

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6812 OF 2004

Spaco Carburettors (India)
Pvt. Ltd. Chinchwad, Pune .. Petitioner
vs.
Shri. Madanmohan D. Makan .. Respondent

Mr. D.J. Bhanage for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 26 MARCH, 2015

P.C. :-

1] This petition challenges the order dated 18 June 2004 made by the Additional Judge, SCC Pune declining to accept the petitioner's written statement on record, on the ground that the same was tendered beyond the period of 90 days from the date made returnable in the summons for settlement of issues.

2] In making the impugned order, learned Judge relied upon certain decisions, which then had taken view that the time limit of 90 days is mandatory and cannot be extended under any circumstances.

3] The aforesaid interpretation, no longer represents the present position in law.

4] In case of *Sambhaji & ors. vs. Gangabai & ors.*¹, the Hon'ble Apex Court has ruled that Order 8 Rule 1 does not deal with the power of the Court and also does not specifically take away the

¹ AIR 2008 SC (Supp) 767

power of the Court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order 8 Rule 1 of the CPC is procedural in nature and not a part of substantive law. The substituted provisions of Order 8 Rule 1 of the CPC intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases, causing inconvenience to the plaintiffs and the petitioners approaching the Court for quick relief and also the serious inconvenience of the Court, faced with frequent prayers for adjournments. The object of the provision is to expedite the hearing and not to scuttle the same. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. It cannot therefore, be said that Court has no power to accept written statement filed beyond 90 days.

5] In the present case, the summons for settlement of issuances was issued on 8 January 2003 and the same was received by the petitioner on 21 January 2003. The returnable date was 21 February 2003. On the said date, the petitioner appeared in the Court and filed reply to application seeking interim reliefs. The interim reliefs was rejected on on 17 March 2003. The matter was thereafter posted for filing of written statement on 13 June 2003. The petitioner, however, filed an application to take on record the written statement on 10 February 2004.

6] In the application dated 10 February 2004, the petitioner pointed out that the petitioner was facing business problems and the General Manager, who was deputed to attend the matter had to travel frequently. In the said application, it was pointed out that the reply has been filed to the application for interim reliefs and additional opportunity be granted to the petitioner to file the written statement on record.

7] As noted earlier, the learned Civil Judge, did not advert to the cause shown, but declined to take the written statement on record, on the ground that provisions contained in Order 8 Rule 1 of CPC were mandatory and the Court was powerless to accept written statement, if tendered beyond the period prescribed under the said provisions.

8] In view of later decisions of the Hon'ble Apex Court as also of this Court, the aforesaid view can no longer be accepted. This is a case, where some cause has been shown by the petitioner. The petitioner, no doubt, could have been more vigilant in pursuing the matter. However, the conduct of the petitioner is not such as would warrant deprivation of an opportunity to avail written statement. The respondent-plaintiff had, in fact, recorded no objection to the receipt of written statement, subject to payment of costs of Rs.500/-. The prejudice to the respondent, can always be compensated in terms of the costs.

9] Accordingly, the impugned order dated 18 June 2004 is set aside. The petitioner to file a written statement within a period of four weeks from today. The petitioner to pay costs of Rs.5,000/- (Rs. Five Thousand only) to the respondent. Since the respondent did not appear despite notice, such costs may be deposited in the Trial Court within a period of four weeks from today.

10] The petitioner to appear before the Trial Court on 15 April 2015 at 11.00 a.m. alongwith an authenticated copy of this order and to produce an authenticated copy of this order.

11] Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs in the present petition.

(M. S. SONAK, J.)

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