

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6902 of 2018
Date of Decision : 10.10.2018

Hira Lal

....Petitioner

VERSUS

Surinder Pal & ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Tushar Sharma, Advocate for the petitioner.

B.S. WALIA, JUDGE

[1] Challenge in the revision petition is to order dated 17.05.2018 (Annexure P-7) passed by the learned Additional Civil Judge (Senior Division), Barnala dismissing the application moved by petitioner-defendant No.5 for permission to file written statement.

[2] Brief facts of the case leading to the filing of the instant petition are that the civil suit out of which the instant revision petition arises was filed on 22.04.2010 in which petitioner-defendant No.5 put in appearance before the learned trial Court on 26.08.2010. Issues were framed on 03.10.2011 and after the evidence was led by the parties, the case became ripe for arguments.

[3] A perusal of the impugned order reveals that application was moved by petitioner-defendant No.5 contending that during the course of arguments, it had been discovered that inadvertently written statement had not been filed and that there was no order on the file regarding non-filing of written statement by petitioner-defendant No.5 and that without written statement on record, his plea/case could not be appreciated or disposed of and that in view thereof he be

permitted to file the written statement. Counsel for the plaintiff-respondent

suffered statement on 15.05.2018 that he had no objection if the prayer was allowed but defendant Nos.1 to 3 contested the application by filing separate reply and stating that no reason was given by petitioner-defendant No.5 for not filing the written statement for 8 years besides, no relief had been claimed against petitioner-defendant No.5 in the suit, moreover, he was only a proforma respondent and was colluding with the plaintiff and that in the circumstances, the period for filing the written statement could not be extended beyond 90 days. Defendant Nos.1 to 3 by relying upon the decision in **AIR 2003 Karnataka 2026** had also argued that since no payer was made for extending time for filing written statement, the court could not extend the time even under its inherent powers especially since there was no explanation for the delay of almost 8 years in filing the written statement. In the circumstances, it was contended that the application was devoid of merit and deserved to be dismissed.

[4] Learned counsel for the petitioner contended that although the petitioner had been remiss in not filing the written statement for a long period of time but one opportunity be granted on such terms as to costs as deemed appropriate by this Court otherwise grave prejudice would be caused to the petitioner-defendant No.5.

[5] I have considered the submissions of learned counsel for the petitioner but am of the view that for the reasons recorded hereunder, the revision petition is devoid of merit and is, therefore, liable to be dismissed.

[6] Admittedly, no reason has been given by petitioner-defendant No.5 for not filing the written statement for close to 8 years nor was any application moved seeking extension of time for filing the written statement. The only plea put forth by the petitioner-defendant No.5 for not filing the written statement is inadvertence. As is self evident, the conduct of petitioner-defendant No.5 is

Act, 1963, lays down that nothing shall be deemed to be done in good faith unless it is done with due care and diligence. Section 2(h) is reproduced as under:

2(h) “good faith”— nothing shall be deemed to be done in good faith which is not done with due care and attention.

[7] Accordingly, I am of the view that in the absence of any reason whatsoever having been given except inadvertence for not filing the written statement for a period of close to 8 years besides in not moving application seeking extension of time for filing the written statement, the revision petition is misconceived and the impugned order does not warrant any interference.

[8] In similar circumstances Hon'ble the Supreme Court in **ATCOM Technologies Limited versus Y.A. Chunawala and Co. & ors. 2018 (6) SCC 639** considered a case involving delay of 5 years and 54 days in the filing of a written statement in proceedings before the Writ Court. The Single Bench allowed filing of the written statement subject to payment of ₹5 lacs as costs and the Hon'ble Division Bench upheld the same. However, Hon'ble, the Supreme Court reversed the decision by holding that it was for the party seeking condonation to plead and satisfactorily demonstrate a valid reason for not filing the written statement within 30 days and that in the circumstances, delay of 5 years could not be condoned in the year 2015 when the only ground was that the summons were not served despite notice of motion having been issued in the year 2000. Hon'ble the Supreme Court held that delay could not be condoned in the absence of proper and satisfactory explanation for such a delay having been given and that although the provisions of Order 8 Rule 1 CPC were procedural in nature and therefore, a handmaid in the administration of justice but the same did not imply that the defendant had the right to take as much time as he wanted in filing the written statement without giving convincing and cogent reasons for delay nor could the High Court condone it mechanically. Relevant extract of the aforesaid decision is

reproduced as under:

