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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CM(M) 1096/2018 & CM APPL. 37535/2018

M/S RAJPOOT MOTORS (TVS CO LTD) ..... Petitioner

Through: Counsel for petitioner (Appearance not given.)

versus

SHIV KUMAR TYAGI ..... Respondent

Through: Mr. Anil & Mr. Saurav Tyagi, Advocates.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

% 20.12.2018

Vide the present petition, the petitioner assails the impugned order dated 17.04.2018 of the Court of the learned ADJ-06, Central in CS No.3177/17 whereby the opportunity of the defendant to file the written statement was closed in view of the factum that the petitioner herein arrayed as the defendant to the said suit having been served with the summons for settlement of issues on 26.12.2017 did not file the written statement till the said date within the stipulated period of 30 days nor within the period of 90 days from the date of service even if within the discretionary period of 90 days is taken into account.

The petitioner submits that the petitioner has not been served with the copy of the entire plaint and annexures which was not accepted by the learned Trial Court. It has been submitted on behalf

of the petitioner that the petitioner would be put to grave prejudice if an opportunity is not granted to file the written statement. On behalf of the petitioner reliance has *inter alia* been placed on the verdict of the Hon'ble Supreme Court in "**Siddalingayya vs. Gurulingappa and Others" (2017) 9 SCC 447"** to contend that the exercise of discretion is ought to be exercised as prayed on behalf of the petitioner in the facts and circumstances of the instant case inasmuch as the petitioner as the tenant in tenanted premises would suffer grave prejudice if the suit is disposed of on technicalities without the petitioner herein being granted an opportunity to put forth its case on merits.

Reference is *inter alia* made on behalf of the petitioner on observations in Para 14, 15 & 16 on the verdict of the Hon'ble Supreme Court relied upon, which read to the effect: -

> ***"14) It is true that the time was granted to the defendants to file written statement initially before closing their right to file written statement, yet in our view, the Trial Court instead of closing their right to file written statement should have granted some time to the defendants subject to payment of reasonable amount of cost to the plaintiff to compensate the inconvenience caused to the plaintiff. The High Court was, therefore, right in imposing a cost of Rs.11,250/- on the defendants to be paid to the plaintiff as a pre-condition to file the written statement within the extended time granted by the High Court.***
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> ***15) In our view, here comes the application of observations of Vivian Bose J. when His Lordship said***
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> *"16. ...."Too technical a construction of a section that leaves no room for reasonable elasticity of*

interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

17. .....Our laws of procedure are grounded on a principle of natural justice, which requires that men should not be condemned unheard, that decision should not be reached behind their back, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them."

16) Having observed this, His Lordship cautioned: (Sangram Singh case, AIR p.429, para 17)

17. ....Of course there must be exceptions too and where they are clearly defined they must be given effect to."

and finally His Lordship concluded observing: (AIR p.429, para 17)

"17. ....But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

On behalf of the respondent, the petition is vehemently opposed submitting *inter alia* to the effect that there are deliberate dilatory tactics adopted by the petitioner and even though the impugned order is of the date 17.04.2018, the petitioner has chosen to file the petition only in September 2018. It has also been submitted on behalf of the respondent that despite closure of the right of the defendant i.e. the petitioner herein to file the written statement on the date 17.04.2018 the petitioner chose not to join the proceedings even on the date

10.07.2018 when the matter was fixed for plaintiff's evidence and three witnesses of the plaintiff were examined and discharged. It has thus been submitted on behalf of the respondent that the intent of the petitioner herein to deliberately delay and protract the proceedings is evident from the non-appearance of the petitioner as defendant on 10.07.2018.

Reliance has been placed on behalf of the respondent in "**Salem Advocate Bar Assn. Vs. Union of India" (2005) 6 SCC 344** with reference to observations in Para 21 of the said verdict which reads to the effect:-

> ***"The effect would be that under Rule 10 Order 8, the Court in its discretion would have the power to allow the defendant to file written statement even after expiry of the 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 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."***

On behalf of the petitioner, it has been submitted that the petitioner just could not reach in time on the date 10.07.2018.

It has thus been submitted on behalf of the respondent that the prayer sought on behalf of the petitioner herein ought not to be granted in the instant case so as to nullify the period prescribed under Order 8 Rule 1 of the CPC.

Reliance is also placed on behalf of the petitioner on the very same verdict of the Hon'ble Apex Court in "**Zolba Vs. Keshao and Ors." AIR 2008 SC 2099** with observations to the effect:-

> ***"it has been clearly held that the provisions including the proviso to Order 8 Rule 1 of the CPC are not mandatory hut directory. It has been held in that decision that the delay can be condoned and the written statement can be accepted even after the expiry of 90 days from the date of service of summons in exceptionally hard cases. It has also been held in that decision that the use of the word "shall" in Order 8 Rule 1 of the CPC by itself is not conclusive to determine whether the provision is mandatory or directory. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the decision in that case, the same can be construed as directory. In paragraph 21 of the said decision, this Court observed as follows***:
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> *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 hand-maid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

On a consideration of the rival submissions, in the interest of justice the prayer made by the petitioner is allowed and the petitioner is granted an opportunity to file the written statement subject to payment of costs of Rs.75,000/- in the Trial Court on the date 25.02.2019, failing which no further opportunity would be granted to the petitioner.

The petition is disposed of.

ANU MALHOTRA, J

DECEMBER 20, 2018/NC