



CNR: KAHC010527802016

NC: 2026:KHC:53517
WP No. 52798 of 2016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 52798 OF 2016 (GM-CPC)

R

BETWEEN:

1. SRI ASHOK KHENY
AGED ABOUT 66 YEARS
S/O SRI MAHARUDRAPPA,
NO.1, MIDFORD HOUSE,
MIDFORD GARDENS, M.G.ROAD,
BANGALORE-560001.

...PETITIONER

(BY SRI. VIKRAM HUILGOL, SENIOR ADVOCATE FOR
SRI. S B MATHAPATI, AND SIDDARTH SUMAN,
ADVOCATES)

AND:

1. SRI ABRAHAM T J
MAJOR IN AGE,
S/O JOSEPH T.A,
R/O 2457, 16TH B MAIN, H.A.L 2ND STAGE,
INDIRANAGAR, BANGALORE-560038.

...RESPONDENT

(BY SRI. RANGANATH REDDY .R, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE
IMPUGNED ORDER DATED 31.8.2016 (ANNEXURE-A) IN SO
FAR AS ALLOWING IA NOS. IV TO VII FILED BY THE
RESPONDENT HEREIN TO REOPEN THE CASE RECALL THE
ORDER AND CONSEQUENTLY TAKE HIS WRITTEN STATEMENT
OF RECORDS BY CONDONING THE DELAY, IN OS

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NO.8591/2013 ON THE FILE OF THE VIII ADDL CITY AND SESSIONS JUDGE (CCH-15); AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The petitioner is the plaintiff in O.S.No.8591/2013 pending before the learned trial Court. The suit was instituted seeking relief against the defendant in respect of certain allegedly defamatory, false and baseless statements made by the defendant against the petitioner on a television news channel.

2. Upon institution of the suit, an interim order came to be passed on 20.01.2014. The defendant was aware of the proceedings and entered appearance before the trial Court on 31.01.2014 and again on 01.04.2014. Despite such appearance and knowledge of the proceedings, the defendant did not file his written statement. The trial Court granted the defendant as many

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as five opportunities to file his defence. The defendant, however, failed to avail himself of those opportunities. Consequently, on 13.01.2015, the trial Court recorded the written statement of the defendant as "Nil". The suit thereafter proceeded to trial. The plaintiff entered the witness box and was examined as PW-1. Though the defendant was aware of the proceedings, he did not cross-examine PW-1. The evidence of the defendant was also treated as closed and the suit was thereafter posted for arguments.

3. At this stage, the defendant filed an application seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short "CPC"). The said application was dismissed by the trial Court with costs of Rs.10,000/-. The filing of the said application did not result in any order staying the further proceedings in the suit or extending the time for filing the written statement.

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4. The suit thereafter continued to progress towards its conclusion. The matter was posted for judgment on 02.08.2016. It was at this stage that the defendant sought to reopen the proceedings. The matter was advanced to 01.08.2016, on which date the defendant filed I.A.Nos.IV to VII under Section 151 CPC seeking, respectively, reopening of the proceedings, recall of the order dated 13.01.2015 recording his written statement as "Nil", and condonation of the delay in filing the written statement and permission to place the same on record.

5. The plaintiff opposed the applications. It was contended that the defendant had knowledge of the suit, had appeared before the trial Court, had been granted repeated opportunities to file the written statement and had nevertheless consciously failed to do so. It was further contended that the plaintiff had already completed his evidence, that the defendant had not cross-examined PW-1, that the defendant's evidence had been closed and that

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the suit had reached the stage of judgment. Permitting the defendant to introduce a written statement at that stage, according to the plaintiff, would result in reopening a substantially concluded trial and cause serious prejudice to him.

6. The plaintiff also relied upon the decisions of this Court in ***Rabia Bi Kassim v. The Country Wide Consumer Financial Services Ltd.*¹**, and ***Dagadu vs. Anand*²** in support of the proposition that once a matter has been reserved for judgment, the Court ordinarily has nothing further to do except pronounce judgment.

7. The learned trial Judge, however, allowed I.A.Nos.IV to VII by order dated 31.08.2016, subject to payment of costs of Rs.10,000/- to the plaintiff. Aggrieved by the said order, the plaintiff has invoked the jurisdiction of this Court under Article 227 of the Constitution of India.

¹ ILR 2004 KAR 2215

² W.P.Nos.77408-410 of 2013



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8. Heard learned Senior Counsel appearing for the petitioner/plaintiff and learned counsel appearing for the respondent/defendant.

9. In the light of the aforesaid facts, the following point arises for consideration:

"Whether the learned trial Judge was justified in permitting the defendant to reopen the proceedings, recall the order dated 13.01.2015 recording the written statement as "Nil", condone the delay and receive the written statement when the plaintiff's evidence had been completed, the defendant had failed to cross-examine the plaintiff, his own evidence had been closed and the suit had been posted for judgment?"

