

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 309 of 2018

Mr. Paul Saldanha,
s/o. Dominic Saldanha,
62 years of age,
Retired, Indian National,
Residing at Agnes Haven,
Nerul, Bardez, Goa.

... Petitioner

versus

Mr. Ajju C.S. Sindolli,
Major of age, Indian National,
Having office at
Victor Palace,
Mezzanine floor,
Opp. Ambedkar Park,
Patto, Panaji, Goa.

... Respondent

Shri M. D'Souza, Advocate for the petitioner.

Shri V. Amonkar, Advocate for the respondent.

CORAM : NUTAN D. SARDESSAI, J.

RESERVED ON : 28th March, 2018.

PRONOUNCED ON : 24th April, 2018.

ORDER:

1. The petitioner challenges the order dated 10/01/2018 passed by the Court of the Senior Civil Judge, Panaji, invoking

the jurisdiction of this Court under Article 227 of the Constitution of India pursuant to which the learned Trial Judge condoned the delay on behalf of the respondent in filing the written statement beyond the stipulated period of 90 days.

2. Heard Shri M. D'Souza, learned Advocate for the petitioner whose contention was that the Trial Court had granted an enlargement of time by 9 days beyond 90 days to file the written statement. In terms of Order VIII Rule 1 CPC, the written statement could not be filed beyond 90 days. He placed reliance in **Dr. J.J. Merchant and others v/s. Shrinath Chaturvedi [(2002) 6 SCC 635]**, **Kailash v/s. Nanhku and ors. [(2005) 4 SCC 480]** and **New India Assurance Company Limited v/s. Hilli Multipurpose Cold Storage Pvt. Ltd. [2015 Vol 16 SCC 20]** to buttress his contention that there was no jurisdiction in the Trial Court to condone the delay beyond 90 days. It was his contention further that assuming for a moment without admitting that **Kailash** (supra) held the field that in exceptional circumstances delay could be condoned, the application for the condonation of delay read with the affidavit of the Advocate nowhere indicated that any medical certificate was

produced on record to substantiate the ground for enlargement of time on medical grounds. He placed further reliance in **Ramjas Foundation and another v/s. Union of India (Civil Appeal No. 6662 of 2004)** and **Esha Bhattacharjee v/s. Mg. Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649]** and submitted that the impugned order had to be quashed and set aside.

3. Shri Vibhav Amonkar, learned Advocate for the respondent submitted that the judgment in **New India Assurance Company** (supra), by the Hon'ble Apex Court was delivered while considering Sections 12 and 13 of the Consumer Protection Act, 1986. He relied on another judgment in **New India Assurance Company Limited v/s. Hilli Multipurpose Cold Storage Pvt. Ltd. [2017 SCC online SC 599]** and canvassed further that the judgment in **Dr. J.J. Merchant** (supra), was also under the Consumer Protection Act. In any event, the 2015 judgment of the Apex Court in **New India Assurance Company** (supra), did not overrule **Kailash** (supra), and placed reliance in **Rani Kusum (Smt) v/s. Kanchan Devi (Smt) and others [(2005) 6**

SCC 705]. He referred to the impugned order and submitted that there was no objection raised about the day's mismatch before the Trial Court. The application for the condonation of delay was duly supported by an affidavit and therefore the contention of Shri D'Souza, learned Advocate to the contrary could not be entertained. Article 227 of the Constitution of India could be invoked only if there was a grave dereliction of duty or violation of the fundamental principles of law and in that context relied in **Jai Singh and others v/s. Municipal corporation of Delhi and another [(2010) 9 SCC 385]**. Assuming for a moment that if the written statement was not taken on record, grave prejudice would be caused to the defendant-respondent resulting in a miscarriage of justice unlike the petitioner-plaintiff who would not be prejudiced in any manner whatsoever.

4. Shri M. D'souza, learned Advocate for the petitioner in reply contended that the Hon'ble Apex Court in **Dr.J.J. Merchant** (supra), had considered Order VIII Rule 1 CPC and so to that in **Kailash** (supra), while reiterating once again that the 2015 judgment in **New India Assurance Company** (supra), applied to his case. The judgment in **Rani Kusum**

(supra), was of the two judge bench relying on **Nanhku** (supra), and therefore it had to give way to **Dr.J.J. Merchant** and **New India Assurance** (supra). The respondent had not placed any Medical Certificate on record i.e. no best evidence was produced on record. The learned Trial Court while passing the impugned order had neither applied the law nor discussed it nor conveyed any discussion on the sufficient cause and therefore the order was vulnerable and liable to interference in this petition.

