

Serial No. 103

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- CM(M) No. 48/2024
CM No. 1330/2024
CAV No. 117/2024

Bhupinder Kumar Aged 63 years
Son of Sh. Parkash Chand,
R/o 126-B Sector 8 Nanak Nagar,
Jammu.

.....Appellant(s)/Petitioner(s)

Through: Mr. Koshal Parihar, Advocate.

Vs

Krishan Lal,
Son of Gangu Ram,
R/o 126-A Sector 8 Nanak
Nagar, Jammu.

..... Respondent(s)

Through: Mr. Lawanya Sharma, Advocate for
Caveator.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
(15.03.2024)

(ORAL)

- 01.** Through the medium of instant petition filed under Article 227 read with Article 226 of the Constitution of India, the petitioner has thrown challenge to SO 1123(E) of 2020 dated 18.03.2020 as also order dated 10.01.2024 passed by the court of 1st Additional District Judge, Jammu.
- 02.** The facts emerging from the record reveal that the plaintiff-respondent herein filed a suit for declaration and injunction against the defendant-petitioner herein before the court

supra whereupon the defendant-petitioner herein in response to the summon issued by the said court entered appearance on 31.10.2022 and sought time to file written statement to the suit, however, instead of filing the same within the stipulated period, filed an application on 25.08.2023 seeking extension of time for filing of written statement. The said court, however, vide order dated 10.01.2024 *dismissed* the application observing that the written statement has not been filed within the period prescribed also relying upon the amendment carried out in the Order VIII Rule 1 of the Civil Procedure Code by virtue of SO 1123(E) of 2020 dated 18.03.2020, thus, holding the defendant-petitioner herein has forfeited his right to file written statement.

Heard learned counsel for the petitioner and learned counsel for the caveator.

- 03.** It is an admitted fact that the defendant-petitioner herein in response to the summon issued by the court below in the suit filed by the plaintiff-respondent herein appeared before the said court on 31.10.2022 and sought time to file written statement to the suit, and in terms of Order VIII Rule 1 of CPC, the defendant-petitioner have had to file the written statement within 30 days from the date of service of summon on him though the proviso appended to Order VIII

Rule 1 of CPC provide for a discretion to the court to allow the defendant to file written statement beyond the said stipulated period of 30 days, in the event of his failure to file the same, however, subject to recording of reasons, the court may permit the defendant to file written statement not later than 120 days from the date of service of summons.

- 04.** Perusal of the record reveals that the defendant-petitioner herein did not file any motion for filing written statement before the said court after the expiry of 30 days time or else during the currency of the period of stipulated 120 days, however, indisputably filed an application much later thereafter on 25.08.2023 seeking extension of time for filing of written statement and in the said application averred that he could not file the written statement on account of non-compliance of the provisions of Order (V) of CPC by the court as also owing to the fact of his being in old age and suffering from various ailments having prevented him from contacting his counsel for enabling him to file written statement.

The aforesaid explanation offered by the defendant-petitioner herein for not filing the written statement to the suit *supra* cannot be said to be sufficient or plausible by any stretch of imagination which would have weighed

heavily with the court below to exercise discretion in favour of the defendant-petitioner herein more so in view of the law laid down by the Apex Court in case titled as **“Desh Raj Vs Balkishan”** reported in **2020 (2) SCC 708** wherein at para 15 the Apex Court has held as under:-

“15. However, it would be gainsaid that although the unamended Order 8 Rule 1 of CPC is directory, it cannot be interpreted to bestow a free hand to on any litigant or lawyer to file written statement at their own sweet will and/or to prolong the lis. The legislative objective behind prescription of timelines under the CPC must be given due weightage so that the disputes are resolved in a timebound manner. Inherent discretion of Courts, like the ability to condone delays under Order VIII Rule 1 is a fairly defined concept and its contours have been shaped through judicial decisions over the ages. Illustratively, extreme hardship or delays occurring due to factors beyond control of parties despite proactive diligence, may be just and equitable instances for condonation of delay.”

- 05.** Risking repetition, the defendant-petitioner herein, as has been noticed in the preceding paras, did not offer any cogent, plausible or sufficient explanation for not having filed the written statement immediately after entering appearance on 31.10.2022 or even thereafter during the period of 120 days provided under Order VIII Rule 1 of CPC.
- 06.** The impugned order, thus, notwithstanding the application of S.O. dated 18.03.2020 made by the court below does not call for any interference otherwise also in view of the aforesaid observations and the judgment of the Apex Court (*supra*).

- 07.** Viewed thus, the petition fails and is ***dismissed***. So far as the prayer made by the petitioner for quashment of SO 1123 of 2020 dated 18.03.2020 in view of the aforesaid facts and circumstances is not necessitated.
- 08.** Caveat stands discharged.

(JAVED IQBAL WANI)
JUDGE

JAMMU
15.03.2024
Bunty

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No

