

\$~19 (Appellate-2022 list)

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

+ CM(M) 140/2022 & CM APPL. 7280/2022

SH. ANUJ TYAGI

..... Petitioner

Through Mr. Vineet Mehta, Adv.

versus

THE HANS FOUNDATION HOSPITALS & ANR.

..... Respondents

Through Ms. Soumya Kumar, Mohd.
Waseem Akram and Mr. Tabish Raza, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (ORAL)

% **01.04.2022**

1. This petition, under Article 227 of the Constitution of India, impugns orders dated 24th March, 2021 and 26th November, 2021, passed by the learned Additional District Judge (“the learned ADJ”).

2. The order dated 24th March, 2021 struck off the defence of the petitioner (the defendant before the learned ADJ) and the order dated 26th November, 2021 dismissed the application filed by the petitioner for review/recall of the said order.

3. Summons in CS 445/2019, preferred by the respondents against the petitioner, were issued on 11th August, 2021 and admittedly received by the petitioner on 27th August, 2021.

4. Order VIII Rule 1 of the Code of Civil Procedure, 1908 (CPC)

requires a written statement, in response to the suit, to be filed within 30 days from the date of service of summons. The proviso to the said rule permits filing of the written statement on any other date as specified by the court for reasons to be recorded in writing, not later than 90 days from the date of service of summons.

5. This period of 90 days, no doubt, is not mandatory and, in exceptional cases, can be further relaxed where sufficient cause is shown as held by the Supreme Court in *Kailash v. Nankhu*¹.

6. By 24th March, 2021, when the right to file written statement was struck off by the learned ADJ, 448 days had elapsed beyond the period of 90 days available under Order VIII Rule 1 read with proviso thereto.

7. In these circumstances, on 24th March, 2021, the learned ADJ struck off the defence of the petitioner/defendant.

8. The petitioner/defendant moved an application under Section 151 of CPC, seeking review/recall of the order dated 24th March, 2021, striking off his defence. It was sought to be submitted, therein, that the learned ADJ had, *vide* order dated 16th November, 2019, directed the petitioner to file written statement and to explore the possibility of settlement. On the next date, i.e. 7th January, 2020, further time was sought by the petitioner to file written statement. Even thereafter, the written statement was not filed.

9. The petitioner also sought to take advantage of the fact that the COVID-19 pandemic had hit the country in March, 2020 due to which periodic lockdowns were imposed.

10. The learned ADJ has, by the impugned order dated 26th November, 2021, rejected the petitioner's application for review/recall.

11. Reliance has been placed, by the learned ADJ, on the following paragraphs from the judgment of the Supreme Court in *Atcom Technologies Ltd. v. Y.A. Chunawala & Co.*²

‘20. 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 Salem Advocate Bar Assn. (2) v. Union of India³:

“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

¹ AIR 2005 4 SCC 480

² (2018) 6 SCC 639

³ (2005) 6 SCC 344

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.”

12. Mr. Vineet Mehta, learned Counsel for the petitioner, has sought to submit that various supervening circumstances had disabled his client from filing written statement. He draws my attention to the ailments from which his client’s parents were suffering, in support of which he has placed medical evidence on record which indicates that his parents were being treated since October, 2019 at Meerut.

13. The medical records filed with the petition were of December, 2020 and later vintage. The maximum time for filing written statement having expired in November, 2019, learned Counsel for the petitioner was granted an opportunity to explain his inaction in filing of the written statement till November, 2019.

14. Pursuant thereto, learned Counsel for the petitioner has placed on record certain additional medical records of his client’s parents. They indicate, no doubt, that they were undergoing treatment. However, a reading of the prescriptions indicate that the petitioner’s father was suffering from haemorrhoids whereas his mother was suffering from “cervical issues”. Moreover, they were situated at Meerut and were not undergoing treatment in Delhi in 2019.

15. The jurisdiction of this Court, under Article 227 of the Constitution of India, is restricted. The jurisdiction is to be exercised only in rare and exceptional cases⁴ and, being supervisory in nature, essentially to ensure that Courts lower in the judicial hierarchy are acting in appropriate exercise of the jurisdiction vested in them by law.

16. As the defence of the petitioner in the suit has been struck off, the court, nonetheless, called for documents to ensure whether, for valid reasons, the petitioner was unable to file the written statement towards the end of 2019 and during the whole of 2020. The medical documents placed on record do not make out any such case.

17. No occasion arises, therefore, for this Court to interfere with the orders of the learned ADJ, which is accordingly affirmed.

18. The petition is dismissed.

C. HARI SHANKAR, J.

APRIL 1, 2022/dsn

⁴ *Estralla Rubber v. Dass Estate (P) Ltd.*: (2001) 8 SCC 97