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the petitioner/defendant filed an application under Section 151 CPC for setting aside order dated 26.09.2020 and an application under Section 5 Limitation Act for condonation of delay in filing the written statement, both of which were dismissed by way of order impugned in the present petition.

3. Learned counsel for petitioner/defendant contends that the impugned order is not sustainable in the eyes of law, because for filing the written statement, the period of 90 days after service of summons is only directory and not mandatory. It is submitted by learned counsel for petitioner/defendant that their panel counsel surrendered his panel but did not return the files, which led to delay in filing the written statement. Learned counsel for petitioner/defendant also contends that the petitioner/defendant being a government department, it took time to engage a new counsel. In response to a specific query, it is informed by learned counsel for petitioner/defendant that they did not take any action against the erstwhile counsel, who allegedly did not return the files after surrendering the panel. It is further submitted by learned counsel that on account of Covid pandemic also, there was delay in filing written statement.

4. Learned counsel for respondent/plaintiff strongly opposes the petition pointing out that in the application under Section 151 CPC, which led to the impugned order, the petitioner/defendant took a clear stand that the panel counsel, after surrendering his panel, had returned all files to the department. It is further submitted that the Covid pandemic started in March, 2020, while even 90 days for filing the written statement expired on 01.10.2019.

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5. Learned counsel for petitioner/defendant submits that there is nothing to address in rebuttal.

6. The application of petitioner/defendant, invoking Section 5 Limitation Act to condone delay of more than two years in filing the written statement after service of summons must be tested on the anvil of Order VIII Rule 1 CPC. It is the content and not the form of the application that would be relevant in any civil proceedings.

7. In the case of **Kailash vs Nanhku**, 2005 IV AD (SC) 468, it was observed by the Supreme Court that extension of time to file written statement beyond 90 days can certainly be allowed, but the same has to be only by way of an exception and for the reasons to be recorded in writing. It was further held that in no case the defendant can be allowed extension of time to file written statement where it appears to the court that there is a laxity or negligence on behalf of defendant or his counsel.

8. Subsequently in the case of **Polo Singh vs DDA**, 2009 VIII AD (Delhi) 341, this Court referred to another judgment of the Supreme Court in the case of **R. N. Jodi & Brothers vs Subhash Chandra**, 2007, VII AD (SC) 156 in which it was explained by the Supreme Court that **Kailash vs. Nanhku** is not an authority to receiving written statement after expiry of period permitted by law in a routine manner. It was observed by the apex court in that case that a dispensation that makes Order VIII Rule 1 CPC directory, leaving it to the courts to extend time indiscriminately, would tend to defeat the object sought to be achieved by amendment to the Code. It was



held that extension of time beyond 30 days to file written statement is not automatic and that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days from service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being cautious of the fact that even the power of the court for extension inhering in section 148 of the Code has also been restricted by the legislature. Supreme Court held that it would be proper to encourage the belief in litigants that the imperative of Order VIII Rule 1 CPC must be adhered to and that only in rare and exceptional cases will breach thereof be condoned.

9. In the case of **Gautam Bhowmick vs Prem Chand**, 167 (2010) DLT274, this Court deprecated the practice of defendants in number of cases to prolong the trial and drag on the proceedings as long as possible. This Court further held that beyond 90 days, court is not powerless in extending the time to file written statement but this discretion must be exercised only in exceptional cases.

10. In the case of **Gautam Bhowmick** (supra), this Court observed thus:

“7. It had become a tendency of the defendants to prolong the trial of the case and to drag the proceedings as long as possible, since prolonging of the proceedings itself results in defeating justice. In order to curb this tendency, amendments were made in Civil Procedure Code and the Supreme Court after considering the legal position took a view that while the written statement should be filed within 30 days, extension of time for filing written statement beyond 30 days but within 90 days should be given if reasonable grounds are shown by the defendant and the Court is satisfied with those grounds. Beyond 90 days, the Court is not powerless in extending the time for filing written statement but this discretion must be exercised only in exceptional cases so that the procedure does not defeat the substantive justice”.



11. In the case of ***Opera Global Pvt. Ltd. vs Travel Planners Pvt. Ltd.***, 169 (2010) DLT 271, this Court held thus:

“7. There is no doubt that procedure is handmaid of justice but the procedure as laid down by legislature is handmaid of justice and the Courts are bound by this procedure. Individual Courts do not have liberty to throw Civil Procedure Code into dustbin and formulate their own procedure in the name of justice. The parties cannot be given liberty to prolong the trial as per their wishes and a case which should be decided normally within six months to one year cannot be allowed to be prolonged for decades. If the procedure as laid down by legislature has to be ignored by the Courts for such trivial reasons, a total anarchy shall prevail and shall make the legislature irrelevant.”

