

#S-14

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 15.02.2023

FAO(OS) 149/2022

JAMALUDDIN

..... Appellant

versus

NAWABUDDIN AND ORS

.....Respondents

Advocates who appeared in this case:

For the appellant : Mr. A.J. Khan, Advocate.

For the respondent : Mr. M.S. Khan, Mr. M. Arshyan & Mr. Daniyal Ayyubi, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

SIDDHARTH MRIDUL, J. (OPEN COURT)

1. The present appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, read with Section 10 of the Delhi High Court Rules, has been instituted on behalf of Jamaluddin, the appellant *herein* and defendant no. 3 in the original suit, praying as follows:

“Keeping in view of the facts and circumstances stated herein and in the interest of justice, it is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

(a) Allow the appeal there by setting aside the impugned order dated 24.11.2022 passed by Hon'ble Mr. Justice V. Kameshwar Rao in O.A. NO. 62/2022 IN CS(OS) NO.115 OF 2020 titled 'Nawabuddin Vs. Sh. Salahuddin & ORS and also order dated 30.08.2022 passed by Ms. Vandana Jain, Learned Joint Registrar in CS(OS) NO.115 OF 2020 titled 'Nawabuddin Vs. Sh. Salahuddin

& Ors, in the interest of justice;

(b) Direct the registry to take on record the written statement on behalf of Appellant/Defendant No.3;

(c) Pass any other and further order as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case be also passed."

2. Axiomatically, the present appeal preferred by the appellant seeks setting aside of the impugned order dated 24.11.2022 passed by the learned Single Judge of this Court, in the chamber appeal i.e. O.A. no. 62/2022, in CS (OS) No. 115/ 2020 titled '*Nawabuddin Vs. Sh. Salahuddin & Ors*', upholding the order dated 30.08.2022, passed by the learned Joint Registrar, whereby the right of the appellant *herein*, to file the written statement, was closed, on the ground that the statutory period for filing the same had come to an end by efflux of time.

3. Learned counsel appearing for the appellant *herein*, would *inter alia* rely on the decision of the Hon'ble Supreme Court in **Kailash Vs. Nanhku and ors**, reported as **(2005) 4 SCC 480**. The relevant portion of the ratio enunciated therein is extracted hereinbelow:-

"43. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on an affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the court that the prayer was founded on grounds which do exist.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, shall the defendant be permitted to seek extension of

time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.”

4. Learned counsel appearing on behalf of the appellant would then rely upon the ratio of the decision of the Hon’ble Supreme Court in **Salem Advocate Bar Association, T.N Vs. Union of India**, reported as **(2005) 6 SCC 344** and in particular para 21 thereof which holds as follows:-

21. *In construing this provision, support can also be had from Order 8 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 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 Order 8, 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 8 Rule 1. There is no restriction in Order 8 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 8 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 8 Rule 1.

5. In view of the ratio of the above decisions of the Hon'ble Supreme Court extracted *herein above* and in the facts and circumstances of the present case, learned counsel appearing on behalf of the respondent no. 1 in the present appeal (*the original plaintiff in the subject suit*) does not oppose the relief prayed for, in the present appeal. It is observed that in view of the foregoing the issue involved in the present appeal is no longer *res integra*.

6. Further, it is also pertinent to observe that the Hon'ble Apex Court in the recent decision of **Bharat Kalra Vs. Raj Kishan Chabra** reported as **2022 SCC Online SC 613** has also *inter alia* observed, that the delay in filing the written statement can be condoned, subject to compensating the plaintiff with costs. The relevant portion of the ratio is extracted hereinbelow:-

"1. Leave granted.

2. The challenge in the present appeal is to an order passed by the High Court on 12.08.2021 whereby delay of 193 days in filing of the written statement was not condoned.

3. Admittedly, the suit for injunction filed by the plaintiff is not the one which is governed by the Commercial Court Act, 2015. Therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of the judgment of this Court reported as 'Kailash v. Nankhu' reported in (2005) 4 SCC 480.

4. In view of the aforesaid judgment, we find that the delay in filing of the written statement could very

well be compensated with costs but denying the benefit of filing of the written statement is unreasonable.

5. Consequently, we allow the present appeal. The order passed by the High Court is set aside. The written statement already filed is taken on record.

6. We do hope that the trial Court shall expedite the decision of the suit keeping in view the old age of the plaintiff.

7. Pending application(s), if any, also stand disposed of.”

7. In view of the foregoing, the impugned order dated 24.11.2022 passed by the learned Single Judge and order dated 30.08.2022 passed by the learned Joint Registrar are set aside. The appellant is permitted to file the written statement in CS (OS) No. 115/ 2020, titled ‘*Nawabuddin Vs. Sh. Salahuddin & Ors*’, within a week from today, after serving an advance copy *thereof* to the other side; subject, however, to payment of compensatory costs of Rs. 25,000 (Rupees Twenty Five Thousand Only), to learned counsel appearing on behalf of Nawabuddin, respondent no. 1 *herein (the original plaintiff in the subject suit)*.

8. No further directions are prayed for.

9. With the above directions, the present appeal is allowed, and disposed of accordingly.

**SIDDHARTH MRIDUL
(JUDGE)**

**TUSHAR RAO GEDELA
(JUDGE)**

FEBRUARY 15, 2023

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[Click here to check corrigendum, if any](#)