

RAJASTHAN HIGH COURT

Rameshwar Lal

Vs.

Dayanand

C.W.P. No. 1877 of 2004

(Shiv Kumar Sharma, J.)

30.05.2005

ORDER

Shiv Kumar Sharma, J.

1. Following questions of law emerge in the instant matter :

- (i) Whether ratio indicated in *Topline Shoes Ltd. v. Corporation Bank*,¹ is applicable to Order 8, Rule 1, Civil Procedure Code so as to make these provisions directory in nature?
- (ii) After closing the written statement under Order 8, Rule 1, Civil Procedure Code, can the Court invoke the provisions contained in Order 8, Rule 9 or Section 148, Civil Procedure Code?

1. Contextual facts depict that the plaintiff respondent No. 1 (for short the plaintiff) instituted a civil suit in the Court of Additional District Judge (Fast Track) Ajmer Camp, Beawar seeking partition of the suit property. Service of summons was effected on the defendant petitioners (for short the defendants) on Feb. 12, 2003. Since the written statement could not be filed within the time prescribed by Order 8, Rule 1 and it could be filed on July 10, 2003 the learned Judge vide order dated August 2, 2003 directed to remove the written statement out of the record. The writ petition bearing No. 5328/2003 preferred by the defendants was disposed on September 15, 2003 and defendants were granted liberty to file written statement in the trial Court with an application under Order 8, Rule 9, Civil Procedure Code.

2. Pursuant to the above directions of this Court the defendants submitted application with a certified copy of the order in the Court of learned Additional

District Judge but the learned Judge vide order dated Feb. 7, 2004 dismissed the application and declined to accept the written statement as subsequent pleadings. Impugning the order dated February 7, 2004 the defendants have preferred the instant writ petition.

WHETHER PROVISIONS CONTAINED IN ORDER 8, RULE 1, Civil Procedure Code ARE DIRECTORY IN NATURE?

4. Order 8, Rule 1, Civil Procedure Code which deals with filing of written statement, provides that the defendant has to file written statement within thirty days from the date of service of summons. But if the defendant fails to file the written statement within the time stipulated, he can file it on some other days which shall not be later than ninety days from the date of service of summons. The Court has power to extend time but it has to record reasons in writing.

5. It is trite that whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantive compliance may be sufficient to achieve the object regarding which the rule is enacted. In this background, it may be noticed that the Legislature never intended to impose any penal consequences for non-compliance of the provisions of Order 8, Rule 1. The whole object is to expedite the disposal of civil cases.

6. In *Topline Shoes Ltd. v. Corporation Bank*,² the question for consideration was as to whether the provision prescribing limitation for filing reply under clause (a) of sub-section (2) of Section 13 of the Consumer Protection Act, 1986 was mandatory or directory. The District Forum would give time of 30 days to the opposite party for the purposes of giving its version. An extension of time for filing reply could be granted but not exceeding 15 days. Thus the total period during which the reply could be filed was 45 days after extension of fifteen days was granted. The Apex Court answered the question holding that provision was directory. It was indicated as under (para 11) –

"We have already noticed that the provision as contained under clause (a) of

sub-section (2) of Section 13 is procedural in nature. It is also clear that with a view to achieve the object of the enactment, that there may be speedy disposal of such cases, that it has been provided that reply is to be filed within 30 days and the extension of time may not exceed 15 days. This provision envisages that proceedings may not be prolonged for a very long time without the opposite party having filed his reply. No penal consequences have however been provided in case extension of time exceeds 15 days. Therefore, it could not be said that any substantive right accrued in favor of the appellant or there was any kind of bar of limitation in filing of the reply within the extended time though beyond 45 days in all. The reply is not necessarily to be rejected. All facts and circumstances of the case must be taken into account. The Statement of Objects and Reasons of the Act also provides that the principles of natural justice have also to be kept in mind."

7. In a recent judgment in *Kailash v. Nanhku*,³ the Apex Court explained the scope of Order 8, Rule 1, Civil Procedure Code and propounded that the provision is a part of procedural law and hence directory. It was observed as under (para 45):-

"The purpose of providing the time schedule for filing the written statement under Order 8, Rule 1, Civil Procedure Code 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 of Order 8 of the Civil Procedure Code 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 of the Civil Procedure Code is not completely taken away. Though Order 8, Rule 1 of the Civil Procedure Code is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the 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 there from 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 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 was needed to be given for the 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."

(Emphasis supplied)

8. In view of ratio indicated in afore-quoted cases I hold that provisions contained in Order 8, Rule 1, Civil Procedure Code are directory in nature.

Whether the provisions contained in Order 8, Rule 9 or Section 148, Civil Procedure Code could be invoked after the expiry of time limit prescribed in Order 8, Rule 1, Civil Procedure Code?

9. A close look at the entire scheme of amendment of Civil Procedure Code demonstrates that while amending Order 8, Rule 1 stipulating the period for filing the written statement, the Legislature did not think it fit to amend correspondingly the provisions contained in latter part of Order 8, Rule 9, where the Court has been empowered to call upon the defendant to file written statement at any time. It is thus evident that after the expiry of stipulated period provided in Order 8, Rule 1, the Court still has the power to call upon the defendant to file written statement. Since the provisions of Order 8, Rule 1 are directory, time to file written statement can be extended under Section 148, Civil Procedure Code.