8. Insofar as Notice of Motion No. 1211 of 2015 in Suit No. 3813 of 2000 is concerned, it resulted in altogether opposite outcome. The learned Single Judge passed the order dated March 15, 2016 allowing the same thereby condoning the delay in filing the written statement with the imposition of cost of 5 lakhs upon the respondents. The reason given by the learned Single Judge was that till the year 2009, Writ of Summons had not been served upon the respondents and, therefore, the delay was of 5 years and 54 days and was condoned on the ground that the appellant also took number of years in serving the summons upon the respondent. Appeal against this order filed by the appellant has been dismissed vide impugned order dated April 18, 2016 affirming the order of the learned Single Judge. The entire reasoning in support of this order is contained in para 5 of the judgment of the High Court which reads as under:

"5 In the impugned order, the learned Judge has assigned reasons. He has found from the record and the affidavits placed, that even the Appellant / Plaintiff did not take any concrete steps. In a suit filed in the year 2000, the writ of summons was not prepared and served till 2009. In paragraph 6 of the impugned order, the explanation that the writ of summons was served promptly has not been accepted. The learned Judge has found that the writ of summons was not served for a period of nine years after institution or filing of the suit. In such circumstances an overall view of the matter was taken and by balancing the rights and equities, the learned Judge has granted the request of the Respondents to allow them to file the

Written Statement and defend the suit / claim on merits.

In the process, the learned Judge has relied upon well settled principle that all procedural rules are handmaids of justice. So long as there is no irreparable loss or prejudice or a case made out of malafides ordinarily a party should be allowed to defend legal proceedings is the rule invoked and applied, then, we do not think that in the facts and circumstances of the present case, the application of such rule can be faulted. Once the rights and equities have been balanced, then, we do not think that in further appellate jurisdiction such an order deserves interference. The Appeal is devoid of merits and is dismissed. By consent of parties, the time to take inspection of the documents and complete pretrial formalities is extended by eight weeks."

9. As is clear from the above, the circumstance which weighed with the High Court in condoning the delay was that though the suit was filed in the year 2000, summons were served only in the year 2009. Plea of the appellant that summons were actually served in the year 2000 itself was not accepted. On this basis, the High Court came to the conclusion that since appellant itself took time of 9 years after institution or following of the suit, to serve the summons upon the respondents herein, equities were balanced by allowing the respondents to file the written statement, more so, when no irreparable loss or prejudice was caused to the appellant and no case of mala fides was made out against the respondents.

10. Notice in the Special Leave Petition was issued on July 18, 2017 which was duly served upon all the five respondents.

However, none of the respondents have entered appearance. Accordingly, the Registry processed the matter for listing before the Court and it was listed for hearing on March 26, 2018. On that day also, nobody appeared on behalf of the respondents. Still in order to give one more opportunity, the matter was directed to be listed after three weeks. It again came up for hearing on April 20, 2018. Since respondents failed to appear inspite of all the aforesaid chances given to them, this Court is left with no option but to proceed ex-parte against the respondents and heard the matter in their absence.

11. Mr. Amar Dave, learned counsel appearing for the appellant submitted that the reason given by the High Court in condoning the delay was totally erroneous inasmuch as Writ of Summons were served upon the respondents immediately after the filing of the suit and not in the year 2009 as mentioned. It was further argued that, in any case, even if when the summons were served in the year 2009, there was no satisfactory explanation submitted by the respondents seeking condonation of delay which was more than 5 years 54 days even on counting the period from the year 2009. He also submitted that the High Court failed to notice that, on identical grounds, Notice of Motion No. 1212 of 2015 in Suit No. 4780 of 1999 for condonation of delay in filing the written statement was filed by the respondents which was dismissed by the learned Single Judge and that order was affirmed by the Division Bench (and now even by this Court). While dealing with the instant matter, the High Court failed to consider those orders passed by the co-ordinate Benches.