5. Order VIII Rule 1 CPC stipulates 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 the written statement within the said period of thirty day, 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. In other words, a bare reading of Order VIII CPC would reveal that the written statement shall come forth in answer to the summons within 30 days from the date of service of summons and within the extended time and which

shall not be later than 90 days from the date of service of summons. In other words, the defendant gets 30 days as a matter of rule and additional 60 days within which he should file the written statement. It is therefore to be seen in the light of the judgments relied upon by the learned Advocate for the petitioner and that for the respondents whether the period of 90 days is the ultimate period for filing the written statement or whether there is any discretion vested in the Court to enlarge the time by further more days if the circumstances of the case so warrant.

6. In **Dr. J.J. Merchant** (supra), Order VIII Rule 1 CPC was dealt with requiring the written statement to be filed within 30 days from the date of service of summons circumscribed by the proviso that it could be filed on such other date for the reasons to be recorded in writing, but which shall not be later than ninety days. However, in **Dr. J.J. Merchant** (supra), the Apex Court was concerned with the Consumer Protection Act requiring the National Commission or the State Commission as the case may be to follow the procedure within a defined period and it was in that context that it was held that the mandate of filing the written

statement was required to be strictly adhered to.

7. In **Nanhku** (supra), the questions which arose for consideration was 1) Whether Order VIII Rule 1 CPC was applicable to the trial of an election petition under Chapter II of the Act? 2) Whether the rules framed by the High Court governing the trial of the election petitions would override the provisions of CPC and permit a written statement being filed beyond the period prescribed by Order VIII Rule 1 of the CPC? (3) Whether the time limit of 90 days as prescribed by the proviso appended to Rule 1 of Order VIII of the CPC is mandatory or directory in nature? The three Judge Bench examined Order VIII Rule 1 CPC and on its reading observed that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the Court and also does not specifically take away the power of the Court to take the written statement on record though filed beyond the time as provided for. Secondly, the nature of the provision contained in Order VIII Rule 1 is procedural. It is not a part of the substantive law. Thirdly, the object behind

substituting Order VIII, Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of 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.

8. In **Nanhku** (supra), a reference was invited to the judgment of three Judge Bench delivered in **Dr. J.J. Merchant** (supra), where a reference was made to Order VIII Rule 1 C.P.C. In that context, the three Judge Bench in **Nanhku** (supra) observed that a careful reading of the judgment shows that the provision of Order VIII Rule 1 of the CPC did not directly arise for consideration before the Court and to that extent the observations made by the Court were obiter. It further held that a prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the Court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on affidavit, medical certificate or other documentary evidence (depending on the facts and

circumstances of a given case) being annexed with the application seeking extension of time so as to convince the Court that the prayer was founded on grounds which do exist. It further held that though Order VIII Rule 1 CPC is a part of the 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 an 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.

9. In **Ramjas Foundation** (supra), a two Judge Bench held that the principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such a person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others Courts and judicial fora. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on the adjudication of the issue(s) arising in the case.

10. In **New India Assurance Co. Ltd.** (supra), the Hon'ble Apex Court was concerned with the period of limitation for filing the written statement or giving version of the opponent as per the provisions of Section 13(2)(a) of the Consumer Protection Act, 1986 and in that backdrop dealt with the

question whether the said issue was governed by the law laid down by this Court in **Dr. J.J. Merchant** or **Nanhku** (supra). The three Judge Bench of the Apex Court were dealing with the period within which the opponent had to give his version to the District Forum in pursuance of a complaint which is admitted under Section 12 of the Consumer Act with prescribed time frame in dealing with the proceedings and in that context stipulating the time limit for filing the statement in defence. The three Judge Bench of the Apex Court was precisely dealing with the case under the provisions of the Act, where a complaint had been filed and the opposite party has not filed its version to the case within 30 days or within the extended period of 45 days, which at the most could have been granted by the District Forum, the version given by the opposite party can be accepted. It was in that backdrop that the three Judge Bench opined that the view expressed by the three Judge Bench in **Dr. J.J. Merchant** (supra), should prevail, that the judgment delivered in the case of **Dr. J.J. Merchant** (supra), held the field and in that context reiterated the view that the District Forum can grant a further period of 15 days to the opposite party for filing his version

or reply and not beyond that.

