

M/S ADITYA HOTELS (P) LTD.
v.
BOMBAY SWADESHI STORES LTD. AND ORS.

MARCH 26, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Code of Civil Procedure, 1908:

O.8, r.1—Written statement—Filing of, beyond limitation period—Held, Court to accept same only by way of exception and for reasons recorded in writing.

In a civil suit filed by Appellant, the defendant-Respondents filed written statement 142 days after the date of service of summons. The Trial Court accepted the written statement subject to payment of costs of Rs. 2,000/-. The order of Trial Court was challenged before the High Court in a writ petition filed under Art.227 of the Constitution. High Court summarily dismissed the writ petition on the ground that discretionary power had been exercised by the Trial Court.

In appeal to this Court, it was contended that after amendment to Order VIII, CPC with effect from 1st July, 2002, the defendant is granted 30 days time to present the written statement which period is to be reckoned from the date of service of summons and that though the proviso to the said provision permits extension of time when the Court is satisfied about the existence of reasons to be recorded in writing, in the instant case neither the Trial Court nor the High Court indicated any reason justifying the extension of time.

Allowing the appeal, the Court

HELD: 1.1. The parameters for extending the time granted by Order VIII Rule 1, CPC have been delineated by this Court in several cases. Ordinarily, the time schedule prescribed by Order VIII Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court.

A The extension of time sought for by the defendant from the Court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. [Para 6] [473-G-H; 474-A-B]

B

1.2. 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 the time fixed, the orders of the Trial Court and that of the High Court are set aside. The matter is remitted to the Trial Court for fresh consideration.

C

[Para 7] [474-D-E]

Kailash v. Nanhku and Ors., [2005] 4 SCC 480, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1572 of 2007.

D

From the Final Judgment and Order dated 07.03 2006 of the High Court of Judicature of Bombay in Writ Petition No. 8574 of 2005.

Seema Bangari, Anshul Singh and Dr. Kailash Chand for the Appellant.

E

S.R. Mishra, Vimal Chandra S. Dave and Neelam Kalsi for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

F

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Bombay High Court dismissing the Writ Petition filed by the appellant holding that the order passed by the trial Court was a discretionary one. The trial Court by its order dated 9.9.2005 granted permission to the respondents to file written statement subject to payment of costs of Rs.2000/-. The said order was passed in Civil Suit No.59/2005 by the Small Cause Judge, Pune.

G

3. Background facts in a nutshell are as follows:

H

Appellant filed Civil Suit No.59 of 2005 in the Court of Small Cause Judge, Pune, inter-alia seeking vacant and peaceful possession of the suit premises. The suit was filed on 24.12.2004. The Small Cause Judge, Pune,

issued summons to the respondents in the suit which were served on 22.3.2005. On 25.4.2005 counsel for the respondents filed vakalatnama and prayed for time to get information from his client and to file written statement, if any. On 20.6.2005 the matter was fixed for filing of the written statement. However, no written statement was filed. The Advocate requested for further time. The trial Court granted time to the respondents to file written statement at their own risk. Again, the matter was fixed for 14.7.2005. On that date also written statement was not filed. Again time was granted at the risk of the respondents. The written statement in fact was filed on 12.8.2005. Appellant sought for time to file the objections regarding the acceptability of the written statement which was filed after 142 days. By a cryptic order dated 9.9.2005 as noted above written statements were permitted to be filed and taken on record subject to payment of costs of Rs.2,000/-. The order of the trial Court was challenged before the High Court in a writ petition filed under Article 227 of the Constitution of India, 1950 (in short the 'Constitution'). The High Court summarily dismissed the writ petition on the ground that discretionary power has been exercised.

4. In support of the appeal, learned counsel for the appellant submitted that after amendment to Order VIII of the Code of Civil Procedure, 1908 (in short the 'Code') w.e.f. 1.7.2002, the defendant is granted 30 days time to present the written statement. The period is to be reckoned from the date of service of summons. However, the proviso to the said provision permits extension of time when the Court is satisfied about the existence of reasons to be recorded in writing. It is submitted that neither the trial Court nor the High Court indicated any reason justifying the extension of time.

5. Learned counsel for the respondents on the other hand submitted that the reason for excuse was shown for filing of the written statement. Though elaborate reasonings have not been indicated, the order being a discretionary one, no interference is called for.

6. The parameters for extending the time granted by Order VIII Rule 1 of the Code have been delineated by this Court in several cases. In *Kailash v. Nanhku and Ors.*, [2005] 4 SCC 480, it was noted as follows:

"42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the

A summons for his appearance in the Court. The extension of time sought for by the defendant from the Court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the 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. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him."

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 the 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.

F B.B.B.

Appeal allowed.