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

+ CM(M) 680/2022, CM APPL. 31181/2022--stay

ANIL KUMAR AGGARWAL

..... Petitioner

Through: Mr. Vineet Aggarwal and Mr. Kunal Chauhan, Advs.

versus

USHA GARG & ANR.

..... Respondents

Through: Mr. Abhimanyu Singla and Ms. Neha Sareen, Advs. for R-1.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

03.04.2024

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1. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 23.05.2022 passed by the Additional District Judge-02, North District, Rohini Courts, Delhi (hereinafter referred as 'Trial Court') in CS DJ No.29/2021 titled as "*Usha Garg vs Anil Kumar Aggarwal & Ors*" whereby the petitioner's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter "CPC") was dismissed. The respondent herein is the plaintiff and the petitioner is the defendant no.1 before the learned Trial Court.

2. Pertinently, apart from dismissing the application under Order VII Rule 11 CPC, the learned Trial Court had also closed the right of the petitioner to file the written statement. However, before this Court on 18.07.2022, the learned counsel for the petitioner has restricted his relief to



the prayer for being permitted to file his written statement in response to Civil Suit bearing CS DJ No. 29/2021 instituted by the respondent against the petitioner and thereby forego his right to challenge the order of dismissal of his application under Order VII Rule 11 of the CPC.

3. A brief factual background of the case is that the petitioner married the respondent no.1 on 08.05.1990 and two children were born out of the wedlock. Thereafter differences arose in the marriage and the petitioner and the respondent no.1 proceeded to institute proceedings against each other. Petitioner file a petition under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955. The respondent no.1 instituted proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and a Civil Suit for permanent injunction, which came to be disposed of by the learned Family Judge on 05.02.2020.

4. The petitioner was the owner of the property bearing No.D-63, Second Floor, Bhagat Singh Road, Adarsh Nagar, New Delhi 110033. The petitioner vide a sale deed dated 06.12.2019, sold the said property to the respondent no.2. The sale deed came to be registered on 07.12.2019. On 09.02.2021, the respondent no.2 filed a civil suit against the petitioner and respondent no.1 bearing CS No.100/2021.

5. Thereafter on 14.01.2021, the respondent no.1 filed a suit for declaration and permanent injunction bearing CS DJ No.29/2021, against the petitioner and the respondent no.2. The respondent no.1 sought a (i) decree of declaration thereby declaring the sale deed dated 06.12.2019 null and void and unenforceable on the respondent/plaintiff as well as a (ii) permanent injunction in favour of the respondent/plaintiff against the defendants restraining them from dispossessing the respondent/plaintiff



without adopting the due course of law.

6. Notice of the suit was issued to the petitioner and the respondent no.2 vide the order dated 18.12.2021. It is stated by the petitioner that the respondent no.1 intentionally gave the wrong residential address of the petitioner, while knowing the correct address erstwhile. On 05.03.2022, the petitioners/defendants were directed to file their written statements as well as a reply to the application under Order XXXIX Rule 1 & 2. Thereafter the matter was adjourned to 23.05.2022 and on 23.05.2022, the petitioner filed an application under Order VII Rule 11 read with Section 151 of the CPC for the dismissal of the suit filed by the respondent no.1.

7. Vide the impugned order, the learned Trial Court dismissed the application filed by the petitioner under Order VII Rule 11 read with Section 151 of the CPC. The learned counsel for the petitioner submits that the relationship between the petitioner and the respondent no.1 has arisen out of marriage and that the learned Trial Court has failed to consider Section 7 of the Family Court Act, 1984 and thereby exceeded its jurisdiction by dismissing the petitioner's application.

8. The learned counsel for the petitioner submits that the learned Trial Court ought not to have closed the right of the petitioner to file written statement on 23.05.2022 as on the said date, the petitioner had moved an application under Order VII Rule 11 CPC challenging the jurisdiction of the Court for trial of the civil suit which was barred under Section 7(c) of the Family Courts Act, 1984. It was only after the disposal of the application under Order VII Rule 11 CPC that the petitioner could have filed his written statement for which an opportunity ought to have been granted to him. The learned counsel submits that in fact there is no delay on the part of the



petitioner to file a written statement which is evident from the record and thus, the impugned order be set aside.

9. Refuting the submissions, the learned counsel for the respondents submits the petitioner has concealed the fact that he was served with summons on 23.01.2022 and despite several opportunities, he did not file his written statement. It is submitted that the petitioner has also concealed orders passed by the learned Trial Court whereby he has been granted an opportunity to file his written statement.

10. The learned counsel for the respondents submits that it is after 120 days of his service that the learned Trial Court has struck off the defence of the petitioner herein on his failure to file written statement.

11. Apart from hearing the submission, the orders passed by the learned Trial Court along with the impugned order have been perused.

12. It is necessary to notice the provision of Order VIII Rule 1 CPC which is reproduced as under:

“1[Written statement, set-off and counter-claim]

2[1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

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.]”

13. The issue with respect to whether the time period to file a written statement in a non-commercial suits is directory or mandatory was considered by the Hon’ble Supreme Court in the case of “**Kailash v. Nanhku**” (2005) 4 SCC 480, the relevant paragraphs are reproduced hereinbelow:-

“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 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."*

46.

(iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 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 Order 8 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 8 Rule 1 CPC is not completely taken away.

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded 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 the 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 is needed to be given for 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.”

14. Reverting back to the facts of the case, it is not disputed that petitioner was served with the summons of the suit on 23.01.2022. The respondents had put an appearance along with counsel for the first time before the learned Trial Court on 05.03.2022. On the said date of hearing, learned counsel for the petitioner had requested for page nos.5 & 9 of the plaint which the counsel for the respondents undertook to provide and also submitted that he had already sent the same. The matter was renotified for 23.05.2022 for filing the written statement and the reply to the application under Order XXXIX Rule 1 & 2 of the CPC. However, learned Trial Court left the issue open with respect to taking on record the written statement on record after 05.03.2022. On 23.05.2022, the learned Trial Court observed that the petitioner instead of filing the written statement in pursuance to the order dated 05.03.2022, had filed an application under Order VII Rule 11 of the CPC read with Section 10 of the CPC. After hearing the rival submissions, the said application was rejected and the learned Trial Court observed that since the petitioner has not filed the written statement and has given no justification as to why the written statement could not be prepared from 05.03.2022 to 23.05.2022, the defence of the petitioner was struck off.

15. Needless to say that as per law, the petitioner was required to file the written statement within 30 days of his service and to seek an extension of period of 90 days thereafter, he would be required to file an appropriate application seeking condonation of delay. Noticeably, the same has not been done in the present case, however, on 23.05.2022, petitioner had moved an application under Order VII Rule 11 of the CPC which came to be dismissed



vide the same order, vide which his right to file written statement was closed. The petitioner ought to have acted diligently by filing the written statement within statutory period.

16. Having considered the aforesaid circumstances and submissions made, in the interest of justice, the petitioner is allowed to file his written statement subject to cost of Rs.15,000/- within two weeks from today to be paid before the learned Trial Court on the next date of hearing.

17. In view of above, petition is allowed and disposed of.

SHALINDER KAUR, J.

APRIL 03, 2024

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