

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 18/07/2018****Order Delivered on 17/08/2018****WP227 No. 671 of 2012**

1. Dharmu S/o Lt. Sukalu Satnami Aged About 49 Years R/o Village Nimora, P.S. Abhanpur, Tahsil Abhanpur, District Raipur, (M.P.) Now Chhattisgarh.
2. Smt. Sokwati D/o Shri Rarwa Satnami, W/o Shri Lailuram Satnami, R/o Village Nimora, P.S. Abhanpur, Tahsil Abhanpur, District Raipur, (M.P.) Now Chhattisgarh.

---- Petitioners**Versus**

1. Deleted (Smt. Satvantin Bai) As Per Honble Court Order Dated 01-02-2013, Chhattisgarh.
2. (A). Smt. Bhagaiya Bai, Aged about 65 years, Wd/o Lt Aalam Satnami, R/o Village - Nimora, Post Bendri, Tah - Abhanpur, District Raipur, (M.P.) Now Chhattisgarh.
- (B). Bahalu S/o Lt Aalam Satnami, Aged about 45 years, R/o Village – Nimora , Post Bendri, Tah - Abhanpur, District Raipur, (M.P.) Now Chhattisgarh.
- (C). Vijay S/o Lt Aalam Satnami, Aged about 40 years, R/o Village - Nimora, Post Bendri, Tah - Abhanpur, District Raipur, (M.P.) Now Chhattisgarh.
- (D). Krishna S/o Aalam Satnami, Aged about 36 years, R/o Village - Nimora, Post Bendri, Tah - Abhanpur, District Raipur, (M.P.) Now Chhattisgarh.
3. Smt. Sonbati D/o Rarwa Satnami, W/o Hari Singh, R/o Village- Nimora, Post Bendri, Tah- Abhanpur, Distt Raipur, (M.P.) Now Chhattisgarh.
4. Smt. Kamla Bai W/o Mehatar Satnami Village- Amora, Post Bendri, Tah. Abhanpur, District Raipur, (M.P.) Now Chhattisgarh.
5. Smt. Krishna Bai, Aged about 36 years, Wd/o Shyamlal R/o Village- Nimora, Tah- Abhanpur, Distt Raipur, (M.P.) Now Chhattisgarh.

6. Minor Dharmendra, Aged about 10 years, S/o Lt. Shyamlal Satnami, minor through natural guardian mother Smt. Krishan Bai, Village- Nimora, Tah. Abhanpur, District Raipur, (M.P.) Now Chhattisgarh.
7. Minor Dharamveer, Aged about 4 years, S/o Lt. Shyamlal Satnami, minor through natural guardian mother Smt. Krishan Bai, Village- Nimora, Tah. Abhanpur, District Raipur, (M.P.) Now Chhattisgarh
8. Prabhulal Sahu S/o Sonuram Sahu Dumartarai, aged about 30 years, R/o. Dumratrai, Tah. & Distt. Raipur C.G.
9. Om Prakash Goutam S/o Satanand Goutam, aged about 27 years, R/o. Near Mahaveer School, Gudiyari, Tah. & Distt. Raipur C.G.
10. Harmeet Singh Hora S/o Gurumukh Singh Hora, Partner M/s Dolphin Promotors & Builders, Devendra, Nagar, Raipur, Tah & Distt. Raipur, CG.
11. Birjhu Ram S/o Bulkhu, Caste- Satnami, R/o. Village. Nimora, Tah. Abhanpur Raipur C.G.

---- Respondents

For the Petitioners : Shri Rajesh Tiwari, Advocate.

For Respondent No.8 : Shri Raghvendra Pradhan, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. By this instant writ petition, the petitioners/plaintiffs are challenging the impugned award dated 24.04.2012 passed by the 15th Civil Judge, Class II, Raipur, C.G in Civil Suit No. 29 A/11, wherein the objection raised by the defendant No.11/respondent No.1 that the written statement to the counter claim filed by the petitioners/plaintiffs could not be taken on record, because it was filed after the time prescribed in Order 8 Rule 1 of C.P.C. was allowed and right to file written statement to counter claim of respondent No.11 was closed.
2. Learned counsel for the petitioners submits that they were not aware about filing of the counter claim by defendant No.11 and it was also not been

intimated by their earlier counsel engaged by them before the learned trial Court.