11. In **New India Assurance Co. Ltd.** (supra), there was one more reason why the three Judge Bench held that the law down in **Dr. J.J. Merchant** (supra), had to be followed as it was decided in 2002 unlike **Nanhku** (supra), which was decided in 2005. Moreover, as per the law laid down by this Court while deciding the case of **Nanhku** (supra), this Court ought to have respected the view expressed in **Dr. J.J. Merchant** (supra), as the judgment was delivered earlier in point of time and ultimately held while answering the reference that the view laid down by the three Judge Bench in **Dr. J.J. Merchant** (supra), should prevail. However, this judgment with respect like that in **Dr. J.J. Merchant** (supra), was a view taken by the Hon'ble Apex Court while dealing with the case under the Consumer Protection Act where there is a defined time limit for disposing the cases filed thereunder unlike the cases filed and covered by the Code of Civil Procedure where there is no time limit within which a case has to be disposed off.

12. In the subsequent order in **Hilli Multipurpose Cold**

Storage Pvt. Ltd. (supra), a two Judge Bench of the Hon'ble Apex Court dealt with the matters arising out of a consumer dispute on the file of the National Consumer Disputes Redressal Commission and concerned with the original jurisdiction of the National Commission. In the case in hand, the National Forum called upon the appellant New India Assurance Co. Ltd. to state its version of its case within 30 days from the receipt of the notice of the admission of the complaint on **08/03/2013** which was made returnable on **22/08/2013**. However, the National Forum directed the appellant New India Assurance Co. Ltd. to file its written statement within 30 days of the receipt of the notice which was received on **19/03/2013**. The written statement was not filed within 30 days period and was filed with a delay condonation petition on **23/07/2013**. The National Commission declined to condone the delay in view of the law declared by this Court in **Dr. J.J. Merchant** (supra), and forfeited the appellant's right to file the written statement. The Hon'ble Apex Court was appraised of the fact that a larger Bench of three Judge had by its order dated 04/12/2015 dealt with the question whether the period of limitation prescribed

under Section 13 of the Act was mandatory or declaratory and on an examination of the earlier decisions of this Court opined that in the case the legislative mandate of not giving more than 45 days for submitting the written statement or version of the opposite Party is not adhered to, the legislative mandates of disposing off the case within 3 or 5 months would be defeated. The larger Bench made a further declaration that the law declared by this Court in **Dr. J.J. Merchant** (supra) should prevail.

13. In **Hilli Multipurpose Cold Storage Pvt. Ltd.** (supra), it was brought to the notice of the two Judge Bench that subsequent to the order by the larger Bench dated 04/12/2015, another Division Bench by an order dated 11/02/2016 referred the question whether adjudicatory bodies under the Act do have the discretion to extend the period of limitation beyond the statutory prescription under Section 13 of the Act, to a Constitution Bench. The two Judge Bench considered the relevant portion of the Reference Order contained in paragraph 22 as below :

22. The relevant portion of the Reference order reads as follows:—

“Since the question that falls for determination here often arises before the Consumer Fora and Commissions all over the country it will be more appropriate if the conflict is resolved by an authoritative judgment. Further since the conflict is between Benches comprising three Judges we deem it fit to refer these appeals to a five-Judge Bench to resolve the conflict once and for all. While we do so we are mindful of the fact that in the ordinary course a two-Judge Bench ought to make a reference to a three-Judge Bench in the first place but in the facts and circumstances of the case and keeping in view the fact that the conflict is between coordinate Benches comprising three Judges a reference to three Judges may not suffice.”

and observed at paragraphs 23, 24 and 25 as below :

23. We are obliged to place on record that there is a factual error in the statement extracted above. The basic assumption that there is a conflict of opinion between different Benches each consisting of three Judges is erroneous. The reference order dated 11.2.2016 mentions five Judgments, namely, *Topline Shoes Limited v. Corporation Bank* [(2002) 6 SCC 33], *Kailash v.*

Nankhu [(2005) 4 SCC 480], Salem Advocate Bar Association v. Union of India [(2005) 6 SCC 344] on the one hand and Dr. J.J. Merchant v. Shrinath Chaturvedi [(2002) 6 SCC 635 and NIA v. Hilli Multipurpose Cold Storage [2014 AIOL 4615].

24. Of the above 5 cases, JJ Merchant and NIA and Topline Shoes Limited cases specifically deal with the question of interpretation of Section 13 of the Act. The judgments in both JJ Merchant and NIA are of benches consisting of three-Judges. Topline Shoes Limited is a judgment of 2-Judges of this Court.

