

GAHC010319952019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(10)/3/2020

ABDUL JALIL LASKAR
S/O- LT. IRFAN ALI LASKAR, R/O- HAILAKANDI TOWN WARD NO. 12, P.O.,
P.S. AND DIST.- HAILAKANDI, ASSAM.

VERSUS

MD. MONIR UDDIN LASKAR AND 12 ORS
S/O- LT. RASHID ALI LASKAR, R/O- VILL. VICHINGCHA PART-I, P.O.
VICHINGCHA, P.S. AND DIST.- HAILAKANDI, ASSAM.

3:MD. AHMED HUSSAIN LASKAR
S/O- LT. RASHID ALI LASKAR
R/O- VILL. VICHINGCHA PART-I
P.O. VICHINGCHA
P.S. AND DIST.- HAILAKANDI
ASSAM.

4:MD. AFTAB UDDIN LASKAR
S/O- LT. RASHID ALI LASKAR
R/O- VILL. VICHINGCHA PART-I
P.O. VICHINGCHA
P.S. AND DIST.- HAILAKANDI
ASSAM.

5:MD. KAMAL UDDIN LASKAR
S/O- LT. RASHID ALI LASKAR
R/O- VILL. VICHINGCHA PART-I
P.O. VICHINGCHA
P.S. AND DIST.- HAILAKANDI
ASSAM.

6:MD. JOYNAL ABEDIN LASKAR
S/O- LT. MAHMUD HUSSAIN LASKAR
R/O- VILL. VICHINGCHA PART-I

P.O. VICHINGCHA
P.S. AND DIST.- HAILAKANDI
ASSAM.

9:MUSSTT. JAYEDA BEGUM LASKAR
W/O LT. MAHMUD HUSSAIN LASKAR
R/O- VILL. VICHINGCHA PART-I
P.O. VICHINGCHA
P.S. AND DIST.- HAILAKANDI
ASSAM.

10:MD. DILWAR HUSSAIN LASKAR
S/O- LT. SAKAR ALI LASKAR
R/O- VILL. VICHINGCHA PART-I
P.O. VICHINGCHA
P.S. AND DIST.- HAILAKANDI
ASSAM.

14:MUSSTT. ACHARUN NESSA
W/O- LT. SAKAR ALI LASKAR
R/O- VILL. VICHINGCHA PART-I
P.O. VICHINGCHA
P.S. AND DIST.- HAILAKANDI
ASSAM.

15:MUSSTT. CHAYARUN NESSA
D/O- LT. RASHID ALI LASKAR
R/O- VILL. VICHINGCHA PART-I
P.O. VICHINGCHA
P.S. AND DIST.- HAILAKANDI
ASSAM.

17:MD. ABDUL KARIM BARBHUIYA
S/O- LT. MOSKANDAR ALI BARBHUIYA
R/O- VILL. BAWARGHAT PART-I
P.O. BAWARGHAT BAZAAR
P.S. AND DIST. HAILAKANDI
ASSAM.

18:MD. ABDUL WAHID BARBHUIYA
S/O- LT. MOSKANDAR ALI BARBHUIYA
R/O- VILL. BAWARGHAT PART-I
P.O. BAWARGHAT BAZAAR
P.S. AND DIST. HAILAKANDI
ASSAM.

19:MD. ABDUL LATIF BARBHUIYA
S/O- LT. MOSKANDAR ALI BARBHUIYA

R/O- VILL. BAWARGHAT PART-I
P.O. BAWARGHAT BAZAAR
P.S. AND DIST. HAILAKANDI
ASSAM.

20:MUSSTT ALEKJAN BIBI BARBHUIYA
D/O- LT. MOSKANDAR ALI BARBHUIYA
R/O- VILL. BAWARGHAT PART-I
P.O. BAWARGHAT BAZAAR
P.S. AND DIST. HAILAKANDI
ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER (ORAL)

Date : 04-04-2023

Heard Mr. A.M. Barbhuiya, learned Standing Counsel for the petitioner.
None appears for the respondents.

2. The petitioner has filed an application under Article 227 of the Constitution of India read with Section 151 CPC against the impugned order dated 08.04.2019 passed by the learned Munsiff No.1, Hailakandi in Title Suit No.21/2014, whereby the present petitioner who was impleaded as defendant No.40 was not allowed to submit his written statement beyond the statutory period.

3. The brief facts of the case is that the present proforma defendant Nos. 2 to 35 filed a Title Suit bearing No. 21/2014 before the learned Munisiff No.1, Hailakandi against the present principal defendants/respondents Nos. 1 to 26 praying for a decree declaring the right, interest and possession over the suit land by virtue of purchase, possession and by right of inheritance etc.

