

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.2030-2020

Date of Decision : 09.11.2020

Smt. Pooja Rani and others

....Petitioners

Versus

Kamal Kumar Tarnaich and others

...Respondents

CORAM : HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.S.D.Sharma, Sr.Advocate with
Mr.Anupam Sharma, Advocate
for the petitioners.

Mr.Shekhar Verma, Advocate
for respondents No.1 to 3.

Mr.Surinder Sharma, Advocate
for respondent No.4.

TEJINDER SINGH DHINDSA, J.(ORAL)

Matter has been taken up through Video Conferencing via
Webex facility in the light of the COVID-19 situation and as per
instructions.

Instant revision petition is directed against the order dated
03.03.2020 (Annexure P-23) passed by the Addition Civil Judge
(Senior Division), Pathankot in Civil Suit No.468 of 2018 titled as
'Pooja Rani and others v. Kamal Kumar and others' vide which an
application filed by the petitioners for striking off the defence of
defendants No.1 to 3 and pronouncing the judgment on account of
filing of the written statements beyond the period of 120 days has
been dismissed.

Brief facts that require notice are that the petitioners herein filed Civil Suit No.468 of 2018 challenging two sale deeds dated 13.06.2017 and seeking a declaration to the effect that they along with respondent No.4 are the joint owners in possession of land in dispute and that they never put their signatures on any agreements or sale deeds and if their signatures are there on such deeds, the same have been obtained by way of fraud.

Summons in the suit were served upon the respondents on 13.06.2018. Written statement on behalf of respondents No.1 and 2 was filed on 20.11.2018 and on behalf of respondent No.3 on 18.02.2019. The written statements on behalf of respondents No.1 to 3 as such were filed beyond the period of 120 days after receipt of summons.

The solitary contention raised on behalf of the petitioners is that under Order 8 Rule 1 CPC and Order 8 Rule 10 CPC the written statement to the suit cannot be filed beyond 120 days. The provisions afore-noticed are mandatory in nature and if the written statement has been filed beyond 120 days the defence has to be struck off and judgment has to be passed in favour of the plaintiffs. In support of such contention heavy reliance has been placed upon judgment of the Apex Court in *M/s. SCG Contracts India Pvt.Ltd. v. K.S.Chamankar Infrastructure Pvt. Ltd. & Ors.* 2019(2) R.C.R.(Civil) 249.

Upon notice of motion having been issued, Mr.Shekhar Verma, Advocate entered appearance on behalf of respondents No.1

to 3. Counsel representing respondents No.1 to 3 would support the passing of the impugned order dated 03.03.2020 (Annexure P-23) submitting that even though there has been a delay in filing of the written statements, yet the relevant provisions in such regard under the Code of Civil Procedure have to be viewed as directory in nature and the impugned order has been passed to advance the cause of justice and to take a decision in the matter on merits. It is submitted that no basis for interference is warranted.

Counsel for the parties have been heard.

Order 8 Rule 1 and Order 8 Rule 10 CPC read in the following terms :-

Order 8 Rule 1 CPC

“**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.

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 written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written

statement and the Court shall not allow the written statement to be taken on record.”

Order 8 Rule 10 CPC

“Procedure when party fails to present written statement called for by Court.—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, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:

Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

The issue as regards such provisions being mandatory or directory in relation of ordinary civil suits is no longer res integra. In *Salem Advocate Bar Association, Tamil Nadu v. Union of India* **2005**

(3) RCR (Civil) 530 it has been held as follows :

“21. 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 work '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 of procedure are

handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

22. 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. 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 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 Order 8, the court in its discretion would have 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.”

The judgment in *SCG Contracts (India) Private Limited*

(supra) would have no applicability in the facts of the present case. In

such judgment the Apex Court was dealing with a case relating to filing of the written statement under the Civil Procedure Code, in respect of a case under the Commercial Courts Act, 2015. After noticing the amendments brought in Order 5 Rule 1, Order 8 Rule 1 and Order 8 Rule 10 of the Code with regard to “commercial disputes of specified value” under the Commercial Courts Act, 2015 by way of insertion of the provisos in the aforesaid provisions the Court had held that the clear, defined and mandatory provisions of Order 5 read with Order 8, Rule 1 and 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what has been stated therein. It was thus held that there was no scope for enlarging the time for filing of written statement beyond the period of 120 days in commercial suits, as the provision with regard to such suits would be mandatory, and not directory.

The matter stands further clarified by the Hon'ble Supreme Court in a recent judgment in *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt.Ltd.* **2020 AIR (SC) 1267**. One of the issues that came up for consideration in *New India Assurance Co.Ltd. case* (supra) was as to whether Section 13 (2) (a) of the Consumer Protection Act which provides for the opposite party to file its response to the complaint within 30 days or such extended period, not exceeding 15 days should be read as mandatory or directory.

Having noticed the earlier decision in *SCG Contracts India Pvt.Ltd. case* (supra) and in number of other previous decisions

a view was taken that for commercial suits as also for cases under the Consumer Protection Act the time frame provided for filing written statement is to be read as mandatory but not so in ordinary civil suits. Relevant observations made by the Apex Court in such regard were as follows :

“Now, while considering the relevant provisions of the Code, it is noteworthy that Order 8, Rule 1 read with Order 8, Rule 10 prescribes that the maximum period of 120 days provided under order 8, Rule 1 is actually not meant to be mandatory, but only directory. Order 8, Rule 10 mandates that where written statement is not filed within the time provided under Order 8, Rule 1 “the court shall pronounce the judgment against him, or make such order in relation to the suit as it thinks fit”. A harmonious construction of these provisions is clearly indicative of the fact that the discretion is left with the Court to grant time beyond the maximum period of 120 days, which may be in exceptional cases. On the other hand, sub-Section (2)(b)(ii) of section 13 of the Consumer Protection Act clearly provides for the consequence of the complaint to be proceeded ex parte against the opposite party, if the opposite party omits or fails to represent his case within the time given.

It may further be noted that in Order 8, Rule 10 of the Code, the suits filed under the Commercial Courts Act, 2015, a proviso has been inserted for 'commercial disputes of a specified value' (vide Act 4 of 2106 w.r.e.f.23.10.2015), which reads as under :

“Provided further that no Court shall make an Order to extend the time provided under Rule 1 of this Order for filing the written statement”.

From the above, it is clear that for commercial suits, time for filing

written statement provided under Order 8, Rule 1 is meant to be mandatory, but not so for ordinary civil suits. Similarly, in our considered view, for cases under the Consumer Protection Act also, the time provided under Section 13(2)(1) of the Act has to be read as mandatory, and not directory.”

By following the dictum laid down in *Salem Advocate Bar Association's case* (supra) as also in *New India Assurance Co.Ltd.* (supra) no infirmity is found in the impugned order dated 03.03.2020 (Annexure P-23) vide which the application filed by the petitioners herein for striking off the defence on account of delay in filing the written statement to the civil suit has been dismissed by taking a view that the relevant provisions in such regard under the Code of Civil Procedure are directory in nature.

Petition dismissed.

09.11.2020
dss

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes