

Mr. Nishant Sasidharan with Mr. Bhavik Lalain, Mr. Nakul Jain, Ms. Gauri Mestha i/by L.J. Law, for Petitioner.

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ORDER :

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upon the Petitioner. In the suit instituted by the Respondents, the Petitioner – Defendant was served with the writ of summons on 5 April 2016. Though, the Petitioner appeared on 26 April 2016 and sought time to engage an Advocate, the Petitioner did not file written statement, and, thus, eventually, on 26 October 2016, the trial Court directed that the suit shall proceed without written statement of the Defendants.

4. On 23 December 2024, the Defendant filed an application seeking permission to file written statement by setting aside no WS order along with the application for condonation of 2194 days delay in taking out the said application and 3146 days delay in filing the written statement.

5. By the impugned order, the learned Civil Judge rejected the application observing, inter alia, that no justifiable reason was ascribed for the condonation of delay and permitting the Defendant to file written statement and the endeavour of the Defendant to put the blame at the doorstep of the Advocate, was unworthy of acceptance as no Vakalatnama was filed till 13 November 2024.

6. Mr. Sasidharan, learned Counsel for the Petitioner, submitted that the learned Civil Judge took a very hyper-technical view of the matter. In the application, the Defendant No.1 had categorically stated that he had entrusted the brief to the Advocate for preparing and filing the written statement. However, due to the inadvertence on the part of the junior Advocate of Mr.

Abhay Kathavale and the ill-health of Mr. Kathavale and adverse impact on the financial position of Defendant No.1 due to demonitisation, the written statement could not be filed. The assertions in the application were also supported by an affidavit affirmed by Advocate Kathavale. In these circumstances, the Defendant No.1 could not have been deprived of the opportunity to contest the suit on merits, on account of the negligence and inadvertence on the part of the Advocate, whom the former had entrusted the brief. The learned Civil Judge lost sight of the cardinal principle that a party should not suffer on account of the default or negligence on the part of the Advocate to whom such a party entrust the brief.

7. The aforesaid submissions simply fail to account for the gross and inordinate delay in filing the written statement. The Applications were filed almost 8 years after the No WS order was passed by the learned Civil Judge. If the averments in the application are perused, one gets an impression that, instead of an explanation for delay, the Defendant No.1 had offered a litany of excuses. All sorts of reasons were sought to be ascribed, which plainly fall short of explanation and squarely fall in the category of excuses.

8. The alleged inaction, inadvertence or negligence on the part of the concerned Advocate, which was sought to be forcefully canvassed by Mr. Sasidharan, does not advance the cause of the submission. Firstly, it is a matter of record that the concerned Advocate did not file vakalatnama till 13

November 2024, though the Defendant had appeared before the trial Court in response to the service of writ of summons on 26 April 2016 itself. Secondly, it is pertinent to note that, the Defendant was pursuing a prior suit instituted by him against the Respondents, being RCS No.120 of 2012. It defies comprehension that, the Defendant could pursue his own suit and fail to defend the instant suit for over eight years on account of the purported inadvertence or negligence on the part of the Advocate when the suits were essentially cross suits.

9. The broad submission canvassed by Mr. Sasidharan that a party should not be made to suffer adverse consequences of the inaction, inadvertence or negligence on the part of the chosen Advocate, cannot be accepted unreservedly. In the case of **Rafiq and Anr. V/s. Munshilal and Anr.**¹ the Supreme Court considered the question whether it would be proper that the party should suffer for the inaction, deliberate omission or misdemeanour of his agent, and answered the said question in the negative. The Supreme Court observed that, the Court cannot be a party to an innocent party suffering injustice merely because his chosen Advocate defaulted.

10. It is pertinent to note that, in the subsequent decisions, the Supreme Court has clarified the import of the aforesaid decision in the case of **Rafiq and Anr. (supra)**. The Supreme Court has cautioned against the condonation

1 (1981) 2 SCC 788

of delay and lapses on the part of a party on the ground that there was inaction, omission or negligence on the part of the Advocate. In the case of **Salil Dutta V/s. T.M. and M.C.Pvt.Ltd.**², the Supreme Court expounded the position as under :

“8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is not such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the Court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the

2 (1993) 2 SCC 185

suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear they 'chose to non-cooperate with the court. Having adopted such a stand towards the Court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted."

(emphasis supplied)

11. The aforesaid position was reiterated in the case of **Rajneesh Kumar Vs Ved Prakash**³ in the following words :

"10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek

3 2024 SCC Online SC 3380

relief.”

(emphasis supplied)

12. A profitable reference can be made to another decision in the case of **Nitin Mahadeo Jawale and Ors Vs Bhaskar Mahadeo Mutke**⁴ wherein the Supreme Court has again cautioned against condoning the delay or setting aside the dismissal order by placing entire blame on the Advocates. Paragraphs 6 to 8 are material and hence extracted below :

“6. We have noticed over a period of time the growing tendency on the part of the litigants in throwing the entire blame on the head of the advocate. ***Not only this, we have come across cases where the concerned advocate has filed an affidavit in favour of his client(s) saying that he was unable to attend the proceedings due to some personal reasons difficulties thereby facilitating the litigant to get the delay condoned.***

7. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance.

8. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.” (emphasis supplied)

13. In the light of the aforesaid caution administered by the Supreme Court , if the affidavit filed by Advocate Kathavale is perused, it appears that

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the endeavour was to facilitate the Petitioner to wriggle out of the situation. Simply put, the concerned Advocate has not subscribed to the version of the Petitioner to the extent desired by the Petitioner. The assertions in the application are not substantiated by the affidavit of the concerned Advocate.

14. The upshot of aforesaid consideration is that, the gross and inordinate delay did not deserve to be condoned as a matter of course. It is true, the provisions contained in Order VIII Rule 1 of CPC, prescribing the time limit for filing the written statement have been construed to be directory and not mandatory. However, the length of delay does matter. If a huge and inordinate delay is condoned as a matter of course and the Defendant is permitted to file written statement, the very object of prescribing the time limit for filing the written statement would be completely defeated.

15. A useful reference, in this context, can be made to a three-Judge Bench judgment of the Supreme Court in the case of **R. N. Jadi & Brothers & Ors. Vs. Subhashchandra**⁵, wherein the approach of the Court in the matter of condoning the delay in filing the written statement was expounded. The observations of Hon'ble Justice P. K. Balasubramanyan, in the supplementary opinion, are instructive and, hence, extracted below :-

“14. It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs. But how far that

5 (2007) 6 SCC 420

concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in *Kailash vs. Nankhu and others* (2005 (4) SCC 480) which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. It was in that context that in *Kailash vs. Nankhu and others* (supra) it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code. *Kailash* (supra) is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

15. A dispensation that makes Order VIII 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 emphasize 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 VIII Rule 1 must be adhered to and that only in rare and exceptional cases, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in Allen v. Sir Alfred McAlpine & Sons [(1968) 1 All E.R. 543] that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?"

(emphasis supplied)

16. If the facts of the case are appraised on the aforesaid touchstone, this Court does not find any legal infirmity in the impugned order so as to warrant interference in exercise of the supervisory jurisdiction.

17. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)