

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(EI.Pet.) No. 158 of 2022

Lourembam Rameshwor Meetei

...Applicant/s

Vs.

Md. Nasiruddin Khan & 4 ors.

...Respondent/s

**B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

02-02-2023

Heard Mr. N. Kumarjit, learned senior counsel assisted by Mr. N. Zequeson, learned counsel appearing for the applicant and Mr. HS Paonam, learned senior counsel assisted by Mr. BR Sharma, learned counsel appearing for the contesting respondent No.1. None appeared for the other respondents.

[2] The present application had been filed raising objection to the filing of the written statement by the respondent No. 1 in the connected El.Recr.Pet. No. 10 of 2022 and praying for rejecting the said written statement. The main ground raised by the present applicant is that the said written statement had been filed beyond the period of 90 days prescribed under Order VIII, Rule 1 of CPC, without seeking any leave of this Court for condoning such delay or without giving any explanation for the delay in filing the said written statement. According to the learned senior counsel appearing for the applicant, the filing of written statement beyond 90 days is not as a matter of right and unless the respondent No. 1 in the said El.Recr.Petition filed an application praying for condoning the delay in filing the said written statement by explaining or by giving cogent reasons, the written statement filed by

respondent No. 1 is liable to be rejected. In this connection, learned senior counsel had relied on the judgment rendered by the Hon'ble Apex Court in the case of "**Kailash – vrs.- Nanhku & ors.**" reported in **(2005)4 SCC 480** wherein it has been held as under :

"42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended."

"46. We sum up and briefly state our conclusions as under:

"(i) The trial of an election petition commences from the date of the receipt of the election petition by the court and continues till the date of its decision. The filing of pleadings is one stage in the trial of an election petition. The power vesting in the High Court to adjourn the trial from time to time (as far as practicable and without sacrificing the expediency and interest of justice) includes power to adjourn the hearing in an election petition, affording opportunity to the defendant to file a written statement. The availability of such power in the High Court is spelled out by the provisions of the Representation of the People Act, 1951 itself and rules made for purposes of that Act and a resort to the provisions of CPC is not called for.

"(ii) On the language of Section 87(1) of the Act, it is clear that the applicability of the procedure provided for the trial of suits to the trial of election petitions is not

attracted with all its rigidity and technicality. The rules of procedure contained in CPC apply to the trial of election petitions under the Act with flexibility and only as guidelines.

“(iii) In case of conflict between the provisions of the Representation of the People Act, 1951 and the rules framed thereunder or the Rules framed by the High court in exercise of the power conferred by Article 225 of the Constitution on the one hand, and the rules of procedure contained in CPC on the other hand, the former shall prevail over the latter.

“(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 spell 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.”

[3] By relying on the aforesaid judgment of the Hon'ble Apex Court, it has been submitted by the learned senior counsel that the Hon'ble Apex Court has clearly held that a prayer seeking time beyond 90 days for filing written statement ought to be made in writing and that the time schedule contained in the provision under order VIII, Rule 1 is to be followed as a Rule and the departure therefrom will be by way of exception. It has further been submitted that since, the respondent No. 1 did not file any application praying for condoning the delay in filing the written statement and since the respondent No. 1 did not give any explanation in the written statement filed by him about the delay in filing the said written statement, the said written statement cannot be accepted and it is liable to be rejected outright.

[4] Mr. HS Paonam, learned senior counsel appearing for respondent No. 1 submitted that in the judgment relied on by the counsel for the applicant, the Hon'ble Apex Court had clearly explained the object and purpose of Order VIII, Rule 1 of CPC to the extent that the purpose of providing a time schedule for filing the written statement under Order 8, Rule 1 of CPC is to expedite and not to scuttle the hearing of the case and that the provisions spells out a disability on the defendant and that it does not impose an embargo on the power of the Court to extend the time. The learned counsel further submitted that the respondent No. 1 had already filed his written statement and the same is on record and that the respondent No. 1, being the Election Petitioner, has no intention to delay hearing of the

Election Petition. The learned counsel further submitted that the respondent No. 1 is willing and ready to pay cost for condoning the delay in filing his written statement.

[5] In the present case, the written statement of the respondent No. 1 to the Election Recr. Petition No. 10 of 2022 had already been filed and the same is found on record. As the respondent No. 1 is the petitioner in the connected Election Pet. No. 8 of 2022, this Court found considerable force in the submission made by Mr. HS Paonam that the respondent No. 1/Election petitioner has no intention to scuttle or delay the hearing of the connected Election Petitions. This Court is also of the considered view that if the written statement of the respondent No. 1 is rejected on the ground of delay in filing the same, a great injustice will be caused to the respondent No. 1. In any case, this Court can also granted time to respondent No. 1 to file a separate application seeking leave of this Court to allow him to file the written statement by explaining the reasons for the delay in filing the same, however, if such recourse is taken, it will only cause further delay in the trial of the connected election petitions.

[6] In view of the facts and circumstances of the present case, this Court is of the considered view that interest of justice will be served if the respondent No. 1 is allowed to file his written statement subject to the payment of cost of Rs. 10,000/- (Rupees ten thousand) to the applicant through his counsel. It is made clear that the respondent No. 1 should pay the cost of Rs. 10,000/- (Rupees ten thousand) to the

applicant through his counsel within a period of 7(seven) days from today.

[7] With the aforesaid direction, the present application is hereby disposed of.

JUDGE

Dhakeshori