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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1276/2022 & CM APPL. 50453/2022, CM APPL. 50454/2022

AKLESH KUMAR MISHRA Petitioner
Through: Mr. Raj Kumar, Adv.

versus

PARMOD KUMAR GUPTA & ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)
23.11.2022

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1. This petition under Article 227 of the Constitution of India assails the orders dated 8th June 2022 and 5th November 2022, passed by the learned Civil Judge in CS 299/2021 (*Parmod Kumar Gupta v. Akhilesh Mishra*). The order dated 8th June 2022 closed the right of the petitioner, as the defendant in the suit, to file written statement and struck off his defence. An application, by the petitioner, seeking recall of the order was dismissed by the learned Civil Judge, *vide* the second impugned order dated 5th November 2022.

2. Ordinarily, this Court is inclined to be lenient in the matter of filing of written statement and the time provided in that regard by the CPC. However, if the prayer of the petitioner, in this case, were to be granted, it would amount to this Court consigning, altogether to oblivion, the provisions of Order VIII Rule 1 of the CPC.

3. The written statement, under Order VIII Rule 1 of the CPC, is

required to be filed within 30 days of receipt of summons. For good cause, the said period is extendable upto 90 days. In its judgment in ***Kailash v. Nanhku***¹ and ***Rani Kusum v. Kanchan Devi***², the Supreme Court has held that the period of 90 days is also not an outer maximum limit and that on sufficient cause being shown, the written statement could be taken on record even beyond the period of 90 days.

4. That said, however, it would be for the defendant to show sufficient cause.

5. In the present case, the summons of the suit were served on the petitioner - defendant on 22nd February 2022. The maximum period of 90 days envisaged by Order VIII Rule 1 of the CPC, therefore, expired on or around 21st May 2022. The order striking of the defence of the petitioner was passed on 8th June 2022, noting that no written statement had been filed till that date.

6. *Prima facie*, no exception can be taken to the said order.

7. As already noted, the petitioner filed an application seeking a review/recall of the said order. In the said application, it stands acknowledged that, on 23rd February 2022, the defendant appeared before the Court, in response to the summons served on him on 22nd February 2022. Though Mr. Raj Kumar, learned Counsel for the petitioner sought to contend that the petitioner was unschooled in law, the application filed by the petitioner under Section 151 of the CPC acknowledges that, on 23rd February 2022, the petitioner was accompanied by learned Counsel. Ignorance of law cannot be pressed

¹ (2005) 4 SCC 480

² (2005) 6 SCC 705

into service by the petitioner.

8. The application further urges, somewhat surprisingly, that learned Counsel who accompanied the petitioner on 23rd February 2022 did not inform the petitioner that there was a period of limitation within which the written statement was required to be filed.

9. It is on this ground that the application, which was filed as late as on 7th July 2022, sought that the written statement be taken on record.

10. The learned Civil Judge has rightly rejected the application.

11. Though Mr. Raj Kumar, learned Counsel for the petitioner vehemently pleaded that the petitioner's written statement be permitted to be taken on record subject to nominal costs, this Court regrets that it is unable to accommodate the request. This Court has to remain conscious of the fact that any order passed by it is likely to be cited as a precedent in a future case. The present case is one in which as much as five months' delay is being sought to be explained away on the sole ground that the petitioner was unschooled in the law and that the advocate, who accompanied him, did not apprise him of the legal position.

12. If such an explanation could suffice as justification to take , on record, written statement on filed much beyond even the maximum period of 90 days envisaged by Order VIII Rule 1 of the CPC, it would render the period of limitation prescribed by the said provision completely otiose. An extremely unsavoury precedent would,

thereby, be set.

13. In that view of the matter, the Court regrets that it cannot accommodate the petitioner's request. There is no illegality or infirmity in the impugned orders as calls for supervisory interference by this Court under Article 227 of the Constitution of India.

14. The petition is accordingly dismissed *in limine*. Miscellaneous applications also stand disposed of.

C.HARI SHANKAR, J

NOVEMBER 23, 2022

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