

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.927 of 2018**

Shashank Agrawal, Age About 16 years, S/o. Sudhir Kumar Agrawal, Minor
Through next Friend Father Sudhir Kumar Agrawal, Resident Pratap Chowk
Saraswati Nagar, Bilaspur (CG)

----Petitioner

Versus

1. Pawan Kumar Agrawal S/o. Shri Harchand Agrawal, Resident-Village Tenganmada, Tehsil Kota, District Bilaspur (CG)
2. Nagar Panchayat Through Competent Officer Ratanpur, Village and Post Ratanpur, District Bilaspur (CG)
3. C.G. State Through Collector Bilaspur (CG)

---- Respondents

For Petitioner	:	Mr.Ravindra Agrawal and Mr.P. Dutta, Advocates
For Respondent No.3	:	Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****29/10/2018**

1. By way of this writ petition under Article 227 of the Constitution of India, the petitioner/plaintiff has questioned legality, validity and correctness of the order dated 11.1.2017 by which written statement filed by defendant No.1 has taken on record by the trial Court.
2. Mr.Ravindra Agrawal, learned counsel for the petitioner/plaintiff, would submit that defendant No.1 having appeared before the trial Court on 3.3.2016, filed his written statement as late as on 11.1.2017, which has been taken on record by the trial Court, which is beyond the period of limitation as prescribed under Order 8 Rule 1 of the

CPC, therefore, the trial court is absolutely unjustified in extending the time of limitation for filing written statement, which runs contrary to the judgment of the Supreme Court in the matter of **Mohammed Yusuf v. Faij Mohammad and others**¹.

3. On the other hand, Mr.Ashish Surana, learned Panel Lawyer for respondent No.3, would submit that the plaintiff himself has filed an application under Order 8 Rule 10 of the CPC on 22.6.2016 stating that a decree be passed as no written statement has been filed by defendant No.1 within time stipulated in Order 8 Rule 1 of the CPC, which was withdrawn by the plaintiff on 16.8.2016 and thereafter written statement was filed by defendant No.1 on 11.1.2017, which was taken on record by the trial Court and even the plaintiff did not object in taking written statement on record by the trial Court and only on 28.8.2017 by filing an application under Order 8 Rule 1 of the CPC objection has been raised against taking written statement on record. Therefore, the trial Court is absolutely justified in taking written statement on record.
4. I have heard learned counsel for the parties, perused the impugned order and other documents appended with the writ petition.
5. It is correct to say that defendant No.1 appeared before the trial Court on 3.3.2016 and did not file written statement right in time, the plaintiff had filed an application under Order 8 Rule 10 of the CPC on 22.6.2016 for passing a decree in favour of the plaintiff in absence of

¹ (2009) 3 SCC 513

written statement, but that application was withdrawn by the plaintiff on 16.8.2016 and thereafter on 11.1.2017 written statement filed by defendant No.1 was taken on record by the trial Court as the petitioner/plaintiff did not object in taking written statement filed belatedly on record. It is pertinent to mention that even the parties were trying to compromise the matter as indicated in order-sheet dated 5.3.2016 and time was granted and thereafter the matter remained pending for miscellaneous purpose and when written statement was taken on record on 11.1.2017, thereafter only on 28.8.2017 after more than one and half year the plaintiff objected the fact of taking written statement on record by filing an application under Order 8 Rule 1 of the CPC, which has been rejected by order dated 3.10.2017.

6. It is correct to say that no reason has been recorded for extension of time for taking written statement on record by the trial Court as held by the Supreme Court in Mohammed Yusuf (supra), but time was extended by order dated 11.1.2017, which the plaintiff has accepted without objection and did not challenge that order till 28.8.2017 by filing I.A.No.13, which has been rejected by order dated 3.10.2017 and this order (3.10.2017) has also not been challenged by the petitioner/plaintiff in this writ petition.
7. In view of above-stated factual position and in view of the petitioner/plaintiff's act of not objecting the fact of taking written statement on record on 11.1.2017 and thereafter questioning that

order only after one and half year and further not questioning the order dated 3.10.2017 rejecting his application for not taking written statement on record and striking out defence, I do not consider it a fit case to entertain the writ petition against the order dated 11.1.2017.

8. Accordingly, the writ petition deserves to be and is hereby dismissed.

No cost(s). A copy of this order be sent to the trial Court for information and needful action.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-