

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.O. No. 1720 of 2015

Abdus Sattar Mia

-Versus-

Satish Mondal & Ors.

For the Petitioner : **Ms. Shila Sarkar.**

For the Opposite Parties :

Hearing concluded on : **26.02.2024**

Judgment On : **28.02.2024**

Prasenjit Biswas, J:-

1. Feeling aggrieved and dissatisfied with the impugned order dated 18th August, 2014 passed by the Ld. Civil Judge (Senior Division), 2nd Court, at Malda in connection with Partition Suit No. 162 of 2007, the

petitioner/defendant has preferred this instant revisional application under Article 227 of the Constitution of India.

2. By passing the impugned order learned Trial Court rejected the petition filed by the petitioner/defendant under Order 47 Rule 1 read with Section 114 and 151 of CPC dated 04.02.2012 with a prayer for review of the order passed by that Trial Court dated 11.03.2011.

3. By passing the order dated 11.03.2011 the learned Trial Court rejected the application filed by the defendant/petitioner to accept the written statement after referring the decision rendered by the Hon'ble Apex Court in case of Kailash vs. Nanhku and Others and in case of R. N. Jadi and Bros. vs. Subhaschandra. In the said order learned Trial Court did not believe the explanation of delay given by the defendant in filing the written statement and rejected the application filed by the defendant/petitioner to accept the written statement.

4. Despite service affected upon the opposite party none appears to contest the present application.

5. Mrs. Shila Sarkar, learned Counsel appearing on behalf of the petitioner submits before the Court interalia that after getting summon of the suit from the Trial Court the defendant/petitioner entered his appearance in the said suit and after taking time for filing written statement this petitioner on 30th November, 2007 filed written statement along with two applications one for withdrawing the suit from ex-parte hearing board and other application showing cause on the ground stated therein for not filing the written

statement within the stipulated time as provided in the amended provision of Order 8 Rule 1 of CPC. The grounds taken by the defendant/petitioner for not filing the written statement within the stipulated period is that he was not keeping good health and as such could not collect all the necessary papers and documents for the purpose of filing written statement and for such reason the written statement could not be filed within the time frame as provided in Order 8 Rule 1 of CPC. It is further submitted that as the written statement filed by the defendant/petitioner was not accepted by the Trial Court by passing an order dated 11.03.2011 he filed another petition under Order 47 Rule 1 read with Sections 114 and 151 of CPC with a prayer for review of the said order but the prayer for review of earlier order dated 11.03.2011 passed by the learned Trial Court was rejected by passing the impugned order.

6. By passing the impugned order, learned Trial Court held that the petition filed on behalf of the defendant/petitioner under Order 47 Rule 1 of Civil Procedure Code does not attract the grounds as enumerated in the said provision for which the application filed by the petitioner with a prayer for review of the order dated 11.03.2021 could be entertained. As per submission of the learned Counsel that the learned Trial Court acted illegally in not exercising the jurisdiction under Order 47 Rule 1 of CPC when due to resolution of the local bar the learned Advocate appearing on behalf of the petitioner could not take any step in the suit and for which the petitioner cannot be blamed in any way.

7. Learned Counsel further submitted that the Court should be more liberal while interpreting the provision of Order 8 Rule 1 of CPC and should not be too harsh to strike off the defence of the defendants at very early stage in view of the decision rendered by the Hon'ble Apex Court in case of Kailash vs Nanhku.

8. Order VIII Rule 1 of Code of Civil Procedure, 1908 provides for a time limit of a maximum of 120 days for filing written statements after the service of summons is complete. Whether it is mandatory or directory depends on the nature of the transaction or the subject matter of the case.

9. The interpretation of the said Order can be seen in the catena of judgments by the Hon'ble Supreme Court. The Supreme Court has clearly stated that the maximum time provided for filing of written statements cannot exceed 120 days. The restriction in this provision is strictly applicable to commercial suits only. In commercial suits the time limit to file written statements within 90 days, is mandatory.

10. It means that it is up to the court's discretion to provide additional time beyond 120 days and depends on case-to-case basis. Some relaxation is provided by law to non-commercial suits due to the fact that subject matter in dispute is not always high and also the risk is limited to specific individuals. Order VIII Rule 1 of CPC provides procedural provision in regard to the written statement, according to which such shall be filed by defendant within thirty days. In case he fails to do so, the time period for submitting the same can be extended up to 90 days from the date of service of summons, for which

the reason of the extension must be recorded by the respective court in writing. Thus, defendant must file the Written Statement within the time period of not more than 120 days from the date of service of the summons, and thereafter upon the expiration of this period, the defendant will forfeit his right to file the written statement and the Court shall not allow the same to be taken on record.

