

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 92 of 2016**

- Dharam Prakash Saraf S/o Late Shri K. Anand Saraf @ Khatanand Saraf, Aged About 57 Years R/o Quarter No. E 22, 15 Block S. E. C. L. Colony Korba Tahsil & District Korba (Chhattisgarh).

---- Petitioner**Versus**

- Satya Prakash Saraf S/o Late Shri Khatanand @ K. Anand Saraf, Aged About 52 Years R/o Quarter No. M 1174 Aadarsh Nagar S. E. C. L. Colony Kusmunda Tahsil Katghora, District Korba (Chhattisgarh).

---- Respondent

For Petitioners	:	in person.
For Respondents	:	not noticed.

Order On Board**07/04/2016**

1. Facts of the case required for disposal of instant writ petition are that Civil Suit No. 29-A/2015 (Dharam Prakash Saraf -v- Satyaprakash Saraf) is pending before the 2nd Civil Judge Class II, Bilaspur. On 19-8-2015, plaintiff/petitioner filed an application under Order 8 Rule 1 of the Civil Procedure Code, 1860 (in brevity 'CPC'). The trial Court after hearing the arguments on the interim application on 14-10-2015, passed an order on 19-10-2015 and rejected the said application. Against the order dated 19-10-2015, plaintiff/petitioner has filed instant writ petition taking a ground that the respondent/defendant was required to file written statement within 30 days as per provision of Order 8 Rule of the CPC and the court below for the reasons to be recorded in writing within 90 days from the date of service of summons may permit filing of written statement. Provisions are mandatory. Hence the order passed by the trial Court is not proper and the impugned order dated 19-10-2015 be quashed and this Court by invoking the supervisory jurisdiction vested to this Court under Article 227 of the

Constitution of India may issue a writ that the subordinate court cannot extend time beyond 30 days without reasons in writing.

2. Petitioner submits that as per law laid down in **M/s. Aditya Hotels (P) Ltd. -v- Swadeshi Stores Limited and others** reported in AIR 2007 SC 1574, as the trial Court has not given any reason to justify acceptance of written statement after expiry of time fixed, the order allowing filing of written statement is liable to be set aside. The petitioner submits that the written statement was not filed on 28-7-2015 and admittedly the same is filed after expiry of 90 days. The reasons mentioned by the trial Court are not as per the law applicable hence the petition may be allowed and the relief sought be granted accordingly.

3. For appreciating the arguments advanced on behalf of the petitioner, I have perused the impugned order, other documents and the grounds taken in the instant writ petition.

4. While discussing the provisions of law, Hon'ble Apex Court in **M/s Aditya Hotels** (supra) referred the decision of **Kailash -v- Nanhku and others** reported in 2005 AIR SCW 2346. In the said case law, Hon'ble Apex Court held categorically that the limitation for filing the written statement is not mandatory rather directory and extension of period of 90 days is permissible. Perusal of the order goes to show that written statement has been filed on 23-7-2015. Prior to the above date, one I.A. No. 1/15 filed on behalf of the plaintiff was pending. The petitioner had filed application under Order 8 Rule 1 of the CPC on 19-8-2015 i.e. much after filing of written statement. Copy of the written statement was given to the plaintiff on 23-7-2015 itself. Court below recorded reasons that since application under Order 8 rule 1, CPC was filed much after filing of the written statement, the same

being filed on a subsequent date is not maintainable and the matter was listed for proceeding under Section 89 of the CPC.

5. As held in **Kailash** (supra), provisions are merely directory and the court can permit filing of written statement beyond the period of 90 days. After filing of written statement, the petitioner received copy of the said written statement and raised no objection 23-7-2015 as the matter itself was pending for other proceeding. Looking to the entire facts and also with the fact that the said application under Order 8 Rule 1 of the CPC has been filed after the date on which written statement was filed thereby the trial Court explained and satisfactorily deemed permitted the defendant to file written statement. On due consideration of the fact that the written statement has been filed much before the application was filed under Order 8 Rule 1 of the CPC and in view of law laid down by Hon'ble Apex Court that the limitation part is directory, in the considered opinion of this Court, instant writ petition is sans substance. Therefore, I am not inclined to issue any direction to the court below. Consequently instant writ petition is dismissed at motion stage itself.

Sd/-
(Chandra Bhushan Bajpai)
Judge