Neutral Citation No. - 2024:AHC:45016

A.F.R

Court No. - 52

Case :- MATTERS UNDER ARTICLE 227 No. - 5882 of 2018

Petitioner :- Devraj Singh
Respondent :- Babli Devi
Counsel for Petitioner :- Mithilesh Kumar Tiwari
Counsel for Respondent :- Pradyumn Kumar

Hon'ble Manish Kumar Nigam,J.

1. Heard Sri Mithilesh Kumar Tiwari, learned counsel for the petitioner. No one is present on behalf of the respondent, even in the revised call.

2. This petition has been filed for following relief:

" Set aside the impugned order dated 11.05.2018 passed by learned Additional District & Sessions Judge, FTC, Court No. 2, Bijnor in M.P. no. 340 of 2015 (Devraj Singh Vs. Babli Devi) under section 13 Hindu Marriage Marriage Act"

3. Brief facts of the case as mentioned in the petition are that the plaintiff-petitioner filed a divorce petition being Divorce Petition No. 340 of 2015 on 05.05.2015. Notice was issued on 05.05.2015 to the defendant-respondent Babli Devi for filing written statement in the aforesaid divorce petition by the Principal Judge, Family Court, Bijnor. After receiving the notices issued in the aforesaid divorce petition, the defendant-respondent appeared and filed an application Ga-10 dated 18.01.2016 under Section 24 of the Hindu Marriage Act and prayed for amount of Rs. 25,000/- for expenses of the aforesaid litigation. After filing the aforesaid application dated 18.01.2016 under Section 24 of Hindu Marriage Act, the defendant-respondent has not filed the written statement and started delaying the disposal of the aforesaid divorce petition by seeking adjournments. On 04.01.2017, the case was directed to proceed ex-parte against the defendant-respondent fixing 16.03.2017. On

16.03.2017 defendant-respondent filed an application paper No. Ga-28 dated 16.03.2017 with the prayer that she may be given an opportunity to file written statement. The application filed by the defendant-respondent was allowed by the court. Thereafter, on 10.04.2018 the defendant-respondent Babli Devi filed an application (paper No. 44-Ga) in the aforementioned case and prayed for condonation of delay in filing the written statement and has also made a prayer to accept the written statement in the aforesaid case. Along with her application dated 10.04.2018, defendant-respondent has also filed his written statement paper No. 46-Ka. To the application (paper No. 44-Ga) filed by the defendant-respondent, petitioner filed his objections and has stated therein that under the provisions of Order 8 Rule 1 of C.P.C., written statement can be filed within maximum period of 90 days after receiving the notice of the case. The application filed by the defendant-respondent dated 10.04.2018, was filed after a lapse of two years and three months. The court below vide order dated 11.05.2018 allowed the application filed by the defendant-respondent paper No. 44-Ga on payment of cost of Rs. 1,500/- and has also accepted the written statement filed by the defendant-respondent paper No. 46 Ka. Hence the present petition.

4. Contention of learned counsel for the petitioner is that under Order 8 Rule 1 as amended by Act No. 22 of 2002 (w.e.f. 01.07.2022) written statement can be filed within a maximum period of 90 days from the date of service of summons on the defendant. It has been further contended by learned counsel for the petitioner that after the amendment in Order 8 Rule 1 of C.P.C., there is no scope for granting any further time for filing written statement. It has been next contended by learned counsel for the petitioner that the provisions of Order 8 Rule 1 C.P.C. are mandatory in nature and the court below has no option but to reject the written statement, if filed beyond the period of 90 days.

5. Before proceeding the matter any further, it will be useful to look into the statutory provisions.

6. Order 8 Rule 1 provides that defendant shall file the written statement within 30 days from the date of service of summons. Proviso to Rule 1 of Order 8 C.P.C provides, in case, defendant fails to file the written statement within said period of 30 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 90 days from the date of service of summons.