11. In the case of ***Bharat Kalra v. Raj Kishan Chabra*** reported in **2022 SCC OnLine SC 613**, whereby an order passed by the High Court delay of 193 days in filing of the written statement was not condoned. Being aggrieved by the order of High Court, an appeal was filed by the defendant in the Hon'ble Supreme Court of India. While referring the judgement of *Kailash v. Nankhu & Ors*, the Apex Court passed an order observing that the suit filed by the Plaintiff is not the one that is regulated by the Commercial Court Act 2015 and therefore the time period for filing the Written Statement under Order VIII Rule 1, CPC is not mandatory.

12. It is profitable to quote the observation of the Hon'ble Apex Court rendered in case ***of Kailash vs Nanhku and others*** reported in **AIR 2005 SC 2441** which is as follows-

"27.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 the 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:-

"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 such as substantive."

45(iv). The purpose of providing the time schedule for filing the written statement under Order VIII, 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 of Order VIII of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. 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 VIII, Rule 1 of the CPC is not completely taken away.

45(v). Though Order VIII, Rule 1 of the CPC is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes 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.”

13. In case of **Kailash v. Nankhu** it was held by the Hon’ble Apex Court that the object behind the time period for filing the written statement under Order VIII, Rule 1 of CPC is to make the procedure and hearing of the matter in a time efficient manner and not to absolutely dismiss it. That is, though the language of the proviso to the respective provision depicts the negative connotation, it does not provide any penal punishment for its non-compliance. The nature of the provision is directory and not mandatory. Thus,

the power of the court to provide an extension to the scheduled time for filing the statement is not completely taken away.

14. In case of ***Desh Raj v. Balkishan*** reported in **2020(2) SCC 708**, wherein clarification was again provided that the time schedule for filing written statement under the aforesaid provision is only applicable in commercial suit whereas such is not in non- commercial suit, wherein it shall only act as a directory provision. Again, the same view point has been established by the Hon'ble Apex Court in case of ***Shoraj Singh v. Charan Singh*** in Civil Appeal No. 6304 OF 2021 (@ SLP(C) No.13129/2018 (Decided on 8th October, 2021).

15. In case of ***Zolba v. Keshao***, **(2008) 11 SCC 769** Hon'ble Apex Court observed interalia that-

“15. Therefore, following the principles laid down in the decision, as noted hereinabove, it would be open to the court to permit the appellant to file his written statement if exceptional circumstances have been made out. It cannot also be forgotten that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Therefore, unless compelled by express and specific language of the statute, the provisions of Order 8 Rule 1 CPC or any procedural enactment should not be construed in a manner, which would leave the court helpless to meet extraordinary situations in the ends of justice.”

16. In light of the above judgements and the latest order passed by the Supreme Court in case of ***Bharat Kalra*** it is clear that the time schedule

provided under Order VIII Rule 1 of CPC a written statement shall be filed within the period of 120 days from the day of service of summons. It is only mandatorily applied to the commercial suits and not in non-commercial suits, in latter it acts as a directory provision.

17. It appears that learned Trial Court misinterpreted the decision rendered by the Hon'ble Apex Court in case of **Kailash Vs. Nanhku** wherein Hon'ble Apex Court categorically held that the provision enumerated in Order 8 Rule 1 of CPC is directory and not mandatory and the power of the court to provide an extension to the scheduled time for filing the statement is not completely taken away. It is further held that the purpose of providing the time Schedule for filing the written statement under Order VIII, Rule 1 of the Code of Civil Procedure, 1908 is to expedite and not to scuttle the hearing. The process of justice may be speed up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried. The provision spells out a disability on the defendants; it does not impose an embargo on the power of the Court to extend the time.

18. In view of the facts and circumstances of the case and considering the submissions on behalf of the petitioner and the law discussed above and in the interest of justice, C.O. being No. 1720 of 2015 is hereby allowed.

19. Accordingly, the impugned order dated 18th August, 2014 passed by the Ld. Civil Judge (Senior Division) 2nd Court at Malda in Partition Suit No. 162 of 2007 is hereby set aside.

20. Consequently, the order dated 11.03.2011 passed by the learned Trial Court for not accepting the written statement filed in connection with Partition Suit No. 162 of 2007 is also set aside.

21. It is directed that the written statement shall now be taken on record but subject to payment of Rs.8,000/- by way of costs payable by the petitioner herein to opposite parties/ plaintiffs within a period of four weeks from receiving/producing the copy of this order in the Trial Court. If the costs is not paid as directed, the order passed already by the trial court shall stand restored.

22. Pending application, if any, filed in connection with this case are also disposed of and closed.

23. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)