

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3759 of 2016

ORDER:

1) Aggrieved by the order dated 31.07.2015 passed in I.A.No.45 of 2015 in O.S.No.383 of 2014 on the file of the Additional Senior Civil Judge, Palamaneru, Chittoor District, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The petitioner/plaintiff filed O.S.No.383 of 2014 (old O.S.No.543 of 2013) seeking permanent injunction. Initially the trial Court was pleased to grant ad-interim injunction on 20.11.2013 for a period of one month, directing the plaintiff to comply with the Order 39, Rule 3 of C.P.C. Pursuant there to the defendants 1 and 2 received notices and summons, thereafter on 20.12.2013 both the defendants entered their appearance through their counsel. It is stated that till March, 2014 no written statement was filed. Thereafter, the case was transferred from Chittoor to Palamaneru. Till January, 2015 the defendants did not file written statement or counter. On 21.01.2015 the defendants requested the Court to receive the written statement without seeking permission of the Court. At that point of time, an objection was raised with regard to receiving written statement and counter at the belated stage. After considering the arguments advanced by both sides and in spite of the objections received,

the trial Court received the written statement and counter. Thereafter, the present I.A. came to be filed seeking to eschew the written statement and counter filed by the defendants. After hearing both sides the trial Court held that the application is not maintainable in the same Court and that the aggrieved person ought to have presented an application before the higher Courts, so saying returned the said application. Challenging the same, the present revision came to be filed.

3) The short question that agitated before this Court is whether the trial Court was justified in accepting the written statement and also the counter to the I.A.

4) Learned counsel for the petitioner mainly submits that since the written statement came to be filed beyond 90 days, the Court should be eschewed the same from consideration. Relying upon the judgment of the Apex Court in *Kailash v. Nanhku and others*¹ the counsel for the petitioner contended that the order under challenge warrants interference. He also relies upon the judgments of the Apex Court in *Aditya Hotels (P) Limited v. Bombay Swadeshi Stores Limited and others*² and in *Sandeep Thapar v. SME Technologies Private Limited*³.

5) Learned counsel for the respondents opposed the same contending that filing of written statement was within the time stipulated as the condition of 90 days stipulated in Order VIII Rule

¹ (2005) 4 SCC 480

² (2007) 14 SCC 431

³ (2014) 2 SCC 302

1 of C.P.C. is not mandatory but only directory in nature. He submits that since the object of prescribing the procedure is to advance cause of justice it would not be appropriate to eschew the written statement from consideration. In support of his plea he places on record the judgment of the Apex Court in *Saleem Advocate Bar Association, T.N., v. Union of India*⁴.

6) Before proceedings further, it would be useful to refer to Order VIII Rule 1 of C.P.C. which deals with filing of the written statement. The same is as under:-

“Order VIII, Rule 1 of C.P.C.: 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.”

7) Though the learned counsel for the petitioner relied upon the judgment of *Kailash case (1 supra)* but the findings arrived at in the said judgment in fact support the plea of the respondents herein. The Court categorically held that the purpose of providing the time schedule for filing the written statement under Order VIII Rule 1 C.P.C. is to expedite and not to scuttle the

⁴ (2005) 6 SCC 344

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. The Court held that though the language of the proviso to Rule 1 Order VIII C.P.C. 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. It has been held that the power of the Court to extend time for filing the written statement beyond the time schedule provided by Order VIII Rule 1 C.P.C. is not completely taken away.

8) In *Salem Advocate Bar Association, T.N. v. Union of India* (4 *supra*) a three Judge Bench of the Apex Court while dealing with the similar aspect observed as under:

“20. The use of the word 'shall' in Order VIII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of

justice and not its mistress. In the present context, the strict interpretation would defeat justice.

21. In construing this provision, support can also be had from Order VIII Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order VIII, the court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order VIII Rule 1. There is no restriction in Order VIII Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written

statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1.”

9) Even in *Sandeep Thapar case (3 supra)* the Apex Court categorically held that though Order VIII Rule 1 of C.P.C. is a part of procedural law is directory. Keeping in view the need for expeditious trial of civil cases which persuaded Parliament to enact the provision in its present form, it was 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 the 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 to be placed on record in writing, howsoever briefly, by the Court on its being satisfied. It has been held that extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant as grave injustice would be occasioned if the time is not extended.

10) From the judgments referred to above, it is clear that the nature of provision contained in Order VIII Rule 1 of C.P.C. is procedural and it is not a part of the substantive law. Substituted

Order VIII Rule 1 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 to the serious inconvenience of the Court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same.

11) The Apex Court in catena of judgments further held that when the language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation.

12) In the light of ratio laid down I find merit in the submission of the learned counsel for the respondents. With regard to the argument of the learned counsel for the petitioner that no sufficient explanation was offered for filing the written statement with delay, it is to be noted that originally the case was filed in Chittoor and there after in the year 2014 it was transferred to Palamaneru. It appears that fresh notice came to be issued and then the written statement was filed in the month of January, 2015. Having regard to the same, it cannot be said that there was abnormal delay in filing the written statement and counter. Since forfeiture of right to file written statement will cause serious hardship to the respondents and as the written statement is

already accepted by the Court below and having regard to the ratio laid down in the judgments referred to above, the plea of the petitioner for eschewing the written statement and counter to the I.A. cannot be accepted.

13) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

12.09.2016
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