

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (227) No. 37 of 2016**

Dabar Singh S/o Late Noman Singh, Aged About 40 Years R/o A.F. 3, Sanjay Apartment, Vyapar Vihar Road, Bilaspur, Civil And Revenue District Bilaspur (Chhattisgarh).....Defendent.

---- Petitioner**Versus**

1. Dr. Narayan Prasad Kashyap S/o Ramji Lal Kashyap, Aged About 74 Years R/o B-232, Agyaya Nagar, Bilaspur, Civil And Revenue District Bilaspur (Chhattisgarh).....Plaintiffs.
2. Smt. Anubha Singh, W/o Dabar Singh, Aged About 36 Years R/o B-232, Agyaya Nagar, Bilaspur (Chhattisgarh)
Presently R/o S.E.-508, CSEB Colony (East), Korba, District Korba (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Ravindra Agrawal, Advocate.
For the Respondents	:	None present.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****19/01/2016**

(1) The matter is listed for hearing on admission.

(2) At the outset, Learned counsel for the Petitioner submits that Civil Suit No. 242-A of 2014 (Dr. Narayan Prasad Kashyap and Another versus Dabar Singh) filed by the Respondents/ Plaintiffs is pending before the Third Additional District Judge, Bilaspur for recording of the Plaintiffs' evidence on 25.1.2016. Learned counsel submits that the Defendant/ Petitioner bonafidely filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 (for short 'the Code') for impleading Rishabh Singh, son of the sole Defendant/ Petitioner as necessary party in the suit thereby they were under impression that they be given an opportunity to file their written statement but the Court below by allowing the application (I.A. No. 1 of 2015) filed by the Plaintiffs

under Order VIII of Rule 10 read with Section 151 of the Code on 17.11.2015 closed the opportunity of the Petitioner/ Defendant to file written statement as the Petitioner failed to submit his written statement as required under the provisions of Order VIII Rule 1 of the Code i.e. within 90 days.

(3) Learned counsel the Petitioner submits that the petition may be disposed of without even noticing the Respondents on the mercy grounds. They are ready to file their written statement on 25.1.2016 alongwith cost payable to the Respondents/ Plaintiffs before filing their written statement. It is further submitted that in 2012 SAR (Civil) 490 (C.N. Ramappa Gowda vs. C.C. Chaqndergowda (D) by Lrs. & Anr.) the Hon'ble Apex Court held at paragraph 11 as under:

11. Explaining the default on the part of the defendant for not filing written statement it has been stated that late C.C. Chandregowda represented by his Lr. C.C. Harish was suffering from severe illness due to jaundice. This fact was pleaded before the High Court at the stage of appeal and the High Court in the light of the same has rightly remanded the matter to the trial court to re-consider it afresh. Learned Counsel for the Defendants-Respondents also submitted that the remand order of the High Court will not serve the interest of justice if the Defendants-Respondents are not allowed to place written statement of the Defendants-Respondents on record and the remand order will not serve any useful purpose if the suit is restored and ordered for retrial without permitting the Defendants-Respondents to file written statement. Learned Counsel has contended that the filing of written statement is governed by procedural law and this Hon'ble Court has held in Kailash v. Nanhku and Ors. reported in (2005) 4 SCC 480, as follows:

“The purpose of providing the time schedule for filing the

written statement under Order 8 Rule 1 Code of Civil Procedure is to expedite and not to scuttle the hearing. The provision spells out a disability on the Defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 Code of Civil Procedure is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 Code of Civil Procedure is not completely taken away.”

Learned counsel also placed reliance on 2005 SAR (Civil) 419 Kailash versus Nanhku and another wherein the Hon'ble Apex Court has observed in paragraphs 43, 44, and 45 as under:

43. However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order VIII Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order VIII Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law.