Accordingly, the defendant Nos. 1 to 7, 10, 11, 13, 18 and 19 submitted their written statements in the said suit. Subsequently, the defendants could know that on 18.10.2016 i.e. during pendency of the suit, the plaintiff No.1 vide registered sale deed sold out 6 Khatas of land to his daughter-in-law Shilpi Begam Barbhuiya which includes 1 Khata of land under suit dag No.428 of patta No.144. As per allegation of the defendants, on 26.09.2016 during pendency of the suit, the plaintiff No.7 Tahera Begum Laskar sold out 12 Khatas of land to her husband i.e. present petitioner namely Abdul Jalil Laskar including another 1 katha of land under same dag number and patta number. Thereafter, the defendant Nos. 2 to 7, 10,11,13,18 and 19 filed a Misc. Case being No.35/2018 in title Suit No. 21/2014 praying for adding/impleading the said purchaser i.e. Shilpi Begam Barbhuiya and Abdul Jalil Laskar i.e. the present petitioner and accordingly they were impleaded as defendant Nos. 39 to 40 respectively in the said suit.

4. It is also stated in the petition that after impleadment of the petitioner as defendant No. 40 in the suit, he was summoned to submit his written statement as such his last date of submission of his written statement was fixed on 08.04.2019 by the learned trial court. However, in the meantime, the defendant No. 40 i.e. the present petitioner suddenly became seriously ill. On 21.03.2019, he immediately went to Apollo Hospital in Chennai. Thus, the petitioner failed to submit his written statement in time which was beyond his control. In respect of his treatment at Apollo Hospital in Chennai, the present petitioner also submitted medical documents before the learned trial court. In the meantime, in absence of the petitioner, the learned trial court passed the order dated 08.04.2019 and the suit was proceeded ex-parte against the petitioner. Thereafter, on 10.06.2019, the petitioner came back home with poor health

condition and even then he submitted a petition dated 22.07.2019 under Order 9 Rule 7 read with Section 151 of CPC along with condonation petition under Section 5 of Limitation Act praying for vacating the said order dated 08.04.2019 and to allow the petitioner to submit his written statement in the suit. But the said petitions were rejected by the learned trial court dated 01.10.2019. Hence, this revision petition before this Court.

5. As per order dated 07.02.2023 of Lawazima court, notices upon respondent Nos. 1,3,4,6,9,10,14,15,16,18,20 and 21 were duly served. On the prayer of the learned counsel for the petitioner, the names of the respondent Nos. 2,7,8,11,12,13,17,22,23,24,25,26 were struck off as it was submitted that their presence are not required in the proceeding of the case.

6. The learned counsel for the petitioner has submitted that as the petitioner was impleaded as defendant No. 40 in the suit, so he was supposed to file his written statement on or before 08.04.2019 but the petitioner was suffering from diabetes since long and accordingly he has developed a multiple deceases and he was taking treatment under super specialty Apollo Hospital in Chennai. In respect of his health condition, the petitioner has also submitted some medical documents. It has also submitted that as the case is at the initial stage of proceeding, so filing of a written statement do not cause prejudice to the other parties to the suit. In support of his submission, learned counsel has placed reliance on the following case law- *Damayanti Goswami and Ors. vs Karuna Das and Ors. 2009(4) GLT 757.*

7. I have considered the submission made by the learned counsel for the petitioner as well as the medical documents submitted by the petitioner. On perusal of the medical documents, it reveals that at the relevant time, the petitioner was suffering from paranasal sinuses which usually caused due to

infection on the nasal area.

8. The Hon'ble Supreme Court in *Kailash v. Nanhku and others* reported in *AIR 2005 SC 2441* which still holds the field, while dealing with the issue as to whether 'Order VIII Rule 1 CPC, is mandatory or directory' observed as under -

Alternatively, Order VIII, Rule 1 of CPC, mandatory or directory-

This leads us to examine the alternative contention of the learned senior counsel for the appellant that, in any event, Order VIII, Rule 1 of the CPC is not mandatory but directory in nature, a submission on which both the learned counsel for the parties have forcefully argued and the learned Amicus Curiae has also made detailed submissions.

