

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.1728 of 2017 (O&M)

Date of decision: 10.03.2017

Kashmiri Lal and others

..Petitioners

Versus

Kamal Nayan Sharma

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. G.S. Jagpal, Advocate
for the petitioners.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 15.11.2016 (Annexure P-4) passed by the Civil Judge (Junior Division), Ludhiana, whereby, the defence of the petitioners has been struck off.

Briefly, the facts of the case as made out in the present revision petition are that the respondent-plaintiff filed a suit for possession under Section 6 of the Specific Relief Act for direction to the petitioners-defendants to restore his possession of shop in dispute and also for permanent injunction restraining them from demolishing, alienating or letting out the shop in dispute. After issuing notice in the civil suit, petitioners-defendants put in appearance but the written statement could not be filed. However, during the pendency of the civil suit, the petitioners-defendants filed an application under Order 7 Rule 11 CPC for rejection of the plaint, which was dismissed without seeking any reply and the trial

Court also struck off the defence of the petitioners-defendants vide separate order dated 15.11.2016, which has been challenged by way of filing the present revision petition.

Learned counsel for the petitioners submits that the impugned order has been passed without any application of mind as the respondent-plaintiff has filed frivolous civil suit just to harass the petitioners. The application for rejection of plaint was filed by the petitioners but no reply was sought and the same was dismissed on the same day. Learned counsel further submits that the first suit filed by the respondent-plaintiff was withdrawn on 16.04.2016 and thereafter, the present suit was filed after a period of one month and no reason whatsoever was given as to how the second suit was maintainable. Learned counsel also submits that the approach of the trial Court was hyper technical while striking off the defence of the petitioners.

Heard arguments of learned counsel for the petitioners and have also perused impugned order dated 15.11.2016 as well as other documents available on the file.

Impugned order dated 15.11.2016 is reproduced as under: -

“Now case is again called at 4:00 PM but defendants are not ready to file written statement. Perusal of file shows that defendants first appeared on 1.8.2016 and since then they have not filed written statement for the reasons best known to them. More than three months have elapsed after the appearance of defendants but the defendants failed to file written statement. No new ground is made out to adjourn the case for the said purpose again and again as the

defendants have already availed statutory period as mentioned in C.P.C. Hence, the prayer of Ld. Counsel for the defendants is declined and the defence of defendants is hereby struck off.”

In the impugned order, simply it has been mentioned that the written statement has not been filed in spite of passing of three months'.

Undisputedly, as per provisions of Order 8 Rule 1 CPC, the written statement is to be filed within a period of 90 days but the Court has the discretion to allow the defendants to file written statement even after expiry of 90 days under exceptional circumstances as Order 8 Rule 1 is directory. Even the Court has discretion to grant more than three opportunities/adjournments in case of special and extraordinary circumstances, which are beyond the control of the party. Similar view has been observed by Hon'ble the Apex Court in case ***Salem Advocate Bar Association, Tamil Nadu vs. Union of India, 2005(3) R.C.R. (Civil) 530*** which is as under:-

“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."

Similarly, in another judgment of Hon'ble the Apex Court in case ***Kajaria Iron Castings Limited vs. Aswini Kumar More, 2002 (10) SCC 292***, by considering the relevant provisions, the defendant was allowed to file written statement by granting one more opportunity and impugned order was set aside.

The question is as to whether under the facts and circumstances of the case, the petitioner deserves to be granted any further opportunity for filing of written statement while setting aside the order passed by the Court below whereby defence of the petitioner was struck-off on account of non-filing of written statement.

Comprehensive amendments were made in CPC in the year 2002 in Order VIII Rule 1 CPC. The relevant provision is reproduced below:-

“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.”

Aforesaid provision provides that 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 written statement within the said period of thirty days, he shall be allowed to file the same within such further time, 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.

The issue as to whether the period so provided under Order VIII Rule 1 CPC for filing the written statement is mandatory or directory,

came up for consideration before Hon'ble the Supreme Court in ***Kailash v. Nanhku and others 2005 (2) RCR (Civil) 379***, wherein it was opined that the purpose of amendment is to expedite and not to scuttle the hearing. This does not impose an embargo on the power of the court to extend the time further, as no penal consequences as such have been provided, the provisions being in the domain of the procedural law are not mandatory. However, it was further opined that keeping in view the need for expeditious trial of the civil cases, ordinarily the time schedule should be followed as a rule and departure therefrom would be by way of exception. The extension of time should not be granted as a matter of routine and merely for asking especially when the time is beyond the period of 90 days. In case any extension is to be granted, the same could be for good reasons to be recorded in writing may be in brief. Relevant paras from the aforesaid judgment are extracted below:-

“45 (i) to (iii) x x x x

(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.”

The issue regarding filing of belated written statement came up for consideration before Hon'ble the Supreme Court in view of objection raised by the plaintiff therein, in ***M. Srinivasa Prasad and others v. The Comptroller & Auditor General of India and others*** 2007 (4) SCT 380, wherein Hon'ble the Supreme Court while setting aside the order passed by

the trial court as well as the High Court, remitted the matter back for consideration afresh, as there were no reasons forthcoming for allowing the written statement to be filed after expiry of period of 90 days. Relevant para thereof is extracted below:-

" 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."

Subsequently the same issue again came up for consideration before Hon'ble the Supreme Court in ***R.N. Jadi v. Subhashchandra 2007 (3) RCR (Civil) 588***, wherein it was opined that the grant of extension of time beyond 30 days is not automatic. The power of the court has to be exercised with caution and for adequate reasons to be recorded and extension of time beyond 90 days of service of summons must be granted only based on a clear satisfaction of the justification for granting such extension. The period prescribed under Order VIII Rule 1 CPC should generally be adhered to and the extension should be in exceptional cases. The relevant paras thereof are extracted below:-

"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 knock-outs. 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 vs. Nankhu and others, 2005 (4) SCC 480** 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 context that in **Kailash vs. Nankhu and others** (supra) 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 statements, after the expiry of the period permitted by law, in a routine manner.*

15. A dispensation that makes Order VIII 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 VIII 1 must be adhered to and that only in rare and exceptional cases, 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 Mc Alpine & Sons, (1968) 1 All ER 543** that law’s delays 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?”*

Similar view was expressed by Hon'ble the Surpeme Court in **Mohammed Yusuf v. Faij Mohammed and others 2009 (1) RCR (Civil) 633** and in **Sandeep Thapar v. SME Technologies Private Limited 2014 (1) RCR (Civil) 729.**”

Keeping in view the facts and circumstances of the case and by considering the law position as discussed above, the present petition deserves to be allowed. Impugned order dated 15.11.2016 is set aside and the petitioners are granted one more opportunity to file written statement subject to payment of of ₹10000/- as costs to be paid to the party opposite by way of demand draft.

10.03.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No