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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 18th November, 2015*

+ **CM(M) 1133/2015**

M/S ZX SOURCES (P) LTD Petitioner
Through: Mr.H.C.Kharbanda, Mr.T.M.Saxena
and Mr.Vipin K.Saxena, Advocates.

versus

ARVIND KUMAR GOYAL & ANR Respondents
Through: Mr.P.K.Rawal and Mr.Tarun
Aggarwal, Advocates.

PRATIBHA RANI, J. (Oral)

CM No.27259/2015

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

CAV.No. 1204/2015

Since counsel for the respondents-caveators has appeared, caveat stands discharged.

CM(M) 1133/2015

1. The petitioner, who is defendant in Civil Suit No.125/2015, is aggrieved by the order dated 13th August, 2015 whereby the right of the petitioner to file the written statement has been closed by the learned Trial Court for the reason that the written statement has not been filed within the stipulated period.
2. Mr.P.K.Rawal, Advocate for the respondents accepts notice.
3. I have heard learned counsel for the parties and carefully gone

through the record.

4. Learned counsel for the petitioner/defendant has submitted that the reason for not being able to file the written statement was that the counsel had gone to take 'kanvar' which has not been considered as sufficient and plausible explanation by learned Trial Court. It has been further submitted that in the facts and circumstances, one opportunity may be granted to the petitioner to file the written statement subject to the conditions deemed fit by this Court.

5. Mr.P.K.Rawal, learned counsel for the respondents has submitted that the petitioner, who is defendant in Civil Suit No.125/2015, has been served with summons on 26.04.2015. The written statement could have been filed by the petitioner within 30 days from the date of service of summons though the petitioner put in appearance before the learned Trial Court on 15.05.2015 but failed to file the written statement either on the date of hearing or within the period prescribed. It has been further submitted that the petitioner failed to file any application seeking extension of time to file the written statement which could have been extended upto 90 days. The defence of the petitioner has been struck off on 13.08.2015 which was much after the expiry of period of 90 days, hence the petition may be dismissed.

6. I have considered the submissions made on behalf of the petitioners.

7. Order VIII Rule 1 CPC provides 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.'

8. The principles governing the discretion of the Court while considering an application under Order VIII Rule 1 CPC have been detailed in the decision reported as Mohammaed Yusuf v. Faij Mohammd & ors. (2009) 3.

Paragraphs 10 and 11 of the report are extracted herein:

“ 10. The question came up for consideration before this Court in M. Srinivasa Prasad and Ors. v. The Comptroller & Auditor General of India and Ors. MANU/SC/1638/2007 : AIR2007SC1574 , wherein a Division Bench of this Court upon noticing Kailash (supra) held as under:

“7. Since neither the trial Court nor the High Court have indicated any reason to justify the acceptance of the written statement after the expiry of time fixed, we set aside the orders of the trial Court and that of the High Court. The matter is remitted to the trial Court to consider the matter afresh in the light of what has been stated in Kailash's case(supra). The appeal is allowed to the aforesaid extent with no order as to costs.”

11. The matter was yet again considered by a three-judge Bench of this Court in R.N. Jadi & Brothers and Ors. v. Subhashchandra. P.K. Balasubramanyan J., who was also a member in Kailash in his concurring judgment stated the law thus:

*“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 knockouts. But how far that 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 v. Nanhku 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 rigour of that provision or to mitigate genuine hardship. It was in that contest that in Kailash v. Nanhku 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 is no authority for receiving written statement, after the expiry of the period permitted by law, in a routine manner. (emphasis placed).

15. A dispensation that makes Order 8 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 emphasise 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 8 Rule 1 must be adhered to and that only in rare and exceptional case, 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 that law's delay 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?”

9. In the instant case, the petitioner/defendant failed to file the written statement within 30 days or seek extension of time by explaining the circumstances under which he could not file the written statement within the prescribed time limit. The period of 90 days from the date of service had expired in July 2015 itself whereas the oral request for extension of time to file the written statement was made by brother of the owner of the petitioner/defendant M/s ZX Sources (P) Ltd. on 13.08.2015 which was declined. The application seeking condonation of delay in filing the written statement has been filed only on 15.10.2015 which has been disallowed.

10. It is pertinent to note here that in this petition, only the order dated 13.08.2015 has been challenged whereby the oral request made by brother of owner of the petitioner/defendant company for extension of time to file the written statement has been declined by the learned Trial Court.

11. The impugned order does not suffer from any illegality or perversity. The petition is dismissed.

12. No costs.

CM No.27258/2015

Dismissed as infructuous.

PRATIBHA RANI, J.

NOVEMBER 18, 2015

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