Order 8 Rule 1 of C.P.C. is quoted as under:

> *"2[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.]"*

7. Learned counsel for the petitioner relied upon the judgment of Apex Court in case of **Aditya Hotels (P) Ltd. Vs. Bombay Swadesh Stores Ltd. And Others reported in A.I.R. 2007 SC 1574** and also relied upon the judgment in case of **Kailash Vs. Nankhu & Others (2005) 4 SCC 480.**

8. In case of **Salem Advocate Bar Association Tamil Nadu Vs. Union of India (2005) 6 SCC 344,** Supreme Court has held that the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file the written statement is discretionary. Paragraph nos. 20 an 21 of the judgment in Salem Advocate Bar Association (supra) is quoted as under:

> *"20. The use of the word 'shall' in Order VIII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used*

or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

21. In construing this provision, support can also be had from Order VIII Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order VIII, the court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order VIII Rule 1. There is no restriction in Order VIII Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1."

9. Again in case of **Zolba Vs. Keshao and others** reported in **(2008) 11 SCC 769**, Supreme Court following the judgment of Salem Advocate Bar Association (supra) held in paragraph 15 as under:-

> *"15. Therefore, following the principles laid down in the decision, as noted hereinabove, it would be open to the court to permit the appellant to file his written statement if exceptional circumstances have been made out. It cannot also be forgotten that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Therefore, unless compelled by express and specific language of the statute, the provisions of Order 8 Rule 1 of CPC or any procedural enactment should not be construed in a manner, which would leave the court helpless to meet extraordinary situations in the ends of justice."*

10. This Court in case of **Aligarh Development Authority and others Vs. State of U.P. and Others reported in 2011 (Volume 9) ADJ Page 810** has held in paragraph no. 2 as under:

> *"2. The short submission of the petitioners is that the provision of Order VIII Rule 1 of the Code of Civil Procedure 1908 are not mandatory but directory in nature. Proviso to Order VIII Rule 1 provides the courts power to grant extension but not beyond 90 days. However, the rule does not indicate as to what consequences flow from the non extension of time. Courts have power to grant extension beyond period of 90 days. Filing of written statement is matter of procedure.Intended purpose of the provision is to expedite the hearing in the matter but not to scuttle the same. The very purpose of the procedural law is to sub serve the ends of justices and not to override the same. If the provision is to be construed strictly than it can lead to miscarriage of justice. There may be instances where the defendants for unavoidable reasons is not able to file his written statement. In such eventuality by operation of law the right to file written statement will be closed. The intend and purpose of the rule by its mere language cannot obliterate the dispensation of justice. It is in this context this provision has to be treated as directory and not mandatory. However, this will not clothe the Court's power to extend the time for filing written statement for unspecified period. If there is no good cause to extend the time same shall be refused. Reliance has*

been placed on the judgement of Hon'ble Apex Court in Rani Kusum Vs Kanchan Devi and others reported in 2005 SAR (Civil) 694 in which in paragraph 11 it has been held that:-

"All the rules of procedure are the handmaid of justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the act remains that the object of prescribing procedure it to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice."

11. Supreme Court in case of **Desh Raj Vs. Balkishan (D) Through Proposed LR Ms. Rohini; 2020 (2) SCC 708** held in paragraph no. 16 as under:-

"16. However, it would be gainsaid that although the unamended Order VIII Rule 1 of CPC is directory, it cannot be interpreted to bestow a free hand to on any litigant or lawyer to file written statement at their own sweetwill and/or to prolong the lis. The legislative objective behind prescription of timelines under the CPC must be given due weightage so that the disputes are resolved in a timebound manner. Inherent discretion of Courts, like the ability to condone delays under Order VIII Rule 1 is a fairly defined concept and its contours have been shaped through judicial decisions over the ages. Illustratively, extreme hardship or delays occurring due to factors beyond control of parties despite proactive diligence, may be just and equitable instances for condonation of delay."

