



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

% **Date of order: 17th August, 2023**

+ **C.R.P. 33/2023 & CM APPL. 5448/2023**

OM PRAKASH Petitioner

Through: **Mr. Sanjib Dutta, Advocate**

versus

SHAMSHER Respondent

Through: **None**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") has been filed on behalf of the petitioner seeking the following reliefs:

“(i) Accept the present Civil Revision Petition and set aside the impugned Order dated 20.08.2022 passed by the Ld. A.D.J.-03, North District, Rohini District Courts Delhi in civil suit No. CS DJ 59124 of 2016 titled as "Om Prakash vis Shamsher", in the interest of justice; and/or

(ii) Pass any other or further Order(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in favour of the Petitioner/Plaintiff and against the Respondent/Defendant, in the interest of justice.”



2. The petitioner/plaintiff is the permanent resident of the village Khera Khurd, Delhi, where he primarily deals in the business of agriculture and cultivation. The respondent/defendant is a relative of the petitioner residing in Gurgaon, Haryana and is running his own business of property dealing.
3. The respondent had taken a loan of Rs. 40,00,000/- (Rupees Forty Lacs only) from the petitioner on 26th December, 2005. Despite providing numerous opportunities for repayment of the loan, the respondent utterly failed repaying the loan amount to the petitioner.
4. The petitioner had filed a Civil Suit bearing no. CS (OS) 756 of 2013 under Order XXXVII Rule 1 of the CPC before this Court on 5th April, 2013 for the recovery of loan amount of Rs. 40,00,000/- (Rupees Forty Lacs only) from the respondent. The said suit was transferred to the learned District Court of Rohini *vide* administrative Order dated 19th January, 2016 and was renumbered as CS DJ 59124 of 2016.
5. In the said suit the learned Trial Court *vide* Order dated 21st April, 2018 had allowed the application of the respondent for leave to defend filed under Order XXXVII Rule 3(5) of CPC, directed the respondent to file his written statement.
6. The learned Trial Court *vide* Order dated 25th August, 2018 had struck off the defense of the respondent by deciding an application moved by the petitioner under Order VIII Rule 10 read with section 151 of the CPC since the respondent had failed to file his written statement within the stipulated period.
7. Consequently, the respondent had moved an application under Order



VIII Rule 1 read with Section 148 & 151 of the CPC seeking setting aside of the Order dated 25th August, 2018 and therefore, requesting for an extension of time for filing written statement.

8. The learned Trial Court *vide* impugned order dated 20th August, 2022 permitted the respondent to file his written statement within seven days, thereby, deciding the above application filed by the respondent in the affirmative.

9. Being aggrieved by the impugned order of the learned Trial Court dated 20th August, 2022 the petitioner has filed the instant revision petition before this Court seeking for impugned order dated 20th August, 2022 to be set aside.

10. Learned counsel appearing on behalf of the petitioner submitted that the present petition has been filed against the impugned order dated 20th August 2022, whereby, the learned Trial Court without considering the entirety of the matter ,had allowed the application of the respondent under Order VIII Rule 1 of the CPC.

11. It is submitted that the impugned order has been passed by the learned Trial Court without applying its judicial mind and has committed grave error of facts and law, hence the impugned order is liable to be set aside.

12. It is submitted that the learned Trial Court while passing the impugned Order dated 20th August, 2022 has failed to consider that the application filed by the respondent for setting aside the order dated 25th August, 2018 *vide* which the defense of the respondent was struck off, is based on false, fake and frivolous grounds.



13. It is further submitted that the learned Trial Court has ignored the fact that the defense of the respondent was already struck off by the Trial Court *vide* Order dated 25th August, 2018 pursuant to the respondent failing to file his written statement even after 126 days from the order dated 21st April, 2018, whereunder, the leave to defend of the respondent was allowed.

14. It is submitted that under Order VIII Rule 1 of the CPC read with Section 148 and section 151 of the CPC does not permit the respondent to seek setting aside of the order dated 25th August, 2018 under Order VIII Rule 10 of the CPC.

15. It is submitted that the learned Trial Court had no power to pass any order, thereby extending the time limit for filing written statement after the lapse of 1582 days from the date of the Order dated 21st April, 2018, whereunder, the leave to defend was allowed, as the time limit to file written statement cannot be extended beyond 90 days under Order VIII Rule 1 of the CPC.

16. It is submitted that the respondent had been attending the matter before the learned Trial Court until his leave to defense was allowed by the Trial Court *vide* Order dated 21st April, 2018. Thereafter, the respondent instead of filing the written statement, delayed the matter with *malafide* intention thereby hindering the process of Trial of the Court below.

17. It is submitted that the Trial Court without applying its judicial mind, wrongly allowed the leave to defend application of the respondent *vide* Order dated 21st April, 2018 but also wrongly directed the petitioner to prove his case regarding maintainability of the said suit. It is further submitted that



the learned Trial Court while allowing the leave to defend of the respondent had failed to consider that there is lack of strong defense to contest the summary suit.

18. In view of the foregoing paragraphs, the learned counsel for the petitioner submitted that the instant petition may be allowed and the reliefs sought may be granted.

19. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the averments made by the petitioner. The present petition is nothing but an abuse of the process of law.

20. It is submitted that the non-filing of the written statement by the respondent is neither intentional nor deliberate but because of the certain exigencies. The respondent could not file his written statement on time as the matter was repeatedly listed for arguments due to which he lost track of the matter.

21. It is submitted that the learned Trial Court has rightly applied its judicial mind while deciding the application of the respondent under Order VIII Rule 1 read with Section 148 and 151 of the CPC. The same has been done after considering the reasons stated by the respondent in not filing of the written statement.

22. It is submitted that the learned Trial Court has not caused any miscarriage of justice by passing the impugned Order. It is further submitted that the respondent will suffer grave injustice and irreparable harm, if he is not allowed to prove his case on merits.

23. It is submitted that the learned Trial Court has rightly passed the order



by exercising its powers under section 151 of the CPC and hence, the order does not suffer from any irregularity or illegality.

24. It is submitted that this revision petition does not fall within the ambit of Section 115 of the CPC. It is further submitted that the impugned order passed by the learned Trial Court is not erroneous as the petitioner did not make any averment which has to be looked into as per this Court's jurisdiction under Section 115 of the CPC .

25. Hence, in view of the foregoing submissions, the respondent seeks that this Court may dismiss this revision petition thereby, upholding the impugned Order.

26. Heard the learned counsel for the parties and perused the material on record.

27. The petitioner has preferred the present revision petition against the order dated 20th August, 2022 passed by the learned Trial Court whereby, the application of the respondent filed under Order VIII Rule 1 read with Section 148 and 151 of the CPC, was allowed. It was argued by the respondent before the learned Trial Court that he could not file his written statement on time as the matter was repeatedly listed for arguments due to which he lost track. In pursuance of such submission, the learned Trial Court by exercising its power by allowing the application filed under Order VIII Rule 1 read with Section 148 and Section 151 of the CPC, whereby, it is explicitly stated that the defense taken by the respondent is a plausible defense and injustice will be caused to him if his opportunity to lead the defense is denied. The learned Court below further directed the respondent



to compensate the petitioner for the prejudice caused to him. The relevant paragraph of the impugned order is reproduced herein below for reference:

“The application of the defendant seeking leave to defend was allowed as he has raised a plausible defense in his favour, if, the defendant is not allowed to place on record his WS, his opportunity to lead his defense will be closed and injustice will be caused to him whereas the prejudice caused to the plaintiff can be compensated by cost. In the interest of justice, the application of defendant is allowed subject to cost of Rs. 20,000/- to be paid to the counsel for the plaintiff with the direction to file WS within 7 days from today with advance copy to the other party.”

28. At this stage, the scope, nature and object of Order VIII Rule 1 of the CPC, is pertinent to be discussed. The relevant provision is reproduced herein below for reference:

“[ORDER VIII – Written statement, set-off and counter-claim

*Rule 1 - Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defense: 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.] *[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 written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of*



summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.]”

29. The Hon’ble Supreme Court in ***Salem Advocate Bar Association, Tamil Nadu vs UOI (2005) 6 SCC 344***, has discussed the scope of Order VIII Rule 1 of the CPC. The Hon’ble Court held that the time period prescribed for the filing of written statement is directory and not mandatory and hence, it can be extended beyond 90 days as per the discretion of Court. However, such discretionary powers should be exercised for the purpose of causing justice, only in extraordinary cases, and not in routine. The relevant paragraph of the judgement is reproduced herein below for reference:

“21. In construing this provision, support can also be had from Order VIII Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other Order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other Order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word "shall", the Court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if the written statement is not filed and instead pass such Order as it may think fit in relation to the suit. In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be



that under Rule 10 Order VIII, the Court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order VIII Rule 1. There is no restriction in Order VIII 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 VIII 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 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 VIII Rule."

30. The provision under Order VIII Rule 1 of the CPC does not put any embargo on the powers of the Court to extend time in filing written statement and has to be construed as directory and not mandatory. This view was reiterated by the Hon'ble Supreme Court in ***Kailash vs Nankhu and Ors. (2005) 4 SCC 480***, wherein, the Hon'ble Court held that the time to file Written Statement may be extended by the Court beyond the period of 90 days but only in exceptional cases and not in a routine manner. The said exceptional cases have to be in cases where circumstance are beyond the control of the defendant and grave injustice would be caused if the duration of filing written submission was not extended. The reasons for exercising such discretion are to be recorded in writing. The Court while exercising



such discretionary power may impose compensatory costs on the defendant.

31. The Hon'ble Supreme Court has further reiterated the principle for condoning the delay in filing written submission under Order VIII of CPC in the judgment of ***Shantilal Gulabchand Mutha v. Tata Engg. & Locomotive Co. Ltd., (2013) 4 SCC 396***

“9. In view of the above, it appears to be a settled legal proposition that the relief under Order 8 Rule 10 CPC is discretionary, and court has to be more cautious while exercising such power where the defendant fails to file the written statement. Even in such circumstances, the court must be satisfied that there is no fact which needs to be proved in spite of deemed admission by the defendant, and the court must give reasons for passing such judgment, however, short it be, but by reading the judgment, a party must understand what were the facts and circumstances on the basis of which the court must proceed, and under what reasoning the suit has been decreed.”