3. They got Knowledge of filing of counter claim only after changing their counsel, who after filing his *Vakalatnama* and verifying the records of the learned trial Court have intimated the petitioners that defendant No. 11 filed counter claim and the written statement to the counter claim has not been filed and immediately, thereafter, application U/o. 8 Rule 1 read with Section 151 of the C.P.C was filed, and, thereafter, written statement to the counter claim was also filed on 24.11.2011.
4. Learned counsel for the petitioner submits that delay occurred in filing of the written statement to the counter claim was not deliberately made in fact they themselves are the plaintiffs to the suit and do not want to linger on their own case but the delay occurred was only on account of the fact that they were not intimated by their earlier counsel with respect to filing of the counter claim and requirement of filing written statement to it.
5. Per contra learned counsel appearing for respondent No.8 have submitted that the provisions U/o. 8 Rule 1 specifically provides that the written statement should be filed within a period of 30 days and on the prayer made by the defendants or persons filing of written statement, the same could be extended for further period of 90 days, but in the instant case the written statement have been filed before the learned Court below, after delay of about 11 months and, therefore, the written statement cannot be taken on record.
6. I have heard the learned respective counsel appearing for the parties perused the records.
7. From perusal of the impugned order itself it is evident that the learned trial Court itself have mentioned that the written statement alongwith the counter claim on behalf of defendant No.11 was filed on 15.11.2010, thereafter, the case was fixed on 22.11.2010 for the written statement to the

counter claim but as the other interim application have been filed by the parties, therefore, while considering those applications after 22.11.2010, the case could not be fixed on the head for filing of the written statement to the counter claim and, further, mentioned that fixing the date for submission of the written statement is not required. It is not in dispute that on 15.11.2010 the written statement alongwith counter claim was filed and within a period of 7 days the next date has been fixed for the written statement to the counter claim and, thereafter, as per the impugned order itself the Court could not have fixed the case for submission of the written statement to the counter claim. The provisions of Order 8 Rule 6 A provides for filing of counter claim by the defendants. Sub-rule (3) of Rule 6 A of Order 8 provides as under :-

“ Rule 1 - xxxxxxxxx

Rule 2 - xxxxxxxxx

Rule 3 - xxxxxxxxx

Rule 4 - xxxxxxxxx

Rule 5 - xxxxxxxxx

Order 8 Rule 6 A “(3). The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.”

8. From bare perusal of Sub-rule (3) of Rule 6 A of Order 8 specifically provides that for filing of written statement the Court may fix a period which in fact in the instant case learned trial Court for one or other reasons has not fixed the case after 7 days fixed for submission of the written statement to the counter claim. Filing of written statement is provided U/o. 8 Rule 1 of C.P.C. The provisions of Order 8 Rule 1 have been held to be directory in nature and on the satisfactory grounds submitted before the Court by the party the Court can extend the period beyond 90 days and take the written statement on record.

9. Hon'ble Supreme Court in the matter of **Salem Advocate Bar Association, T. N. Versus Union of India** reported in **2005 6 SCC 344**, held as under -:

“ (20). The use of the word 'shall' in Order 8 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 8 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 the 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 8 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 8, the court in its discretion would have the power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 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 8 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 8 Rule 1.

10. The Court can exercise the power to grant permission or accept the written statement beyond the prescribed period but not in routine manner and only on satisfactory special circumstances.
11. In the case in hand, the specific plea of the petitioners/claimants are that their counsel have not intimated to them with regard to filing of the counter claim and the requirement of filing of the written statement to the counter claim. The Court also recorded order sheet for filing written statement only once, within 7 days of filing of counter claim and no date fixed for filing written statement to counter claim, thereafter. Further that it came to their knowledge when they have changed their counsel, who filed his *Vakalatnama* on 27.08.2011 and, immediately, thereafter, on 20.09.2011 i.e., the next date of hearing, the application for extension of time has been filed.
12. Looking to the facts and circumstances of this case as well as the provisions of Order 8 Rule 6 A (3), and, further, that the dispute in the instant case is with regard to the immovable property and by striking off the rights to file written statement to counter claim the petitioners will be deprived of their valuable right to contest the case on merits of the case and will also deprive of getting substantial justice.
13. Keeping in view the entire facts and circumstances of this case as well as the facts that the petitioners/plaintiffs being villagers have already filled

written statement to counter claim in the larger interest to provide justice to the parties, the writ petition is allowed subject to payment of the cost of Rs. 3000/- to defendant No.11 and the impugned order dated 24.04.2012 is hereby set aside.

14. It is directed that the written statement submitted by the petitioners/plaintiff to the counter claim filed by the defendant No. 11 be taken on record and to proceed with the case, thereafter, in accordance with the law.

Sd /-
(Parth Prateem Sahu)
Judge