25. Kailash case is a case arising under Representation of People's Act and incidentally, provisions of the Order VIII Rule 1 CPC was examined in the said case. It is not a case dealing with the Act. Though JJ Merchant's case was referred to in the said decision but the ratio of Kailash case has nothing to do with the Act or any one of its provisions. Salem Advocates Bar Association Case dealt exclusively with interpretation of various provisions of the CPC including Order VIII Rule 1, a provision similar to Section 13 of the Consumer Protection Act."

In that background the two Judge Bench were of the view that the Constitution Bench is not really required to examine any question as stated in the order of reference particularly. In view of the factual error which we have already indicated earlier which crept in the reference order and deemed it appropriate to direct the Registry to place the order before the Hon'ble Chief Justice of India for appropriate further directions.

14. In **Rani Kusum** (supra), the respondent was served with summons issued by the Trial Court on 10.11.2003 and the written statement was filed on 10.7.2004. According to the appellant, the written statement should not have been entertained as it was filed beyond 30 days (which is the normal period) and even beyond 90 days which is the maximum period. By order dated 12.8.2004 the learned Subordinate Judge accepted the written statement which had been filed and rejected the prayer of the appellant to reject the written statement. According to the appellant after the amendment of CPC, the Court had no discretion to extend the period for filing the written statement beyond 90 days from the date of service of summons even where the Court extends

the time beyond 30 days. It was further contended that the amendment requiring filing of the written statement within the stipulated time is intended to avoid delay in disposal of suits and to avoid unnecessary harassment to the litigants. Quite on the contrary, it was contended on behalf of the respondents that the provisions of Order VIII Rule 1 of CPC are directory and when the written statement had already been filed and accepted by the Trial Court, the High Court had rightly rejected the appellant's plea. The scope and ambit of Order VIII Rule 1 of CPC had been examined in detail by this Court in **Nanhku** (supra). The Apex Court observed at paragraphs 13, 14 and 15 as below:

13. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. (See *Blyth v. Blyth*). A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the

recipient of justice is not to be followed. (See Shreenath and Anr. v. Rajesh and Ors.

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

15. It is also to be noted that though the power of the Court under the proviso appended to Rule 1 of Order VIII is circumscribed by the words - "shall not be later than ninety days" but the consequences flowing from non- extension of time are not specifically provided though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

15. Jai Singh (supra), held that the High Court under Article 227 of the Constitution of India has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within

the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of the judgment of a Court, or Tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

16. **Jai Singh** (supra), quoted the Judgment in *The Estralla Rubber Vs. Dass Estate (P) Ltd.* [(2001)8 SCC 97] where the

scope and ambit of Article 227 of the Constitution was observed in paragraph 6 thus : "The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of the fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

17. In **Jai Singh** (supra) the Hon'ble Apex Court considered the nature and scope of the power of the High Court under Article 227 of the Constitution of India being supervisory and

observed at para 15 as below.

“15..... Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a ‘bull in a china shop’, to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be

exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.”

18. In **Prakash Ahuja** (supra), a two Judge Bench of Hon'ble Apex Court answered the question to the effect that, in case of there being a conflict between the two judgments of Co-ordinate Benches, it is not the later but the earlier one in point of time, which should be followed and applied by the Subordinate Courts to the facts and circumstances of a case before it, unless, of-course, earlier decision is considered and explained in the later decision.

19. In **R. N. Jadi and Brothers** (supra), the question which was at large before a three Judge Bench of the Apex Court was whether the provision of Order VIII Rule 1 and proviso thereto was mandatory or directory. In the brief facts, the appellants-defendants were issued summons by the Trial Court and did not file the written statement within 90 days from the date of service of summons and there was a delay of two days. The Trial Court accepted the written statement filed beyond 90 days despite the objection raised

by the plaintiff-respondent which was challenged before the Karnataka High Court in a Writ Petition under Article 227 of the Constitution of India on the ground that the provision of Order VIII Rule 1 CPC was mandatory and the Trial Judge could not have accepted the written statement filed beyond 90 days from the date of service. The writ petition was allowed and a Writ Appeal was filed which was held to be not maintainable. A review petition was filed taking the stand that in view of the decision of this Court in **Nanhku** (supra), where it was held that the provisions of Order VIII Rule 1 CPC are directory, the reasons justifying the delayed presentation of the written statement could be satisfactorily explained. The High Court dismissed the review petition on the ground that a case for review was not made out giving rise to the appeal by special leave

20. In **R. N. Jadi and Brothers** (supra), the three Judge Bench considered the scope and extent of Order VIII Rule 1 CPC, that all rules or procedures are the handmaid of justice and that unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which

would leave the Court helpless to meet extraordinary situations in the ends of justice. It considered the judgment in **Nanhku** and **Rani Kusum** (supra), and ultimately held that the High Court was in error in setting aside the order of the Trial Court accepting the written statement and allowed the appeal.