12. The Supreme Court in **Sangram Singh Vs. Election Tribunal Kotah & Anr. AIR 1955 Supreme Court 425** has held as under:-

"A code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both

sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

13. Again **Supreme Court in case of Rajinder Tiwari Vs. Kedar Nath (Deceased) Thr L.Rs. & Ors. ; 2019 (14) SCC 286** has held in paragraph 18 as under:

"18. It is a settled law that all the contesting parties to the suit must get fair opportunity to contest the suit on merits in accordance with law. A decision rendered by the Courts in an unsatisfactory conducting of the trial of the suit is not legally sustainable. It is regardless of the fact that in whose favour the decision in the trial may go."

14. Thus, it is well settled that the provision of Order 8 Rule 1 C.P.C. is discretionary and the trial court in exercise of discretion may permit the defendant to file written statement even after the statutory period of 90 days, as provided by Order 8 Rule 1 of C.P.C. The discretion has to be exercised reasonably for advancement of justice.

15. I have perused the order impugned passed by Additional District and Sessions Judge/ Fast Track Court No. 2 Bijnor. Finding has been recorded by the court below that the defendant-respondent appeared on 18.01.2016 and moved an application under Section 24 of Hindu Marriage Act claiming lump-sum amount for expenses for contesting the suit and different dates were fixed till 04.01.2017 for hearing the application filed by the defendant-respondent under Section 24 of the Hindu Marriage Act. On 04.01.2017 date was fixed as 19.01.2017 and on that date the defendant was not present and therefore, the case was directed to proceed

against the defendant-respondent ex-parte fixing 16.03.2017. On 16.03.2017 defendant-respondent moved an application for recalling the order dated 19.01.2017 which was decided on 23.10.2017 and 17.01.2018 was fixed for written statement and 16.02.2018 was fixed for framing of issues.

16. Another finding has been recorded by the court below that by order of the Principal Judge, Family Court dated 17.01.2018 the file was transferred to the present court i.e. Additional District and Sessions Judge/ FTC Court No. 2 and the matter was referred for mediation to the Mediation Centre and after the report of the mediation centre dated 05.04.2018, the mater recommenced. On 10.04.2018, the application paper no. 44 Ga was moved by the defendant-respondent along with the written statement.

17. It has also been held by the court below that the application filed by the defendant-respondent for maintenance pendente lite dated 18.01.2016 has yet not been decided and the defendant-respondent cannot be held responsible for not disposal of the application filed by her. Court below has also recorded finding that the defendant-respondent bonafidely contested the case and in view of the principles of natural justice, both the parties should have reasonable opportunity to contest the matter and therefore, the application (paper No. 44 Ga) filed by the defendant-respondent is allowed and written statement (paper No. 46 Ka) is taken on record on payment of cost of Rs. 1,500/-.

18. In case of **Sau. Vanita Pravin Gaikwad V. Sri Pravin Pundlik Gaikwad reported in A.I.R. 2010 Bombay 62:: 2010 (1) A.I.R. Bombay R 352**, Bombay High Court has held, in case where respondent has applied under Section 24 of the Hindu Marriage Act for grant of litigation expenses, the said respondent cannot be compelled to file written statement unless an order is passed on the said application. If an order is passed in favour of the respondent directing the petitioner to pay

litigation expenses, the respondent is expected to file written statement only after the amount is paid to the respondent. (para 13)

19. In case of **Usha Tripathi Vs. Chakradhar Tripathi reported in A.I.R. 2009 Chhattisgarh 10,** the Chhattisgarh High Court in paragraph nos. 2,3 and 6 of the judgment has held as under:

