

\$~13

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

% *Date of Decision: 25th April, 2023*

+ **CRP 52/2023**

CHANCHAL GOEL & ANR. Petitioners

Through: Mr. Arun Khatri and
Mr. Akshay Kumar Dahiya, Advocates.

versus

ALOK MALANI Respondent

Through: Mr. Asheesh Lal, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present revision petition has been filed by the Petitioners assailing the impugned order dated 31.01.2023, whereby the Trial Court has closed the right of the Petitioners to file the written statement. Petitioners herein are Defendants before the Trial Court and Respondent is the Plaintiff.

2. Respondent herein filed a suit for eviction, permanent and mandatory injunction before the Trial Court with respect to property bearing No.4428-30, 2nd Floor, Ward No.3, Ganesh Bazaar, Vishnu Bazaar and Dau Bazaar, Delhi. Summons were issued in the suit on 19.10.2022 returnable on 31.01.2023. On 02.12.2022, Petitioners were served with summons and copy of the plaint for appearance on 31.01.2023. When the matter was listed on 31.01.2023, Trial Court closed the right of the Petitioners to file written statement since the statutory period of 30 days prescribed in Order VIII Rule 1 CPC for filing written statement from date of service of summons i.e. 02.12.2022, had expired.

3. Counsel for Petitioners submits that Petitioners were served with the summons on 02.12.2022, however, Petitioners were unable to

discern from the reading of the summons as to what steps they were required to take and decided to consult a lawyer. It took Petitioners some time to engage a lawyer and finally, Petitioners were able to engage the present lawyers on 30.01.2023 and briefed them in the matter. Since the matter was listed on the next day i.e. 31.01.2023, counsel for Petitioners requested for some time to file the written statement as the lawyers had been recently engaged and in any case, the delay was within the period of 90 days available under Order VIII Rule 1 CPC, within which the Court has a discretion to condone the delay *albeit* on payment of costs. It is, therefore, submitted that the impugned order be set aside and Petitioners be permitted to file written statement, failing which grave prejudice would be caused to them and the suit would be decided against them without any opportunity to defend. It is also submitted that Petitioners are willing to pay costs if the time for filing written statement is granted.

4. Learned counsel for Respondent, appearing on the advance copy of the petition, opposes the petition and submits that there is no reason forthcoming in the revision petition to explain why the written statement could not be filed on or before 31.01.2023, when Petitioners were admittedly served on 02.12.2022 and therefore, the petition deserves to be dismissed.

5. I have heard learned counsels for the parties and examined their contentions.

6. It is an admitted position between the parties that the suit out of which the present revision petition arises is a non-commercial suit and the timelines for filing written statement are provided under Order VIII Rule 1 CPC. Order VIII Rule 1 provides a period of 30 days to a Defendant to file written statement from the date of service of summons. Proviso to Order VIII Rule 1 CPC provides that where the Defendant fails to file written statement within the said period of 30

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, which shall not be later than 120 days from the date of service of summons. The provision came up for consideration before the Supreme Court in ***Kailash v. Nanhku and Others, (2005) 4 SCC 480***, where the Supreme Court held that the provisions of Order VIII Rule 1 CPC are procedural and not a part of substantive law. Though the object is to curb the mischief of Defendants adopting dilatory tactics to delay disposal of cases, however, in an adversarial system normally and ordinarily, a party should not be denied opportunity of participating in justice dispensation process. It was also held that merely because a provision is couched in a negative language, it is not without exception and no provision of a procedural enactment should be construed in a manner which leaves a Court helpless to meet extraordinary situations, in the interest of justice. Relevant paras of the judgment are as follows:-

“27. Three things are clear. Firstly, a careful reading of the language in which Order 8 Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Secondly, the nature of the provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law. Thirdly, the object behind substituting Order 8 Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of

prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6)

“The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence — processual, as much as substantive.”

7. In **N. Balakrishnan v. M. Krishnamurthy**, (1998) 7 SCC 123, the Supreme Court held that refusal to condone delay in filing written statement would result in foreclosing a suitor from putting forth his cause and there is no presumption that delay is always deliberate. It must be remembered that in every case of delay, there can be some lapse on part of the litigant concerned but that alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack of dilatory strategy, the Court must show utmost consideration and at the same time make sure that the opposite party is compensated for the resultant delay in disposal of his suit. The Supreme Court in Civil Appeal No.3788/2022 in **Bharat Kalra v. Raj Kishan Chabra**, held that in a non-commercial suit not governed by Commercial Courts Act, 2015, time limit for filing written statement under Order VIII Rule 1 CPC is not mandatory in view of the judgment of the Supreme Court in **Kailash (supra)** and set aside the order of the High Court whereby delay of 193 days was not condoned.

8. In the present case, Petitioners were served with the summons on 02.12.2022 and had engaged their lawyers on 30.01.2023, who had appeared before the Trial Court on the next day, i.e. 31.01.2023. *Vakalatnama* filed on behalf of the Petitioners was taken on record, however, time to file the written statement was closed. In my view, the facts of the present case did not entail an order closing the right of the Petitioners to file the written statement since the delay was 30 days beyond the statutory period of 30 days in filing the written statement under Order VIII Rule 1 CPC. It does not appear to the Court that there was any delay tactic on the part of the Petitioners as it is not unusual that on receipt of summons, it does take time for any litigant to engage a lawyer. Moreover, in light of the judgments aforementioned, present is a case where this Court cannot overlook the observations of the Supreme Court that provisions of Order VIII Rule 1 CPC are procedural and not mandatory and in a non-commercial suit, the Court is not denuded of its powers to condone the delay so that a party does not go unheard.

9. Accordingly, the impugned order is set aside, granting the Petitioners a period of two weeks from today for filing the written statement. Needless to state that if the written statement is filed beyond the timelines granted by this Court, the same shall not be taken on record. Applying the dictum of the Supreme Court and balancing the equities between the parties, it is directed that the written statement shall be taken on record if filed within the time granted, subject to payment of cost of Rs.50,000/- by the Petitioners to the Respondent on or before the expiry of the two weeks period.

10. Revision petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

Signature Not Verified **APRIL 25, 2023/shivam**

Digitally Signed by: KAMAL
KUMAR
Location:
Signing Date: 29.04.2023
19:11:49

C.R.P. 52/2023

Page 5 of 5