21. In **Ramesh Lal** (supra), the learned Single Judge of this Court held that if the reason pleaded for condoning the delay in filing the writ petition appeared satisfactory or sufficient to condone the delay, the delay may be so condoned subject to the payment of reasonable costs. It considered the three Judge Bench judgment in **Nanhku** and **R.N. Jadi** (supra).

22. Coming to the facts, the respondents had filed the application for the condonation of delay in filing the written statement in which he had carved a case that on receiving the notice, the defendant had contacted his Advocate requesting him to do the needful in the matter who had assured him that though the returnable date was 11/04/2017, he could file his written statement within 30 days and which could be

extended to 90 days with the permission of the Court. However, subsequently that Advocate appeared before the Court and sought extension of time and ultimately on 21/06/2016 withdrew the Vakalatnama in the matter and issued a No Objection Certificate. The defendant had accordingly approached some other Advocate and finally engaged the services of Advocate Shri A.V. Pavithran and who sought for time to file the written statement which expired on 06/07/2017. Advocate Shri Pavithran had prepared the written statement on 30/06/2017 and forwarded a copy to the defendant for his comments and correction, who perused the draft and made necessary corrections. He had thereafter approached the office of Advocate Shri Pavithran to finalise the written statement so that it could be filed on or before 05/07/2017 but on visiting his office on 03/07/2017, he was informed that Advocate Shri Pavithran would not be available for the whole week till 10/07/2017 as his brother was admitted in hospital for surgery. The defendant could not establish contact with Advocate Shri Pavithran and his associates showed their difficulty in finalising the written statement. It is only after Advocate Shri Pavithran resumed

his work that the written statement could be finalised and made ready to file with a delay of 9 days. This delay was on account of a bonafide reason and not on account of any negligence on the part of defendants and the circumstance was beyond his control. On that premise he sought for the condonation of 9 days delay in filing the written statement which was duly supported by an affidavit and that of Advocate Shri Pavithran.

23. Shri D'Souza, learned Advocate for the petitioner contended that there was variance in the version of the defendant - respondent and the Advocate inasmuch as, as per the version of the defendant, he had contacted Advocate Shri Pavithran on 21/06/2017 unlike the version of Advocate Shri Pavithran himself on oath that the defendant approached him on 20/06/2016 and his assistants appeared in the Court on 21/06/2017. But for this hair splitting, there was otherwise no reason why the ground urged by the respondent-defendant could not have found favour with the Trial Court which it did and the Trial Court condoned the delay and allowed the filing of the written statement on record. No doubt the Trial Judge in her wisdom had not discussed the

judgments relied upon on behalf of the petitioner and its applicability to the facts of the case unlike that relied upon on behalf of the respondents and had ultimately held that the respondents had made out sufficient cause for the condonation of delay and condoned the delay in filing the written statement. On that premise alone, it is not available to the petitioner to contend that the respondent had not made out a sufficient cause for condoning the delay looking to the tenor of the application and the grounds urged therein which were duly forwarded by the Advocate who had finally settled the draft written statement and filed on his behalf though beyond the period of 90 days. i am however unable to reconcile with the contention of Shri D'Souza, learned Advocate for the petitioner that the judgment in **Rani Kusum** (supra), relying on **Nanhku** (supra), should give way to the judgment in **Dr. J.J. Merchant** and **New India Assurance** (supra), being earlier in point of time when on a discussion it has been observed that the judgment in **Dr. J.J. Merchant** and **New India Assurance** (supra), were precisely in the context of the Consumer Protection Act unlike **Rani Kusum** (supra), which was in the context of Order VIII Rule 1 C.P.C.

precisely. Moreover, it is rather farfetched for the petitioner to expect the medical certificate to be placed on record not for the illness of the Advocate but that of his brother only to justify the delay in filing the written statement. Last but not the least considering and applying the ratio in **Jai Singh** (supra), the power of superintendence of this Court in terms of Article 227 of the Constitution of India are not to correct all errors of the Court acting within the limit of its jurisdiction. It can be exercised only when the orders have been passed in grave dereliction of duties or in flagrant abuse of the foundation of principles of law and justice which is not the case presently. In the circumstances, therefore there is no merit in this petition and hence, i pass the following

O R D E R

The petition is dismissed with no order as to costs.

NUTAN D. SARDESSAI, J.