32. The aforesaid principle has been reiterated further by Hon'ble Supreme Court in the judgment of ***C.N. Ramappa Gowda v. C.C. Chandregowda, (2012) 5 SCC 265***

25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed.: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a



mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial.

27. However, if the court is clearly of the view that the plaintiff's case even without any evidence is prima facie unimpeachable and the defendant's approach is clearly a dilatory tactic to delay the passing of a decree, it would be justified in appropriate cases to pass even an uncontested decree. What would be the nature of such a case ultimately will have to be left to the wisdom and just exercise of discretion by the trial court who is seized of the trial of the suit.

33. In light of the above-mentioned judgements that the word “Shall”



mentioned in Order VIII Rule 1 of the CPC by itself, is not conclusive to determine whether the provision is mandatory or directory. Therefore, in a case where the time period to file written statement as provided in Order VIII Rule 1 of the CPC expired, the Courts can extend such time period beyond 90 days, only in exceptional cases, but the same must be done to protect the interests of the party and for the purpose of imparting justice.

34. In regards to Section 151 of the CPC it is a well settled law that Section 151 of the CPC has an extensive scope and covers numerous instances where the specific provisions of the CPC may not *provide* enough relief to a party. Therefore, it is clear that the Courts must exercise their jurisdiction and powers under Section 151 of the CPC only when an exceptional case comes before the Court and the circumstances warrant that inherent power be exercised to impart justice between the parties. Furthermore, to ensure that the interests of justice are served, the Courts must use their inherent powers under this section cautiously and with prudence and also to prevent any abuse of the legal process.

35. During the course of the arguments, it was averred by the petitioner that this Court is incumbent with the wide revisional power under section 115 of the CPC to decide the present petition. It was prayed that the present petition be allowed as the learned Trial Court did not have the jurisdiction to pass the impugned Order.

36. At this juncture it is prudent to understand and analyse the powers of the Civil Court under Section 115 of the CPC. The said provision is reproduced herein below for reference:



“115. Revision. — [(1)] *The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—*

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such Order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any Order made, or any Order deciding an issue, in the course of a suit or other proceeding, except where the Order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or Order against which an appeal lies either to the High Court or to any Court subordinate thereto.

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation. —In this section, the expression “any case which has been decided” includes any Order made, or any Order deciding an issue in the course of a suit or other proceeding.]”

37. The Hon’ble Supreme Court in ***D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh, (1969) 3 SCC 807*** has discussed the scope of the High Court under section 115 of the CPC, wherein it was held that:

“5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors



have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the Order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words “illegally” and “with material irregularity” as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.”

38. The above said position was recently reaffirmed in the judgment of



Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd., (2022) 8 SCC 633, by the Hon'ble Supreme Court, wherein, it was observed that the Court exercising revisional powers shall not enter into the questions of facts or evidence or any errors, thereto, but shall limit itself to the question of errors in exercise of jurisdiction.

39. The power of revision under Section 115 of the CPC has a very limited scope, while adjudicating a revision petition does not have to go into the merits of the case and just have to look at the question of jurisdiction. Therefore, the Court exercising revisional powers shall not enter into the questions of facts or evidences or any errors, thereto, but shall limit itself to the question of errors in exercise of jurisdiction. Also, not every order of the learned Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of the High Court.

40. The case of the petitioner is that the time period to file written statement had already expired and defense of the respondent was struck off by the learned Trial Court *vide* order dated 25th August, 2018. Thereafter, the respondent filed an application under Order VIII Rule 1 of the CPC to set aside the said order and Trial Court allowed an extension of 7 days to the respondent to file his written statement.

41. In view of foregoing discussion, this Court is of view that the time-limit under Order VIII Rule 1 of the CPC is directory in nature, can be further extended by the Courts to impart the ends of justice. The learned Trial Court has rightly adopted the law laid down by the Hon'ble Supreme Court in the above-mentioned judgements concerning the extension of



time limit prescribed under Order VIII Rule 1 of the CPC, which is to be construed as directory and not mandatory.

42. Therefore, I do not find any error or irregularity in the impugned order dated 20th August, 2022, passed by the trial court. The learned Trial Court has the power to pass such an order for the reasons that the respondent should not be left defenseless and therefore, the order does not suffer from any illegality and infirmity.

43. As per the discussion in foregoing paragraphs the Trial Court has passed the impugned order dated 20th August 2022 passed by the Learned A.D.J.-03, North District, Rohini District Courts Delhi in civil suit bearing no. CS DJ 59124 of 2016 titled as Om Prakash v. Shamsheer, within its jurisdiction for achieving its jurisdiction for achieving ends of justice. The learned Court below has neither acted illegally in the exercise of its jurisdiction nor has there been any material irregularity. Therefore, the present petition is liable to be dismissed.

44. Accordingly, the instant petition along with pending application stands dismissed.

45. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 17, 2023
gs/db

Click here to check corrigendum, if any