

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 725 of 2015**

Paras Ram S/o Shri Thuiya Ram, Aged About 55 Years Caste Kanwar,
Resident Of Batwahi, Police Station Dhourpur, Tahsil Lundra, District
Surguja (Chhattisgarh)

---- Petitioner**Versus**

1. Smt. Tijo Bai W/o Late Nan, Aged About 72 Years By Caste Gond,
Resident Of Mahamaya Para, Near Mahamaya Mandir, Ambikapur,
Tahsil And Police Station Ambikapur, District Surguja (Chhattisgarh)
2. Smt. Vimla D/o Late Lodhu, Aged About 26 Years By Caste Gond,
Resident Of Mahamaya Para, Near Mahamaya Mandir, Ambikapur,
Tahsil And Police Station Ambikapur, District Surguja (Chhattisgarh)
3. Smt. Sima @ Simla D/o Late Lodhu, Aged About 24 Years By Caste
Gond, Resident Of Mahamaya Para, Near Mahamaya Mandir,
Ambikapur, Tahsil And Police Station Ambikapur, District Surguja
(Chhattisgarh)
4. Smt. Sukhmaniya W/o Late Khiru, Aged About 50 Years By Caste
Gond, Resident Of Mahamaya Para, Near Mahamaya Mandir,
Ambikapur, Tahsil And Police Station Ambikapur, District Surguja
(Chhattisgarh)
5. Dinesh Pawle S/o Late Lodhu, Aged About 36 Years By Caste Gond,
Resident Of Mahamaya Para, Near Mahamaya Mandir, Ambikapur,
Tahsil And Police Station Ambikapur, District Surguja (Chhattisgarh)
6. Smt. Sumitra Singh D/o Somaru Singh, Aged About 36 Years Caste
Khairwar, Resident Of Mominpura, Ambikapur, District Surguja
(Chhattisgarh)
7. State Of Chhattisgarh, Through The Collector, Surguja, Ambikapur
(Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Shahid Ahmad Ansari, Adv.
For Respondents No. 1 to 6	:	None appears though served.
For Respondent No. 7/State	:	Mr. Lav Sharma, Panel Lawyer.

Order On Board**17/03/2016**

1. With consent of the parties, the matter is heard finally at motion stage itself.
2. Brief facts necessary for disposal of instant writ petition are that Civil Suit No. 174-A/2014 (Paras Ram -v- Smt. Tijo Bai and six others) is pending

before 4th Civil Judge Class II, Ambikapur, Distt. Sarguja. In the said trial, defendants No. 1 to 5/respondents No. 1 to 5 remained *exparte*. Respondent No. 6/Defendant No. 6 Smt. Sumitra Singh was taking part in the trial. On 4-7-2015, the trial Court fixed the matter for filing of written statement on 6-7-2015. On 6-7-2015 on behalf of respondent No. 1 to 6 a joint written statement was filed. Also on the same date, an application under Order 8 Rule 1 of the Civil Procedure Code, 1908 (in brevity 'Code') was filed. The court below after hearing the parties, on 6-7-2015 itself rejected the application under Order 8 Rule 1 of the Code and held that as the matter is fixed for written statement and as per the date so fixed for filing of the written statement, the written statement has been filed, the same cannot be rejected. Hence rejected the application. Against said order, the plaintiff/petitioner has preferred instant writ petition submitting that as the respondent No. 1 to 5 have not filed any application for setting aside *exparte* proceeding against them, they cannot be permitted to file written statement until *exparte* proceedings are not set aside/quashed. They have also taken the ground that respondent No. 6 also may not be permitted to file written statement beyond 90 days from the date of service of summon. Hence the court below was required to disallow the written statement filed on behalf of the respondents No. 1 to 6. As the respondents failed to file written statement within stipulated period of 30 days and no reason is assigned in writing, hence they may not be permitted to file written statement after stipulated period of 30 days as required under the law. Hence it is prayed that order dated 6-7-2015 be quashed and the application under Order 8 Rule 1 of the Code be allowed. Written statement filed on behalf of respondents No. 1 to 6 may be disallowed.

3. Heard learned counsel for the petitioner on motion and also perused the impugned order, other documents annexed along with the writ petition.

