

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-2108-2022

Date of Decision : 16.10.2023

Nishan Singh

.....Petitioner

Versus

Mohinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Sunil Agnihotri, Advocate
for the petitioners.

Mr. Raman Kumar, Advocate for
Mr. Rajeev K. Kapila, Advocate
for the respondents No.1, 2 and 4

NAMIT KUMAR, J. (ORAL)

1. Challenge in the present revision petition is to the order dated 12.11.2021 (Annexure P-2) passed by learned Civil Judge (Junior Division), Dasuya, District Hoshiarpur in CS No.114 of 2019, whereby defence of the petitioner/defendant has been struck off for non-filing of written statement despite availing several opportunities.

2. Learned counsel for the petitioner contends that respondents No.1 and 2/plaintiffs have filed the suit on 28.03.2019 and further proceedings were adjourned for the appearance of the defendants upto 28.01.2021. At that time, the petitioner/defendant No.2 was residing in London and due to Covid-19 Pandemic he could not come to India. The petitioner gave special power of attorney in favour of Satwinder Singh, who prepared written statement on 30.01.2022 but before submission of the written statement on behalf of the

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petitioner/defendant No.2, the impugned order was passed. He submits that non-filing of the written statement within the stipulated period is neither intentional nor deliberate. He further submits that the proposed written statement has been annexed along with the present petition as Annexure P-3 which may be permitted to file before the Trial Court.

3. On the other hand, learned counsel for respondents No.1, 2 and 4 has opposed the present revision petition and submits that despite giving several opportunities, the petitioner/defendant No.2 has failed to file written statement.

4. I have heard learned counsel for the parties and perused the record.

5. The question is as to whether under the facts and circumstances of the case, the petitioner deserves to be granted any further opportunity for filing of written statement while setting aside the order passed by the Court below whereby defence of the petitioner was struck-off on account of non-filing of written statement.

6. Comprehensive amendments were made in CPC in the year 2002 in Order 8, Rule 1 CPC. The relevant provision is reproduced below:-

"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."

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7. Aforesaid provision provides that 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 written statement within the said period of thirty days, he shall be allowed to file the same within such further time, 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.

8. The issue as to whether the period so provided under Order 8, Rule 1 CPC for filing the written statement is mandatory or directory, came up for consideration before Hon'ble the Supreme Court in ***Kailash v. Nanhku and others 2005 (2) RCR (Civil) 379***, wherein it was opined that the purpose of amendment is to expedite and not to scuttle the hearing. This does not impose an embargo on the power of the court to extend the time further, as no penal consequences as such have been provided, the provisions being in the domain of the procedural law are not mandatory. However, it was further opined that keeping in view the need for expeditious trial of the civil cases, ordinarily the time schedule should be followed as a rule and departure therefrom would be by way of exception. The extension of time should not be granted as a matter of routine and merely for asking especially when the time is beyond the period of 90 days. In case any extension is to be granted, the same could be for good reasons to be recorded in writing may be in brief. Relevant paras from the aforesaid judgment are extracted below:-

"45(i) to (iii) x x x x

(iv) The purpose of providing the time schedule for filing the written statement under Order 8, Rule 1 of CPC is to

expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 Order 8 of the CPC is couched in negative form, it does not specify any penal consequences flowing from the noncompliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order 8, Rule 1 of the CPC is not completely taken away.

(v) Though Order 8, Rule 1 of the CPC is a part of procedural Law and hence directory, keeping in view the need for expeditious trial of civil cases which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

9. The issue regarding filing of belated written statement came up for consideration before Hon'ble the Supreme Court in view of objection raised by the plaintiff therein, in ***M. Srinivasa Prasad and others v. The Comptroller & Auditor General of India and others*** **2007 (4) SCT 380**, wherein Hon'ble the Supreme Court while setting aside the order passed by the trial court as well as the High Court,

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remitted the matter back for consideration afresh, as there were no reasons forthcoming for allowing the written statement to be filed after expiry of period of 90 days. Relevant para thereof is extracted below:-

"7. Since neither the trial Court nor the High Court have indicated any reason to justify the acceptance of the written statement after the expiry of time fixed, we set aside the orders of the trial Court and that of the High Court. The matter is remitted to the trial Court to consider the matter afresh in the light of what has been stated in Kailash's case(supra). The appeal is allowed to the aforesaid extent with no order as to costs."

10. Subsequently the same issue again came up for consideration before Hon'ble the Supreme Court in ***R.N. Jadi v. Subhashchandra 2007 (3) RCR (Civil) 588***, wherein it was opined that the grant of extension of time beyond 30 days is not automatic. The power of the court has to be exercised with caution and for adequate reasons to be recorded and extension of time beyond 90 days of service of summons must be granted only based on a clear satisfaction of the justification for granting such extension. The period prescribed under Order 8, Rule 1 CPC should generally be adhered to and the extension should be in exceptional cases. The relevant paras thereof are extracted below:-

"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 v. Nankhu and others, 2005 (4) SCC 480 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 rigour of that provision or to mitigate genuine hardship. It was in that context that in Kailash v. Nankhu and others (supra) 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.

15. A dispensation that makes Order 8, Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in Allen v. Sir Alfred Mc Alpine & Sons, (1968) 1 All ER 543 that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?"

11. Similar view was expressed by Hon'ble the Supreme Court in ***Mohammed Yusuf v. Faij Mohammed and others 2009 (1) RCR***

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(Civil) 633 and in Sandeep Thapar v. SME Technologies Private Limited 2014 (1) RCR (Civil) 729.

12. Provisions contained in Order VIII Rule 1 CPC though ought to be adhered to but learned Court below could have still permitted petitioner to file written statement subject to certain penalty as a deterrent. Otherwise also, provisions contained in Order 8 Rule 1 have been held to be directory in nature by the Hon’ble Supreme Court. The Court should not, therefore, be too harsh to disallow filing of written statement.

13. Keeping in view the facts and circumstances of the case and by considering the position of law as discussed above, the instant petition is allowed and the impugned order dated 12.11.2021 is modified accordingly as the same would indeed cause prejudice to petitioner/defendant No.2 and the petitioner is granted one more opportunity to file written statement subject to payment of Rs.20,000/- as costs to be paid to the plaintiffs/respondents No.1 and 2 on the next date of hearing before the trial Court.

16.10.2023

Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No