed by them despite the fact that the mandatory period of 90 days had already expired long back. Even on 09.04.2014 when the matter came to be transferred to this Court, defendant was given an opportunity to file the reply to the application of plaintiff under Order 8 Rule 10 CPC, but despite that defendant failed to file any reply or WS. Rather on 15.04.2014 despite the fact that matter was repeatedly passed over, as per request of proxy counsel for defendant – who had appeared before the court only at first call, none had appeared for defendant on subsequent calls. The plea of the defendant taken in the instant application that the proxy counsel had repeatedly appeared on 15.04.2014 and requested the Court for passing over the matter for filing the WS is contrary to the record, as only on the first call proxy counsel had appeared and on subsequent calls none had appeared on behalf of defendant. Furthermore, it is averred in the application that learned counsel for defendant had appeared before the Court at 03.30PM on 15.04.2014 with the WS and reply to the application. Had it been so, then what had stopped the defendant in moving the present application immediately thereafter. As already noted above, the present application was filed on record after more than 20 days i.e. 12.05.2014. It is further argued on behalf of defendant that WS could not be prepared due to the fact that on 15.04.2014 there was a convocation in the university and prior to that there was one week gazetted holidays. Nothing in support of said contention has been placed on record. Even otherwise, as already pointed out, after 10.01.2014, defendant had sufficient time to prepare and file the WS as all efforts of settlement had already proved futile. Even the application under Section 5 of the Limitation Act is silent about the explanation of each day delay and the averments made therein are cryptic in nature.

The facts and circumstances narrated above clearly demonstrate the laxity and gross negligence on the part of defendant and its counsel for not filing the WS within the statutory period of 90 days or even beyond that till the defence was struck off on 15.04.2014. In my view, in the instant case, there is no satisfactory ground for departing from the time limit prescribed by law and the application as a routine manner cannot be allowed.” (underlining added)

4. If this Court allows the relief claimed in the present petition, the same would amount to doing violence to the language of Order 8 Rule 1 CPC which fixes time for filing of the written statement. Time was fixed by the 1999/2002 amendment of CPC in view of the delay being caused to the disposal of the suit by the actions of the defendant in delaying the filing of the written statement. Merely because the petitioner is a Government body does not mean that it is not bound by the provision of Order 8 Rule 1 CPC.

5. Even if the written statement of the petitioner will not be on record, the respondent/plaintiff will have to prove its case in accordance with law and the petitioner/defendant will have a right to cross-examine the witness of the respondent/plaintiff as also address arguments.

6. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

AUGUST 20, 2014

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