10. The material chronology assumes significance in determining whether the discretion exercised by the learned trial Judge can be sustained. The defendant had knowledge of the suit and had entered appearance before the trial Court. He was granted five opportunities to file his



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written statement, but failed to do so. Consequently, on 13.01.2015, the trial Court recorded his written statement as "Nil". The proceedings thereafter continued without any written defence from the defendant.

11. The plaintiff subsequently entered the witness box and was examined as PW-1. The defendant did not cross-examine him. The defendant also did not lead evidence and his evidence was treated as closed. The suit was thereafter posted for arguments and ultimately for judgment. It was only at that stage that the defendant sought reopening of the proceedings, recall of the order dated 13.01.2015 and permission to file his written statement.

12. The explanation placed before the trial Court does not disclose any circumstance which prevented the defendant from filing the written statement despite the repeated opportunities granted to him. The record does not disclose a short or inadvertent delay occasioned by



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circumstances beyond his control. On the contrary, the conduct of the defendant, viewed cumulatively, shows that he was aware of the proceedings but repeatedly failed to avail himself of the opportunity to place his defence on record.

13. The legal position that emerges from ***Kailash v. Nanhku³, Salem Advocate Bar Association (II) v. Union of India⁴, and Desh Raj v. Balkishan⁵***, is that, in an ordinary civil suit, the time prescribed under Order VIII Rule 1 CPC is directory and the Court possesses a limited discretion to receive a written statement beyond the prescribed period. The recognition of such discretion, however, does not amount to conferring an unrestricted right upon the defendant to file the written statement at any stage of the proceedings.

14. The discretion has to be exercised judicially and not mechanically. The Court is required to consider the

³ (2005) 4 SCC 480

⁴ (2005) 6 SCC 344

⁵ (2020) 2 SCC 708



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explanation for the delay, the conduct of the party, the prejudice to the opposite party and the stage which the proceedings have reached. The later the stage at which the indulgence is sought, the greater must necessarily be the justification for reopening the proceedings.

15. The present case is not one where the defendant approached the Court at the commencement of the trial seeking a short extension of time. By the time the applications were filed, the plaintiff had completed his evidence, the defendant had declined to cross-examine PW-1, his own evidence had been closed and the suit had reached the stage of judgment. The defendant was thus seeking not merely acceptance of a belated pleading but reopening of a substantially concluded trial.

16. This distinction is important. A written statement sets out the defence which the plaintiff is required to meet and ordinarily forms the basis upon which the issues are crystallised and evidence is led.



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Permitting a written statement containing a defence to be introduced after completion of the plaintiff's evidence would necessarily require the plaintiff to be afforded an opportunity to meet that defence. The consequence would be to unsettle the trial already conducted and to confer upon the defaulting defendant an opportunity which had been lost through his own conduct.

17. The prejudice to the plaintiff, therefore, cannot be adequately addressed merely by imposing costs. The plaintiff had conducted the proceedings on the basis of the procedural position which existed before the trial Court. He had completed his evidence without the defendant's written defence being on record and without being subjected to cross-examination by the defendant. To permit a new defence to be introduced thereafter would materially alter the character of the trial.

18. The filing of an application under Order VII Rule 11 CPC does not improve the defendant's position. An

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application seeking rejection of the plaint is distinct from a written statement and cannot be treated as a substitute for a defence to the suit. In the absence of any order staying the proceedings or permitting the defendant to defer filing of the written statement, the pendency of an application under Order VII Rule 11 did not suspend his obligation to place his defence on record. Indeed, the fact that the defendant considered it appropriate to contest the maintainability of the suit at the threshold demonstrates that he was conscious of the proceedings and was actively taking steps in the suit. There was, therefore, no apparent impediment to his filing the written statement while pursuing the said application. The sequence in which the defendant chose to contest the proceedings is a relevant circumstance in assessing his subsequent request to reopen the suit. Having consciously elected to pursue an application for rejection of the plaint, while at the same time failing to file his written statement despite repeated opportunities, the defendant cannot now rely upon the

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pendency of that application to explain or justify his prolonged default. Viewed in the context of his other defaults, including his failure to cross-examine PW-1 and his failure to lead evidence, the conduct of the defendant reflects a pattern of pursuing the proceedings in a manner that resulted in their protraction rather than timely advancement towards trial and adjudication. The subsequent attempt to reopen the proceedings, after the suit had reached the stage of judgment, must therefore be considered in the backdrop of this entire course of conduct.

19. The invocation of Section 151 CPC also does not furnish a valid basis for the order under challenge. Inherent powers are preserved to secure the ends of justice and to prevent abuse of the process of the Court. They are not intended to enable a party to circumvent the procedural scheme of the Code or to revive, without

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sufficient cause, a stage of the proceedings which has been closed by reason of that party's own default.

20. In ***M/s. SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd.***⁶, the Hon'ble Supreme Court emphasised the limitations upon the exercise of inherent jurisdiction where CPC prescribes consequences for failure to file a written statement. That decision arose in the context of a commercial suit and the mandatory regime applicable thereto. The present suit, not being shown to be a commercial suit, is governed by the more flexible regime recognised in ***Kailash*** (supra) and ***Desh Raj*** (supra). Nevertheless, the distinction does not confer upon the defendant an unrestricted right to reopen the proceedings. Section 151 cannot be employed merely to overcome the consequences of prolonged and unexplained default.

⁶ (2019) 12SCC 210



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21. Equally, the fact that the suit had been posted for judgment does not require the proposition to be stated in absolute terms that the Court thereafter possesses no jurisdiction to pass any order except to pronounce judgment. The question is one of judicial discretion. Once the proceedings have reached the stage of judgment, an application seeking to introduce a written statement after completion of the evidence must be examined with particular caution, because its acceptance would ordinarily necessitate reopening the trial and would have a direct bearing upon the rights already accrued to the opposite party.

22. The decisions relied upon by the petitioner, including ***Rabia Bi Kassim v. Country Wide Consumer Financial Services Ltd.***, (supra), are relevant in emphasising the significance of the stage at which an attempt is made to reopen proceedings after the matter has been posted for judgment. They cannot, however, be



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understood as laying down an inflexible rule that the Court becomes wholly powerless to deal with an application after a matter is posted for judgment. The proper principle is that such an application must disclose a compelling and legally sustainable basis for disturbing the concluded stage of the proceedings.

23. No such basis exists in the present case. The defendant has not demonstrated why, despite his knowledge of the suit and five opportunities granted by the trial Court, he could not file his written statement. Nor has the impugned order recorded any finding of sufficient cause explaining the prolonged default. The order proceeds essentially on the consideration that an opportunity could be granted subject to payment of costs.

24. Such an approach does not constitute a proper exercise of judicial discretion. Costs may, in an appropriate case, compensate the opposite party for a curable procedural lapse. They cannot, however, by

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themselves justify reopening a trial where the delay is prolonged and unexplained and where the proceedings have already advanced to the stage of judgment.

25. The right of a defendant to have his case decided on merits is undoubtedly an important consideration. But that right cannot be divorced from the corresponding right of the plaintiff to have the litigation brought to a conclusion in an orderly and reasonably expeditious manner. A litigant who has repeatedly failed to avail himself of opportunities granted by the Court cannot claim, as a matter of right, that the proceedings should be reopened merely because he has belatedly decided to contest the suit.

26. In the circumstances of the present case, the cumulative effect of the defendant's conduct is decisive:

- a. he had knowledge of the proceedings; appeared before the trial Court;

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- b. was granted five opportunities to file the written statement;
- c. failed to do so;
- d. suffered an order recording the written statement as "Nil";
- e. did not cross-examine PW-1;
- f. did not lead evidence;
- g. and sought reopening only after the suit had reached the stage of judgment. The absence of any satisfactory explanation, coupled with the prejudice that reopening would cause to the plaintiff, makes the exercise of discretion in favour of the defendant unsustainable.

27. The learned trial Judge consequently failed to consider material circumstances which were directly relevant to the exercise of discretion. The impugned order does not adequately address the defendant's prolonged default, the absence of sufficient cause, the stage of the proceedings or the prejudice to the plaintiff. The discretion under Section 151 CPC and Order VIII Rule 1 CPC has,

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therefore, not been exercised in accordance with settled principles.

28. This Court is conscious that Order VIII Rule 1 CPC is not invariably mandatory in an ordinary civil suit. The conclusion reached herein rests not upon an inflexible application of the period prescribed under that provision, but upon the particular facts of this case and the manner in which the defendant sought to invoke the Court's discretion after allowing the proceedings to reach the stage of judgment.

29. The impugned order, in permitting the defendant to reopen the proceedings in such circumstances, has resulted in an unwarranted interference with the course of a substantially concluded trial. The order accordingly suffers from material irregularity in the exercise of jurisdiction and warrants interference under Article 227 of the Constitution of India.

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Accordingly, the point for consideration is answered in the ***Negative.***

30. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The writ petition is ***allowed***;

(ii) The impugned order dated 31.08.2016 passed on I.A.Nos.IV to VII in O.S.No.8591/2013 by the learned VIII Additional City Civil and Sessions Judge (CCH-15) vide Annexure-A, is hereby set aside. The said applications filed by the defendant stand dismissed;

(iii) Consequently, the order dated 13.01.2015 recording the written statement of the defendant as "Nil" shall stand;

(iv) The learned trial Court shall proceed with the suit on the basis of the evidence already recorded and pronounce judgment in accordance with law. The defendant shall not



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be permitted, pursuant to the applications considered herein, to reopen the trial or introduce a written statement at this stage;

(v) It is clarified that this Court has not held that a written statement cannot, in any circumstances, be received beyond the period prescribed under Order VIII Rule 1 CPC in an ordinary civil suit;

(vi) The present conclusion is confined to the peculiar facts of the case, where the defendant has failed to establish sufficient cause for his prolonged default and has sought to reopen the proceedings only after completion of the plaintiff's evidence, closure of his own evidence and posting of the suit for judgment;

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(SACHIN SHANKAR MAGADUM)
JUDGE

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List No.: 1 Sl No.: 46