SUPREME COURT OF INDIA

Mohammed Yusuf

Vs.

Faij Mohammad

C.A.No.7209 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

02.12.2008

ORDER

Leave granted.

1. This appeal is directed against a judgment and order dated 20.9.1997 passed by a learned Single Judge of the High Court of Judicature at Allahabad allowing the writ petition filed by the respondents herein questioning the validity of an order dated 29.8.2007 passed by the learned Additional District Judge, Mathura in Civil Revision No. 322/2005 affirming the order dated 24.10.2005 passed by the learned Civil Judge whereby and whereunder while rejecting the application filed by the appellant herein under Order 8 Rule 10 of the *Code of Civil Procedure*, a date was fixed for recording the evidence of the plaintiffs and the application filed by the respondents herein praying for condoning the delay in filing the written statement was rejected.

2. The basic fact of the matter is not in dispute.

3. Appellant herein filed a suit for a decree for permanent injunction in the year 2002. A separate applicationfor grant of temporary injunction was also filed. Summons upon the defendants were served on 6.7.2002. The defendants appeared through their learned advocate on 19.7.2002.

4. Appellant filed an application for grant of temporary injunction which was rejected on 28.1.2004. An appeal was preferred thereagainst which was disposed of by an order dated 14.5.2004. It is neither in doubt nor in dispute that the defendants- respondents filed applications for extension of time for filing written statement number of times. The matter was also adjourned on one ground or the other.

5. On or about 31.1.2005, the appellant also filed an application before the learned trial Judge for pronouncing judgment in terms of Order 8 Rule 10 of the Code of Civil Procedure, inter alia, on the premise that the defendants-respondents did not file any written statement. It

is on the same date the defendants filed an application for filing written statement. No application for condonation of delay in filing the written statement was, however, filed.

6. However, on 23.9.2005, as indicated hereinbefore by reason of an order dated 24.10.2005, while rejecting the said application of the respondent, the trial
Judge allowed the plaintiff to examine his own witnesses in support of his case.

7. A Revision Petition was filed by the respondents which by reason of an order dated 29.8.2007 was dismissed by the learned District Judge.

8. Being aggrieved by and dissatisfied with the said order, the respondents filed a Writ Petition which was marked as CMWP No. 45197/2007 before the High Court. By reason of the impugned judgment, the High Court has allowed the said Writ Petition, directing:

> "Considering the facts and circumstances of the case, this Court is of the opinion that the petitioner should be permitted to contest the suit on merit. In view of the aforesaid, the order of the trial court refusing to keep the written statement on record is set aside. The written statement shall be kept on the record and the defendant-petitioner shall be permitted to contest the matter on merit subject to payment of cost of Rs.10, 000/-, which shall be deposited by the defendant-petitioner in favour of the plaintiff by means of a bank draft within two weeks. The amount so deposited can be withdrawn by the plaintiff. The writ petition is allowed."

9. Mr. R.S. Hegde, learned counsel appearing on behalf of the appellant would submit that keeping in view the fact that the summons upon the defendants were served on 6.7.2002 and no step having been taken to file written statement for a period of three years and only on 31.5.2005, an application for filing written statement having been filed, the High Court committed a serious error in passing the impugned judgment.

10. Learned counsel appearing on behalf of the respondents, on the other hand, would contend that from a perusal of the order-sheet before the trial Court, it would appear that dates after dates were fixed for filing written statement and, furthermore, having regard to the fact that the appellant himself preferred an appeal before the learned District Judge against an order rejecting his application for grant of temporary injunction, the written statement could not be filed.

11. It is urged that the provisions of Order 8 Rule 1 of the Code of Civil Procedure having been held to be directory in nature by this Court in *Kailash Vs. Nanhku and Ors.*[1], this Court may not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

12. Order 8 Rule 1 of the Code of Civil Procedure reads thus:

> " [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.]

13. Although in view of the terminologies used therein the period of 90 days prescribed for filing written statement appears to be a mandatory provision, this Court in Kailash(supra) upon taking into consideration the fact that in a given case the defendants may face extreme hardship in not being able to defend the suit only because he had not filed written statement within a period of 90 days, opined that the said provision was directory in nature. However, while so holding this Court in no uncertain terms stated that defendants may be permitted to file written statement after expiry of period of 90 days only on exceptional situation. The question came up for consideration before this Court in *M. Srinivasa Prasad & Ors. Vs. The Comptroller & Auditor General of India & Ors.*[2], wherein a Division Bench of this Court upon noticing Kailash (supra) held as under:

> "7. Since neither the trial Court nor the High Court have indicated any reason to justify the acceptance of the written statement after the expiry of time fixed, we set aside the orders of the trial Court and that of the High Court. The matter is remitted to the trial Court to consider the matter afresh in the light of what has been stated in Kailash's case (supra). The appeal is allowed to the aforesaid extent with no order as to costs."

14. The matter was yet again considered by a three-judge Bench of this Court in *R.N.Jadi & Brothers and Ors. Vs. Subhashchandra*[3]. P.K. Balasubramanyan J., who was also a member in Kailash(supra) in his concurring judgment stated the law thus:

> "14. 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 knockouts. 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. Nanhku which held that the provision was directory and not mandatory. But there could be situations where even a procedural provisional 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 rigour of that provision or to mitigate genuine hardship. It was in that contest that in Kailash Vs. Nanhku 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 statement, after the expiry of the period permitted by law, in a routine manner.
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> 15. A dispensation that makes Order 8 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 emphasise 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 8 Rule 1 must be adhered to and that only in rare and exceptional case, will 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 that law's delay 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?"

15. In view of the authoritative pronouncements of this Court, we are of the opinion that the High Court should not have allowed the writ petition filed by the respondent, particularly, when both the learned trial judge as also the Revisional Court had assigned sufficient and cogent reasons in support of their orders.

16. As indicated hereinbefore, the High Court allowed the writ petition and thereby set aside the orders passed by the trial Court as also the Revisional Court without assigning any reason therefor. The jurisdiction of the High Court under Article 226 and 227 of the Constitution of India is limited. It could have set aside the orders passed by the learned trial Court and the Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety. The High Court did not arrive at a finding that there had been a substantial failure of justice or the orders passed by the trial Court as also by the Revisional Court contained error apparent on the face of the record warranting interference by a superior Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

17. For the reasons stated above, the impugned judgment of the High Court cannot be sustained. It is set aside accordingly. The appeal is allowed. In the facts and circumstances of this case, there shall be no order as to costs.

18. In this view of the matter the respondents would be entitled to withdraw the sum of Rs.10,000/- deposited by them as costs.

[1]*(2005) 4 SCC 480*
[2]*2007 (5) SCALE 171*
[3]*(2007) 6 SCC 420*