4. Learned counsel for the petitioner/plaintiff supported entire ground taken in the instant writ petition. Placing reliance in **Mohammed Yusuf -v- Faij Mohammad and others** reported in (2009) 3 SCC 513, he submitted that in that case, the Hon'ble Apex Court has clarified that though in **Kailash v. Nanku** [(2009) 3 SCC 513], Order 8 Rule 1 proviso of the Code are held to be directory but the Supreme Court therein in no uncertain terms stated that the defendants may be permitted to file written statement after the

expiry of period of 90 days only in exceptional situation. The High Court should not have permitted filing of written statement in exercise of its writ jurisdiction after delay of three years, particularly when both the trial Judges as also the Revisional Court had assigned sufficient and cogent reasons in support of their orders rejecting the application for condonation of delay. Learned counsel submitted that the cited case law is applicable in the present case. Hence instant writ petition may be allowed and the relief sought therein may be granted.

5. In the instant case, Order 9 Rule 7 and Order 8 Rule 1 of the Code are relevant for adjudication of the case and are reproduced below :

“Order 9 Rule 7

7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non appearance.- Where the court has adjourned the hearing of the Suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Order 8 Rule 1

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:*

6. *Provided that where the defendant fails to file the written statement within the said period of thirty day, 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. “*

10. It is settled law that if any particular stage in the hearing is crossed and if any defendant has not participated in the stage crossed and if he wants to participate in the stage already crossed then only he is required to file an application to set aside the exparte proceeding under the provisions of Order 9 Rule 7 of the Code. Perusal of the order sheet dated 4-7-2015 goes to show that respondent No. 6 was represented. Respondents No. 1 to 5 were exparte and on the prayer by an application under Order 17 Rule 1 of the Code filed on behalf of the respondent No. 6, the trial Court gave an opportunity of filing written statement and fixed the date of 6-7-2015 for filing of written statement of Respondent No. 6 which goes to show that undisputably the court fixed the dated 6-7-2015 for filing the written statement. On 6-7-2015 a joint written statement was filed on behalf of respondent No. 1 to 6 which goes to show that the stage of filing of written

statement was not crossed and other respondents No. 1 to 5 though exparte but took part in the hearing dated 6-7-2015 and filed a joint written statement along with respondent No. 6. As per settled law, other respondents No. 1 to 5 are not required to file an application under Order 9 Rule 7 of the Code because the stage of filing the written statement was not crossed.

11. It is true that an application under Order 8 Rule 1 of the Code was filed immediately after filing of the written statement on behalf of the respondents, the copy of the said application was given to the respondents. The court heard the matter on that interim application and on the said date itself rejected the said application and held that the written statement filed cannot be disallowed in the facts and circumstances of the case. The case law cited on behalf of the petitioner goes to show that as per **Kailash's** case (supra) the Hon'ble Apex Court held that proviso to Rule 1 of Order 8 of the Code is directory though in the **Mohammed Yusuf** (supra), the Apex Court held that in given circumstance where written statement has been filed after delay of 3 years and the trial Court, revision court had assigned sufficient and cogent reason for rejecting the application for condonation of delay, the High Court should not permit filing of written statement in exercise of its writ jurisdiction. Hon'ble Apex Court well held that the court may permit filing of written statement in exceptional situation. In the present case, there is no delay of 3 years, on the other hand, case itself was fixed for filing written statement. The court vide order dated 4-7-2015 by allowing the application under Order 17 Rule 1 of the Code thereby condoned the delay if any and also the same was not for three years. The court below condoned the delay, allowed the defendant to file written statement and if the joint written statement has been filed on the date so fixed it goes to show the same was filed with permission of the court. Order 9 Rule 7 of the Code is not applicable in the present case, written statement filed with permission of the court and also proviso to Order 8 Rule 1 of the Code is not mandatory, rather directory for which the trial court duly granted permission and opportunity to file written statement.

12. On due consideration, the case law cited supports the case of the respondents No. 1 to 6 and it is of no help to the petitioner. The petitioner has failed to demonstrate any illegality or impropriety in the order dated 6-7-2015.

13. The petition being sans substance deserves to be and is hereby dismissed at motion stage itself.

14. No order as to costs.

Sd/-
(Chandra Bhushan Bajpai)
Judge