

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 417 of 2015**

1. Laxman Kumar S/o Hukum Sai Aged About 45 Years Resident Of Village Basdei, Out Post Basdei, Police Station & Tahsil Surajpur, District Surajpur Chhattisgarh.
2. Ram Pyare S/o Tularam Aged About 50 Years Caste- Rajwar, Occupation Service, SECL, Resident Of Village Basdei, Out Post Basdei, Police Station & Tahsil Surajpur, District Surajpur Chhattisgarh.

**---- Petitioners**

**Versus**

1. Smt. Kunti Rajwade W/o Subhagram Rajwade Aged About 33 Years D/o Shivbalak Ram, Caste Rajwar, R/o Village Basdei, Police Station & Tahsil Surajpur, District Surajpur Chhattisgarh.
2. State Of Chhattisgarh Through The Collector, Surajpur, District Surajpur Chhattisgarh.

**---- Respondents**

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| For Petitioners     | : | Shri Rakesh Pandey, Advocate.   |
| For Respondent No.1 | : | Shri Surfaraj Khan, Advocate.   |
| For State           | : | Shri R.K. Jaiswal, Panel Lawyer |

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**Order On Board**

**08/10/2015**

Heard.

1. This petition under Article 227 of the Constitution of India is directed against order dated 29.04.2015 by which petitioners' right to file written statement has been closed.
2. Learned counsel for the petitioners submits that grave injustice has occasioned by impugned order as the petitioners are deprived to contest the suit by contradicting pleadings of the plaintiff. Learned counsel for the petitioners submits that the petitioners filed application before the Court below clearly stating that due to disruption of electricity supply, non-availability of typing machine, the reply could not be typed, till the end of day. He submits that this constitutes an exceptional reason. Submission is that the provision is merely procedural and directory. Once, a reason has been assigned by the petitioners, the Court is required to adopt a liberal view and not strict view because the object of the provision is only to expedite the trial and not to scuttle defence that may be

raised by the defendant in the suit. Reliance has been placed on a decision of the Supreme Court in the case of **Kailash versus Nanhku and others (2005) 4 SCC 480**.

In the case of **Kailash (supra)**, the Supreme Court held –

- “46 (i) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx  
(ii) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx  
(iii) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx  
(iv) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx  
(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 fact and circumstances of a given case.”

3. In the case of **Salem Advocate Bar Association, Tamil Nadu v. Union of India (AIR 2005 SC 3353)**, the Supreme Court held -

“22 .....Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1.”

The provision contained in Order 8 Rule 1 and the principles evolved upon interpretation by the Supreme Court in aforesaid two decisions make it clear that the prayer for extension of time cannot be granted as a matter of routine and merely because it is asked for, more so when the period of 90 days have expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the

defendant and also placed on record in writing, howsoever briefly, by the Court on its being satisfied. It has also been held that extension of time may be allowed, if it is needed to be given for the circumstances which are exceptional, occasioned by reasons beyond control of the defendant and grave injustice would be occasioned if the time is not extended.

4. In the present case, the defendant had appeared before the Court below on 10.11.2014. Even after expiry of 90 days, no written statement was filed and a last opportunity to file written statement was granted and the case was listed on 25.02.2015 on which date, the petitioner remained ex-parte. Thereafter, an application for setting aside ex-parte order was made, which was eventually allowed by the Court on 19.03.2015. Again last opportunity was granted to the petitioner to file written statement on 26.03.2015 instead of filing written statement, the petitioner came out with an application under Order 7 Rule 11 CPC. Thereafter, another application under Section 151 CPC was filed for extension of time to file written statement.

5. The reason assigned by the petitioners, as it appeared on the face of it, was not at all bonafide. Vague averment of disruption of electricity supply, non-availability of typing machine has been made. The petitioners were granted sufficient opportunity in the past and it appears that despite repeated opportunity was granted to him, they failed to submit reply, written statement and they came out with a lame excuse, which hardly constitutes an exceptional reason. The Court below has meticulously examined the reason assigned and recorded finding that the reason assigned by the applicants are self-contradictory. Therefore, no interference is called for and the petition is dismissed.

Sd/-

**Manindra Mohan Shrivastava**

**J U D G E**