

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

136

CR-5542-2023

Date of Decision : 19.09.2023

Rakesh Kumar and another

.....Petitioners

Versus

M/s Nivedan Fin Invest Lease Limited

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

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

NAMIT KUMAR, J. (ORAL)

1. The petitioners/defendants have preferred the instant revision petition under Article 227 of the Constitution of India impugning the order dated 21.08.2023 passed by learned Civil Judge (Junior Division), Jalandhar, whereby their right to file the written statement has been closed.

2. Learned counsel for the petitioners contends that the petitioners/defendants, through their counsel, have appeared for the first time on 03.04.2023 and the case was adjourned to 28.04.2023 for filing written statement. On 28.04.2023 again time was sought for filing of written statement and the case was adjourned to 26.05.2023. Since on 26.05.2023 the District Bar Association was observing no work day, therefore, the case was adjourned for 25.07.2023 and on 25.07.2023 time was granted for filing the written statement subject to payment of costs of Rs.200/- to be paid to the plaintiff and the case was adjourned to 21.08.2023. However, on 21.08.2023 the right of the petitioners/defendants for filing the written

CR-5542-2023

2

statement has been closed. He further submits that non-filing of the written statement within the stipulated period is neither intentional nor deliberate. The reason for not filing the written statement before the Trial Court is that counsel for the petitioner namely Sh. Davinder Gupta had gone to Vietnam on 31.05.2023 but unfortunately he suffered heart attack on 02.06.2023 and remained admitted in I.C.U. in Vietnam from where he was brought to India on 28.06.2023 through Air Ambulance and got admitted to Fortis Hospital, Mohali and he remained admitted there in I.C.U. till 29.07.2023. On 29.07.2023 he was shifted to the I.C.U. Wing of S.G.L. Multispeciality Hospital, Jalandhar and till today he has not been discharged from the hospital though he is recovering now and has been shifted to general ward from I.C.U. wing. He seeks another opportunity for filing the written statement on the next date of hearing fixed before the Trial Court i.e 27.10.2023.

3. Notice of motion.

4. Mr. Rishabh Gupta, Advocate has put in appearance and accepts notice on behalf of the respondent and filed his memo of appearance which is taken on record.

5. Learned counsel for the respondent has vehemently opposed the relief claimed in the present petition on the ground that despite granting several opportunities, the petitioners have failed to file their written statement. Since, the statutory period of 90 days for filing the written statement has already been elapsed, therefore, there is no illegality or perversity in the impugned order dated 21.08.2023 and the present petition may be dismissed.

CR-5542-2023

3

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

7. 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.

8. 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."

9. 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.

10. 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."

11. 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, 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."

12. 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?"*

13. Similar view was expressed by Hon'ble the Supreme Court in ***Mohammed Yusuf v. Faij Mohammed and others 2009 (1) RCR (Civil) 633 and in Sandeep Thapar v. SME Technologies Private Limited 2014 (1) RCR (Civil) 729.***

14. 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.

CR-5542-2023

8

15. 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 21.08.2023 passed by learned Civil Judge (Junior Division), Jalandhar is modified accordingly as the same would indeed cause prejudice to petitioners/defendants and the petitioners are granted one more opportunity to file their written statement/reply on or before the next date of hearing fixed before the trial Court i.e. 27.10.2023.

19.09.2023

Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No