44. We sum up and briefly state our conclusions as under:-

(i) The trial of an election petition commences from the date of the receipt of the election petition by the Court and continues till the date of its decision. The filing of pleadings is one stage in the trial of an election petition. The power vesting in the High Court to adjourn the trial from time to time (as far as practicable and without sacrificing the expediency and interests of justice) includes power to adjourn the hearing in an election petition affording opportunity to the defendant to file written statement. The availability of such power in the

High Court is spelled out by the provisions of the Representation of the People Act, 1951 itself and Rules made for purposes of that Act and a resort to the provisions of the CPC is not called for.

(ii) On the language of Section [87\(1\)](#) of the Act, it is clear that the applicability of the procedure provided for the trial of suits to the trial of election petitions is not attracted with all its rigidity and technicality. The rules of procedure contained in the CPC apply to the trial of election petitions under the Act with flexibility and only as guidelines.

(iii) In case of conflict between the provisions of the Representation of the People Act, 1951 and the Rules framed thereunder or the Rules framed by the High Court in exercise of the power conferred by Article [225](#) of the Constitution on the one hand, and the Rules of Procedure contained in the CPC on the other hand, the former shall prevail over the latter.

(iv) The purpose of providing the time schedule for filing the written statement under Order VIII, Rule 1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 of Order VIII of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order VIII, Rule 1 of the CPC is not completely taken away.

(v) Though Order VIII, Rule 1 of the CPC is a part of Procedural Law and hence directory, keeping in view the

need for expeditious trial of civil causes which persuaded the 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 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 was needed to be given for the 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 facts and circumstances of a given case.

45. In the case at hand, the High Court felt satisfied that the reason assigned by the defendant-appellant in support of the prayer for extension of time was good and valid. However, the prayer was denied because the High Court felt it had no power to do so. The written statement has already been filed in the High Court. We direct that the written statement shall now be taken on record but subject to payment of Rs. 5000/- by way of costs payable by the appellant herein to respondent No. 1 i.e. the election petitioner in the High Court, within a period of 4 weeks from today.

(4) Learned counsel for the Petitioner submits that as observed by the Hon'ble Apex Court the provisions has to be held directory and not

mandatory. It is further submitted that they will cooperate further in proceedings before the Court below and he may be given an opportunity.

(5) To appreciate the arguments advanced in this behalf, the impugned order dated 17.11.2015 passed by the trial Court and other annexed documents are perused.

(6) From perusal of the entire material, it shows that the Defendant/ Petitioner has not filed the written statement within 90 days from the date of service of summons. On the other hand, it is also apparent that instead of filing the written statement, an application under Order I Rule 10 of the Code has been filed for impleadment of his son as a necessary party.

(7) On the other hand, the Plaintiffs have also filed an application under Order VIII Rule 10 read with Section 151 of the Code to close the opportunity of the Defendant to file written statement as he had not complied with the provisions of Order VIII Rule 1 of the Code wherein it is required that the written statement has to be filed within 90 days from the date of service of summons.

(8) Upon perusal of the entire material, this Court is of the view, in the larger interest of justice and as per the observation in this behalf by the Hon'ble Apex Court that the provisions are directory and not mandatory, the petition may be disposed of without even noticing to the Respondents.

(9) Consequently, the instant WP (227) is disposed of. The Petitioner is directed to pay Rs.5,000/- (Rupees Five thousand only) as cost to the Respondents/ Plaintiffs and file his written statement on 25.1.2016 after payment of cost to the Respondents/ Plaintiffs. It is made clear that if the

Petitioner failed to pay the cost and to file his written statement on 25.1.2016 then the Court below is directed to proceed further as required under the law.

(10) In case the cost as directed above is paid to the Respondents/ Plaintiffs and the written statement is filed on 25.1.2016 then the Court below is directed to proceed further thereafter as per provisions of law.

(11) Copy of this order be produced by the Petitioner before the Court below for compliance.

(12) No order as to costs.

(13) Certified copy of the order today as per rules.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE