SUPREME COURT OF INDIA

M/s R.N. Jadi & Brothers & Ors

Vs.

Subhashchandra

Civil Appeal No. 2925 of 2007

(P.K. Balasubramanyan)

10/07/2007

JUDGEMENT

P.K. BALASUBRAMANYAN, J.

1. I respectfully agree. The High Court was in error in setting aside the order of the trial court accepting the written statement filed by the defendants, in the circumstances of the case. I am prompted to make a few observations in the context of the discussion by my learned brother on the scope of the related provisions of the Code of Civil Procedure.

2. It is notorious that suits were being dragged on by defendants in suits by not filing their written statements within a reasonable time. We are not unaware of cases where written statements were not filed even within two or three years of the filing of the suits. The control expected to be exercised by courts, by the scheme of the Code, was not being exercised leading to slackness in the matter of filing of pleadings in defence. It was in that context that the relevant provisions of the Code of Civil Procedure were amended, the laudable object being to avoid delay in the disposal of suits. The Amended Order VIII Rule 1 fixes a time limit for the filing of written statements. But,

Parliament did not stop with amending Order VIII Rule 1 alone i.e. introducing a time limit for filing written statements and restricting the power of the court to grant extension of time for filing written statements as 90 days from the date of service of summons. The power for extension of time granted to the court under Section 148 of the Code was curtailed by introducing an outer time limit of 30 days from the date originally fixed or granted. Thus, the legislative intent to limit or curtail the power of the court to extend the time for filing a written statement is obvious from a conjoint reading of these provisions.

3. In addition to the time limit prescribed in Order VIII Rule 1 of the Code, it is provided in Order V Rule 1 that the summons issued to the defendant should itself provide that he has to appear and file his written statement within one month of receipt of it and limiting the power of the court to extend the time for written statement to 90 days. The summons is to be accompanied by a copy of the plaint. It simultaneously introduced Rule 14 to Order VII providing that where the plaintiff sues upon a document or relies upon a document in his possession or power, in support of his claim, he shall enter such documents in a list and shall produce it in court when the plaint is presented by him and shall at the same time deliver the document and copy thereof to be filed with the plaint. Sub-rule (3) was introduced to provide that if the document is not included in the list, or is not produced with the plaint, it was not to be produced without the leave of the court and without the leave of the court it shall not be received in evidence on his behalf at the hearing of the suit.

4. In such a position, normally no injustice would be caused to the defendant in insisting upon his filing the written statement at least within 90 days of having received the summons in the suit. I think that it would be proper to avoid an interpretation that may tend to thwart the legislative intent in such circumstances.

5. It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in Kailash vs. Nankhu and others (2005 (4) SCC 480) which held that the provision was directory and not mandatory But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. It was in that context that in Kailash vs. Nankhu and others (supra) it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code. Kailash is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

6. A dispensation that makes Order VIII Rule 1 directory, leaving it to the courts to extend the time

indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious 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. It would be proper to encourage the belief in litigants that the imperative of Order VIII Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in ALLEN vs. SIR ALFRED McALPINE & SONS [(1968) 1 All E.R. 543] that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?