

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

Reserved on: 12.05.2014  
Date of Decision: 07.08.2014

+ CM (M) No.1027 of 2013 & CM No.15394 of 2013

VIVEKANANDA KENDRA INTERNATIONAL & ANR..... Petitioners  
Through: Mr. Alok Tiwari & Ms. Pragya, Advs.

*versus*

N.P. SURI ..... Respondent  
Through: Mr. Dev Rishi & Mr. Namit Suri, Advs.

CORAM:  
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition impugns an order dated 18.7.2013 whereby the Trial Court had struck off the defence of the defendants/petitioners because the Written Statement had not been filed. The case of the petitioners is that notice in the suit was received by petitioner Nos.1 & 2 on 26<sup>th</sup> & 28<sup>th</sup> March, 2013, respectively. The Written Statement was required to be filed by 16.5.2013. However, it could not be filed since the authorisation for the same was to be obtained from the Head Office which is located in Kanyakumari. Furthermore the suit related to an old contract which had been closed more than three (3) years ago and the representatives who were handling the transaction had resigned in the intervening period, thus, leading to some difficulty in obtaining relevant documents pertaining to the case. The time for filing the Written Statement was extended till 18.7.2013, however, in

view of the aforesaid difficulty as explained by the petitioners it could not be filed. On the latter date, i.e. 18.7.2013, the petitioners had sought extension of time by only one week but the Trial Court had struck off the defence by the impugned order.

2. The learned counsel for the petitioners has contended that the rules of procedure are handmaiden of justice and the objective prescribed is to advance the cause of justice. Striking off the defence, therefore, has irremediably deprived the petitioners from placing their defence on record for the trial.
3. In response, the learned counsel for the respondent has argued that since ninety (90) days' period of limitation from the date of service of the court summons had expired and the Written Statement had not been filed the time, therefore, could not be extended. Thus, the Trial Court had rightly closed the petitioners' right to file Written Statement as per Order VII rule 1 of the Code of Civil Procedure, 1908 (for short 'the Code'). The learned counsel further contended that the petitioners have not given any justifiable reason for the delay in filing the Written Statement; that in an organisation which was being run by many persons it would be incomprehensible that absence of one of the officials caused the delay of about 81 days, beyond thirty (30) days as claimed by the petitioners. Therefore, the respondent argued that no justifiable ground for condoning the delay/extension of time has been made out.
4. This Court finds that the petitioners/defendants had appeared before the Trial Court on each date and that on the last date time was only sought by one (1) week. To that extent, this Court finds that they

were diligent in pursuing the matter before the Court. The reason for non-filing of the Written Statement appears to be plausible since the office of the defendants/petitioners is located in Kanyakumari and records pertaining to few years old and the concerned officer dealing with the same had since moved on.

5. Learned counsel for the petitioners has relied upon ***ICICI Lombard General Insurance Co. Ltd. v. Continental Transport Organisation Pvt. Ltd.*** MANU/DE/4527/2009, wherein this Court has held that where there are justifiable reasons which prevented defendant from filing written statement within the period of 30 days, beyond 90 days, the Court can allow filing of written statement only under exceptional circumstances.
6. Reliance has also been placed on ***Mohammed Yusuf v. Faij Mohammad & Ors.*** (2009) 3 SCC 513 wherein the Supreme Court held that “A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1

must be adhered to and that only in rare and exceptional case, will the breach thereof will be condoned.” In the aforesaid case, the Supreme Court had reversed the order of the High Court which had allowed the defendant to file the Written Statement even after three (3) years. However, in the present case, the facts are different since the petitioners/defendants had sought an extension of time only by one (1) week from the last extended date, i.e. 18.7.2013.

7. In ***Kailash v. Nanhku & Ors.* AIR 2005 SC 2441** the Supreme Court has held that – “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.” This

view has also been affirmed by the Supreme Court in *Sandeep Thapar v. SME Technologies Pvt. Ltd.*, AIR 2014 SC 897.

8. The aforesaid judgement clearly posits the extension of time beyond ninety (90) days but only in justifiable circumstances. This Court is of the view that the dates fixed by the Court are only to advance the cause of justice and they can be modified in justifiable circumstances. The order closing/striking-off the defence of a petitioner precipitately results in irremediably prejudicing the petitioners/defendants from putting up their case before the Court. The present case is one where the petitioners sought only one more week's time, this extension ought to have been granted for filing the written statement perhaps subject to costs. Accordingly the time to file the written statement is extended by two (2) weeks from today subject to payment of costs of Rs.25,000/- to the respondent/plaintiff.
9. The impugned order is set aside and the petition stands disposed off accordingly.

AUGUST 07, 2014  
*b'nesh*

NAJMI WAZIRI, J.