

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO.506 OF 2020

1. Smt. Rakhi wd of Rajkumar Giri,
Aged about 28 years, occu. Household, (Ori. Plaintiff no.1)
2. Master Rohit Rajkumar Giri,
Aged about 4 years, (Minor) occu.
Education, Through her N.G. mother
petitioner No.1 Both R/o Lahan
Wadgoan, Yavatmal, Tah. and Dist. (Ori. Plaintiff no.2)
Yavatmal. **Petitioners**

// VERSUS //

Sau. Madhuri Sachin Bharati,
aged about 27 years, occu. Household,
R/o Purva heritage, Saturana road,
behind Kranti Colony, near income tax
office, Saturana, Sai Nagar Amravati, (Ori. Defendant)
Tah. & District : Amravati. ... **Respondent**

Shri Pawan Dahat, Adv. h/f Shri A.B. Moon, Advocate for the
Petitioner
Shri N.S. Khubalkar, Advocate for the R-sole

CORAM : ANIL S. KILOR, J.
DATED : 27.01.2023

ORAL JUDGMENT :

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of both the parties.
3. In this writ petition, the order below Exh.14 dated 19.09.2019 passed by Civil Judge Junior Division, Yavatmal in Regular Civil Suit No.111 of 2018, allowing the defendant/respondent-sole to file written statement beyond statutory period, is under challenge.
4. The learned counsel for the petitioners, submits that the suit for cancellation of registered gift deed and permanent injunction was filed by the petitioner Nos.1 and 2, who are the wife and the son of the deceased, who allegedly executed gift deed in favour of his sister/respondent before one month of his death.
5. It is submitted that the defendant has not filed written statement within a statutory period and on 01.08.2019, the application was moved without showing any sufficient reason for not filing written statement within time. It is pointed out that the only reason given in the application was that, the defendant is a house wife and on the perious date, her lawyer was not available as

he was out of station for his personal work and therefore, she could not file her written statement.

6. It is submitted that though the application was strongly opposed, the learned trial Court without referring the reasons and only observing that one opportunity needs to be given, permission was granted to file written statement.

7. It is submitted that except an extraordinary situation or exceptional circumstances, such permission should not be granted. For this purpose, he has placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of *R.N. Jadi & Brothers and Others Vs. Subhashchandra*¹.

8. On the other hand, the learned counsel for the respondent-sole submits that considering the relation between the parties for the reasons stated in the application, the learned trial Court has thought it fit to grant one opportunity to defendant to file written statement and thereby, no error has been committed by the learned trial Court in allowing the application Exh.14. He submits that in

¹ (2007) 6 Supreme Court Cases 420

such matters, a liberal approach shall be adopted by the learned trial Court, as held by the Hon'ble Supreme Court of India in the case of *Zolba Vs. Keshao and others*².

9. In the light of the rival submissions, I have perused the writ petition and the documents filed along with it.

10. The Hon'ble Supreme Court of India, in the case of *R.N. Jadi & Brothers and Others* (supra), has observed thus:

"11. It is notorious that suits were being dragged on by defendants in suits by not filing their written statements within a reasonable time. We are not unaware of cases where written statements were not filed even within two or three years of the filing of the suits. The control expected to be exercised by courts, by the scheme of the Code, was not being exercised leading to slackness in the matter of filing of pleadings in defence. It was in that context that the relevant provisions of the Code of Civil Procedure were amended, the laudable object being to avoid delay in the disposal of suits. The Amended Order 8 Rule 1 fixes a time limit for the filing of written statements. But, Parliament did not stop with amending Order 8 Rule 1 alone i.e. introducing a time limit for filing written statements and restricting the power of the court to grant extension of time for filing written statements as 90 days from the date of service of summons. The power for extension of time granted to the

2 (2008) 11 Supreme Court Cases 769

court under Section 148 of the Code was curtailed by introducing an outer time limit of 30 days from the date originally fixed or granted. Thus, the legislative intent to limit or curtail the power of the court to extend the time for filing a written statement is obvious from a conjoint reading of these provisions.

14. *It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in Kailash vs. Nankhu which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. It was in that context that in Kailash vs. Nankhu it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code. Kailash is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner. ”*

11. In the case of *Zolba* (supra), the Hon’ble Supreme Court of India, has held thus:

“15. Therefore, following the principles laid down in the decision, as noted hereinabove, it would be open to the court to permit the appellant to file his written statement if exceptional circumstances have been made out. It cannot also be forgotten that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Therefore, unless compelled by express and specific language of the statute, the provisions of Order 8 Rule 1 CPC or any procedural enactment should not be construed in a manner, which would leave the court helpless to meet extraordinary situations in the ends of justice.”

12. After going through the above referred observations of the Hon’ble Supreme Court of India, it is evident that where there is a sufficient justification for departing from the time limit fixed by the Court and where the exceptional circumstances have been made out, no doubt such opportunity, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship by allowing the defendant to file written statement beyond time limit fixed by the statute, is permissible.

13. In the present case, after going through the impugned order, it is evident that the learned trial Court while allowing the

application, has not observed any such exceptional circumstances or extraordinary situation for permitting the defendant to file written statement beyond time limit fixed by the statute.

14. In the circumstances, I am of the opinion that the matter needs be remanded back to the trial Court to decide the application Exh.14 afresh, after taking into consideration the reasons stated in the application and the law in this regard as enunciated by the Hon'ble Supreme Court of India, time and again. Accordingly, I pass the following order:

(i) The application is **partly allowed**.

(ii) The order dated 19.09.2019 passed by Civil Judge Junior Division, Yavatmal in Regular Civil Suit No.111 of 2018, is hereby quashed and set aside.

(iii) The matter is remanded back to the learned trial Court to decide Exh.14 afresh, and the learned trial Court shall decide the application after hearing both the parties within two months from today.

At this stage, the learned counsel for the respondent seeks permission to file additional affidavit in support of Exh.14.

An opportunity is granted to the respondent to make such request before the learned trial Court, which the learned trial court shall decide it on its own merit.

The writ petition is **disposed of** in the above terms.
No costs.

[ANIL S. KILOR, J.]