12. We find force and due merit in the aforesaid submissions of

the learned counsel for the appellant.

13. We shall proceed on the basis that summons in Suit No. 4870 of 1999 were served only in the year 2009. In this behalf, it may be stated that in this suit, unconditional leave to defend was granted by the learned Single Judge on March 16, 2002. By the same order, all three suits were directed to be tried together. Therefore, Vakalatnama in the suit was also filed and on the dates fixed before the Court, respondents were appearing having knowledge about the Suit No. 4870 of 1999 as well. Obviously, this leave to defend was granted after the respondents had put in appearance and filed application for grant of leave to defend. Thus, summons in the suit were served upon the respondents, albeit, in Form 4 of Appendix B, as stipulated in Rule 2 of Order 37 of the Code of Civil Procedure, 1908. May be, thereafter, Writ of Summons were not served again upon the respondents. However, in any case, these summons were served in the year 2009. Therefore, it was incumbent upon the respondents to show as to in what manner they were prevented from filing the written statement.

14. It has to be borne in mind that as per the provisions of Order 8, Rule 1 of the Code of Civil Procedure, 1908, the defendant is obligated to present a written statement of his defence within thirty days from the date of service of summons. Proviso thereto enables the Court to extend the period upto ninety days from the date of service of summons for sufficient reasons. Order 8, Rule 1 of the Code of Civil Procedure, 1908 reads as under:

"1. 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."

15. This provision has come up for interpretation before this Court in number of cases. No doubt, the words 'shall not be later than ninety days' do not take away the power of the Court to accept written statement beyond that time and it is also held that the nature of the provision is procedural and it is not a part of substantive law. At the same time, this Court has also mandated that time can be extended only in exceptionally hard cases. We would like to reproduce the following discussion from the case of Salem Advocate Bar Association, Tamil Nadu v. Union of India, 2005(3) R.C.R.(Civil) 530 : (2005) 6 SCC 344:

"21. ...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 the 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."

16. In such a situation, onus upon the defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within thirty days. When that is a requirement, could it be a ground to condone delay of more than 5 years even when it is calculated from the year 2009, only because of the reason that Writ of Summons were not served till 2009?

17. We fail to persuade ourselves with this kind of reasoning given by the High Court in condoning the delay, thereby disregarding the provisions of Order 8, Rule 1 of the Code of Civil Procedure, 1908 and the spirit behind it. This reason of the High Court that delay was condoned 'by balancing the rights and equities' is farfetched and, in the process, abnormal delay in filing the written statement is condoned without addressing the relevant factor, viz. whether the respondents had furnished proper and satisfactory explanation for such a delay. The approach of the High Court is clearly erroneous in law and cannot be countenanced. No doubt, the provisions of Order 8, Rule 1 of the Code of Civil Procedure, 1908 are procedural in nature and, therefore, hand maid of justice. However, that would not mean that the defendant has right to take as much time as he wants in filing the written statement, without giving convincing and cogent reasons for delay and the High Court has to condone it mechanically. It is also to be borne in mind that when the matter was listed on January 29, 2015, it was

specifically recorded that no written statement was filed and the two suits were adjourned for ex-parte decree. In other suit i.e. Suit No. 3813 of 2000, similar Notice of Motion seeking condonation of delay was rejected though it contained same kind of explanation and that order has been upheld till this Court. On this ground also, there was no reason to take a contrary view in the instant matter when both the suits were taken up together and proceed simultaneously.”

[9] In the light of the position noted above, I find no merit in the revision petition. Accordingly, the same is dismissed in limine.

October 10, 2018
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No