10. Karnataka High Court answered this question in *A. V. Purshottam v. N. K. Nagaraj*⁴ indicating that even in cases where written statement is not filed by the defendant within 30 days or within the extended period of 60 days the Court under Order 8, Rule 9 has been empowered to call upon the defendant to file the written statement at any time subject to the condition that if the Court calls upon the defendant to file the written statement, it shall fix time of not more than 30 days for presenting the same. It was observed as under (paras 18 and 19) :

"Therefore when the Court has not pronounced the judgment on failure of the

defendant to file the written statement within the stipulated time, if the case is adjourned for any reason whatsoever and before the pronouncement of judgment if a request is made to receive the written statement and the Court finds that it is desirable to have the defense on record, notwithstanding the expiry of the period stipulated under Order 8, Rule 1 or Order 5, Rule 1, the Court has the power to receive such written statement. The Court is not rendered powerless. The Court could press into service Section 148 of the Civil Procedure Code or the latter part of Order 8, Rule 9, Civil Procedure Code as a source of power to receive such written statement. It is needless to point out that the filing of written statement within the stipulated period is the rule. Filing or receiving written statement beyond the stipulated period is only an exception. It is left to the discretion of the Court to exercise the power to receive the written statement beyond the stipulated time. The discretion is a judicial discretion."

11. In *Sri Prasanna Parvathamba v. Sr. M. S. Radhakrishna Dixit*,⁵ it was held that Order 8, Rule 9 in extraordinary case gives Court judicial discretion to permit defendant to file written statement within outer span of 30 days for reasons recorded in writing.

12. Order 8, Rule 9, Civil Procedure Code invest the Court with the widest possible discretion and enables it to accept a written statement or additional written statement within a period of 30 days from the date of passing the order. Provisions of Order 8, Rule 9 can be conveniently divided into two parts. The first part runs as under –

"No pleading subsequent to the written statement of a defendant other than by way of defense to set off or counter claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit."

The second part however reads as under:

"but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same."

13. Evidently the second part of Order 8, Rule 9, Civil Procedure Code leaves to the discretion of the Court to exercise the power to receive written statement beyond stipulated time and in view of this interpretation this Court vide order dated September

15, 2003 granted liberty to the defendant to file written statement under Order 8, Rule 9 and request the trial Court to accept the written statement as subsequent pleadings. The order dated September 15, 2003 of this Court was clear and unambiguous and endeavor ought to have been made to decide the application of the defendants in view of directions made in the order but it is unfortunate that the Court below did not take pains to follow the order and made following observations contrary to the directions made by the High Court.

(Vernacular matter omitted.....Ed.)

14. The directions that were made by this Court in paras 3 and 4 of the order dated September 15, 2003 were as under:-

"3. A close look at Order 8 Rule 9, Civil Procedure Code demonstrates that the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same. This rule invest the Court with the widest possible discretion and enables it to accept a written statement or additional written statement within a period of thirty days from the date of passing the order. The right of the defendant to file written statement stands forfeited after expiry of the ninety days from the date of service of summons. It is however, the inherent right of the Court either to accept or refuse the subsequent pleadings under Order 8, Rule 9, Civil Procedure Code.

3. I do not find it a fit case where refusal to intervene under Article 227 of the Constitution would result in travesty of justice as the petitioners may move written statement under Order 8, Rule 9, Civil Procedure Code and request the trial Court to accept the written statement as subsequent pleadings. If such application is filed the learned trial Court is expected to make endeavor to decide it after providing opportunity of hearing to the opposite party expeditiously as possible."

15. Having closely scanned the material on record I find that the trial Court has made deliberate attempt to over reach the order dated September 15, 2003 of the High Court. Conduct of the trial Court in expressing its own opinion contrary to the ratio indicated in the High Court's order amounts to judicial indiscipline. The manner of expressing opinion in utter disregard of the order of the High Court does not appear to me bona fide.

16. On a close reading of the application of the defendants I find that if time to file the

written statement is not extended, grave injustice would be occasioned. I therefore allow the writ petition and set aside the impugned order. The written statement of the defendants shall be taken on record on payment of costs of Rs. 1000/-. The record of the trial Court be sent back immediately. The parties are directed to appear before the trial Court on July 4, 2005.

17. Before parting with I intend to formulate the following procedure to be adopted by the Civil Courts after institution of the civil suit."

(i) The date of service of summons on the defendant shall be noted in red ink on the file.

(ii) The case shall not be adjourned beyond thirty days from the date of service of the summons on the defendant.

(iii) Endeavour shall be made to receive the written statement within the stipulated time of thirty days.

(iv) A prayer for extension of time in view of the proviso appended to Order 8 Rule 1 may be allowed by recording the reasons in writing.

(v) Extension of further time under Order 8, Rule 9 read with Section 148, Civil Procedure Code may be allowed if it was needed to be given for the 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 the given case.

(vi) A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking more so when the period of 90 days has expired.

18. Let copies of this order be circulated amongst all the subordinate Civil Judges of the State.

Petition allowed.

Cases Referred.

1. AIR 2002 SC 2487

2. (2003) 6 SCC 33 : (AIR 2002 SC 2487)

3. (2005) 4 JT (SC) 204 : (AIR 2005 SC 2441)
4. AIR 2003 Kar 417
5. AIR 2003 Kar 345