12. Thence, legal position with regard to Order VIII Rule 1 CPC can be summarized as follows:

1. that ordinarily, the time schedule prescribed by Order VIII Rule 1 CPC has to be honoured and the defendant has to bring his written statement within 30 days from the date of service of summons;
2. that the extension of time sought for by the defendant to file the written statement must not be granted as a matter of routine and the extension of time after expiry of 90 days from service of summons can be allowed only by way of an exception on the basis of reasons assigned by the defendant which were beyond his control;
3. that as specifically held in para 44 in the case of ***Nanhku*** (supra) by the apex 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”.

13. Falling back to the present case, as mentioned above, it is not in dispute that summons were duly served on the petitioner/defendant on 01.07.2019. That being so, the statutory period of 30 days during which the written statement could be filed by the petitioner/defendant as a matter of right expired on 31.07.2019 and the 90 days extendable period during which the written statement could be filed by the petitioner/defendant explaining the delay expired on 30.09.2019, but the written statement was filed much belatedly on 27.10.2021.

14. Of course, as rightly submitted by learned counsel for petitioner/defendant, even after expiry of 90 days from service of summons, the Court is not powerless and can condone delay in filing the written statement. But such exercise of condonation of delay after expiry of 90 days has to be in exceptional circumstances, as described above.

15. The exceptional circumstances, as submitted by learned counsel for petitioner/defendant to explain delay of more than two years in filing the written statement are only to the effect that their panel counsel surrendered the panel but did not return the files. On this aspect, as mentioned above, in their own application, petitioner/defendant specifically pleaded that the files were returned by the previous counsel. However, the application does not disclose the date when the previous counsel allegedly surrendered the panel and returned the files.

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16. More importantly, it is also the admitted position that petitioner/defendant took no action at all against the erstwhile counsel for failure to file written statement within time prescribed by law. Petitioner is not a lay person or some illiterate individual litigant. Petitioner is a government body and it is assumed to have a law department with government officers working as Law Officers/Managers, none of whom kept a track of the proceedings.

17. In the absence of any action taken by the petitioner/defendant against the erstwhile counsel, if the plea of the petitioner/defendant is accepted that it is the erstwhile panel counsel who committed professional misconduct by not filing written statement in time, that would be also tantamount to condemning the erstwhile counsel without being heard.

18. So far as the issue regarding professional misconduct of the counsel is concerned, the Supreme Court in the case of **Salil Dutta vs T.M. & M.C. Private Ltd**, (1993) 2 SCC 185 held thus:

“8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq [(1981) 2 SCC 788 : AIR 1981 SC 1400] must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a



second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. Maybe, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear — they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted”.

(emphasis supplied)

19. In the case of **Moddus Media Private Ltd. vs Scone Exhibition Pvt. Ltd.**, 2017 SCC OnLine Del 8491, this Court observed thus:

“13. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted. The appellant is not a simple or rustic illiterate person but a Private Limited Company managed by educated businessmen, who know very well where their interest lies. The litigant is to be vigilant and pursue his case diligently on all the hearings. If the litigant does not appear in the court and leaves the case at the mercy of his counsel without caring as to what different frivolous pleas/defences being taken by his counsel for adjournments is bound to suffer. If the litigant does not turn up to obtain the copies of judgment and orders of the court so as to find out what orders are passed by the court is liable to bear the consequences”.

(emphasis supplied)



20. In the case of **Rajneesh Kumar & Anr. vs Ved Prakash**, 2024 SCC OnLine SC 3380, the Supreme Court dealt with the situation where the applicant coming under Section 5 of the Act attributed the delay in filing the appeal to his erstwhile counsel, and observed thus:

“10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief”.

(emphasis supplied)

21. Then comes the plea of learned counsel for petitioner/defendant that being government machinery, they took time in engaging new counsel to file written statement.

22. In the case of **State of Madhya Pradesh vs Bherulal**, (2020) 10 SCC 654, the Supreme Court expressed anguish over delays on the part of government machinery in dealing with litigation thus:

“2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed



as per the Statutes prescribed.

3. **No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in *Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr.* (2012) 3 SCC 563 where the Court observed as under:**

“27) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28) Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. **The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.**

29) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red- tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the



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(emphasis supplied)



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26. As requested by learned counsel for respondent/plaintiff, copy of this order be sent to the learned trial court with the request to expedite the hearing of the suit because vide order dated 13.12.2021, the learned predecessor bench had stayed the trial court proceedings when the same were at the stage of final arguments.

GIRISH
KATHPALIA

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**GIRISH KATHPALIA
(JUDGE)**

NOVEMBER 13, 2025

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