The CPC which consolidated and amended the laws relating to the procedure of the Courts of Civil Judicature in the year 1908, has in the recent times undergone several amendments based on the recommendations of the Law Commission displaying the anxiety of Parliament to secure an early and expeditious disposal of civil suits and proceedings but without sacrificing the fairness of trial and the principles of natural justice inbuilt in any sustainable procedure. The Statement of Objects and Reasons for enacting Code of Civil Procedure (Amendment) Act, 1976 records the following basic considerations which persuaded the Parliament in enacting the amendments:-

(i) that a litigant should get a fair trial in accordance with the accepted principles of natural justice;

(ii) that every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;

(iii) that the procedure should not be complicated and should, to the

utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases.

9. The text of Order VIII Rule 1 CPC, as it stands now, reads as under:-

“1. Written statement- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

10. Three things are clear.

Firstly, a careful reading of the language in which Order VIII, Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for.

Secondly, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law.

Thirdly, the object behind substituting Order VIII, Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick

relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

11. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made in the case of *Sushil Kumar Sen v. State of Bihar* reported in 1975 1 SCC 774, are pertinent:-

"The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence processual, as such as substantive."

12. It is to be noted that though the power of the Court under the proviso

appended to Rule 1 of Order VIII is circumscribed by the words "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language mandatory character, the same is not without exceptions. The courts when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

13. In another case, reported in *AIR Online 2020 HP 428 (Amrik Singh and Anr. vs Gurbachan Singh and Anr.)* it was observed as under -

"No doubt as per provisions contained under Order VIII Rule 1 CPC, defendants are required to file written statement within a period of thirty days, but such time can be further extended by the court up to ninety days as has been provided in the Proviso to Order VIII Rule 1 CPC. Otherwise also, it has been repeatedly held by the Hon'ble Apex Court whenever technicalities are pitted against substantial justice, it is the substantial justice, which is to prevail. It has been categorically held by the Hon'ble Apex Court in Salem Advocate Bar Association, T.N. vs Union of India, reported in 2005 vol. 6 SCC 344, that rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. Hon'ble Apex Court has categorically held in the aforesaid judgment that the rules or procedure are handmaid of justice and not its mistress. While interpreting the word 'shall' as provided Order VIII Rule 1, Hon'ble Apex Court has held that though use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but

having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory.”

14. Recently the Hon'ble Supreme Court in *Bharat Kalra v. Raj Kishan Chhabra* reported in 2022 SCC Online SC 613 relying upon the earlier judgment rendered in *Kailash v. Nanhku* (supra) observed as under -

“Admittedly, the suit for injunction filed by the plaintiff is not the one which is governed by the Commercial Court Act, 2015. Therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of the judgment of this Court reported as 'Kailash v. Nanhku' reported in 2005 vol.4 SCC 480.

In view of the aforesaid judgment, we find that the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing of the written statement is unreasonable.”

15. Considering the object and purpose behind enacting Rule 1 of Order VIII in the present form and the context in which the provisions is placed, it can be said that the provision has to be construed as directory and not mandatory. In exceptional situations, the court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, no strait-jacket formula can be laid down except that the observance of time schedule contemplated by Order VIII, Rule 1 shall be the rule and departure there from an exception, made for satisfactory reasons only.

16. Reverting back to the present case, it appears that due to illness, the petitioner was not present on the day fixed by the trial court for filing written statement. Subsequently, when he came back home, he filed a petition before

the trial court with a prayer for allowing him to file a written statement along with petition for condonation of delay and which was rejected by the learned trial court with a plea that as the mandatory period of 90 days is over, the petitioner was not allowed to file his written statement. In respect of his submission, the petitioner also produced some medical documents for his treatment in Apollo Hospital in Chennai which shows that he was suffering from paranasal sinuses at the relevant time. It is also noticed that the case is at its preliminary stage and keeping in view the law laid down by the Hon'ble Supreme Court and other High Courts as well as the rights of the parties as regard to the suit, this Court is of the opinion that in the interest of justice, the present petitioner may be granted one more opportunity to file his written statement. However, considering all entirety, the prayer of the petitioner is allowed with a cost of Rs.5,000/-. The order dated 08.04.2019 passed by the learned Munsiff No.1, Hailakandi in Title Suit No.21/2014 is set aside.

17. The petitioner is directed to file his written statement before the learned Munsiff No.1, Hailakandi within 30(thirty) days from today. If the petitioner has failed to file his written statement within the time frame, the learned trial court is given liberty to proceed with the case as per provision of law.

18. The amount of cost be deposited in the account of Gauhati High Court Legal Services Committee at Principal Seat.

19. In the result, the present revision petition is allowed and disposed of accordingly.

JUDGE

Comparing Assistant