> *"2. Learned Counsel appearing for the petitioner submits that the petitioner and the respondent are wife and husband, respectively. Their marriage was solemnized on 22-5-1998 at Patthalgaon, District Jashpur and within the wedlock, one son was born on 15-3-1999. On 24-7-2007 the respondent/husband filed an application u/s 13 of The Hindu Marriage Act, 1955 (for short "The Act, 1955") for grant of a decree of divorce against the petitioner/wife, in the Family Court, Ambikapur. The application was registered as Civil Suit No. 36-A/2007. The notice was issued to the petitioner and the case was fixed for 18-9-2007 for conciliation. The petitioner appeared on 18-9-2007. In the conciliation proceeding, the petitioner had shown her desire to live with her husband/respondent. On 18-9-2007 the petitioner filed an application u/s 24 of the Act, 1955 and the case was fixed for 21-9-2007. Thereafter the case was fixed on various dates. On 16-1-2008 the petitioner filed an application for grant of time to file written statement. On 25-1-2008 the petitioner filed an application for grant of permission to engage a counsel, which was allowed and the case was fixed for 28-1-2008 for order on the application of the petitioner for grant of time to file written statement. By the impugned order dated 28-1-2008 the application of the petitioner for grant of time to file written statement was rejected by the trial Court. Being aggrieved, the petitioner has filed this petition.*
>
> *3. Shri Subhash Yadav, learned Counsel appearing for the petitioner submits that on 18-9-2007 the case was fixed only for conciliation proceeding between the parties and there was no order for filing written statement. Though the conciliation proceeding failed on 18-9-2007 but the case was not fixed for filing written statement. Learned trial Court has erred in holding that the time for filing written statement has expired. The petitioner could engage a counsel on 25-1-2008, as such learned trial Court ought to have granted time to the petitioner to file written statement.*
>
> *6. Having regard to the facts situation of the case and taking into consideration that the case on hand relates to a marital dispute, the ends of justice would be subserved if the*

petitioner is granted liberty to file written statement in Civil Suit No. 36-A/2007, within a period of one month from the date of receipt of a copy of this order.

20. In view of the law laid down as noted above, it is clear that the provision of Order 8 Rule 1 C.P.C. is directory and not mandatory. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the summons are served on him, the defendant should take steps for filing 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. The extension of the time sought 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 only be by way of exception and for reasons assigned by the defendant and recorded in writing by the court to its satisfaction.

21. Contention of learned counsel for the petitioner is that the court below have exercised the discretion arbitrarily in accepting the written statement filed by the defendant-respondent after the lapse of statutory period i.e. of 90 days.

22. So far as the contention of learned counsel for the petitioner that the court below has exercised the discretion arbitrarily is misconceived. The Supreme Court in case of **The Printers (Mysore) Private Ltd. Vs. Pothan Joseph reported in A.I.R. 1960 Supreme Court 1156** has held that the appellate court should be slow to interfere with the exercise of discretion by the trial court. Para 9 of the judgment in case of **The Printers (Mysore) Private Ltd. (Supra)** is quoted as under:-

"9. Where the discretion vested in the court under s. 34 has been exercised by the trial court the appellate court should be slow to interfere with the exercise of the said discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of discretion under

appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial judge; but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts and has adopted an unjudicial approach then it would certainly be open to the appellate court-and in many cases it may be its duty-to interfere with the trial court's exercise of discretion. In cases falling under this class the exercise of discretion by the trial court is in law wrongful and improper and that would certainly justify and call for interference from the appellate court. These principles are well established; but, as has been observed by Viscount Simon, L. C., in Charles Osenton & Co. v. Johnston (1) " the law as to the reversal by a court of appeal of an order made by a, judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case".

23. Again in case of **Wander Ltd. and Another Vs. Antox India Private Ltd.** reported in **1990 (Supp) Supreme Court Cases 727** has reiterated the view and it is relevant to quote paragraph no. 14 of the judgment in case Wander Ltd. And another (supra)

"*14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the*

matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

24. Again in case of **Mohd. Mehtab Khan and others Vs. Khushnuma Ibrahim and others reported in A.I.R. 2013 Supreme Court Page 1099**, in paragraph no. 15 has held as under:

"15. In a situation where the learned Trial Court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the Trial Court was a possible view the Appellate Court should not have interfered with the same ...."

25. In the present case, the court below has recorded a finding that an application under Section 24 of Hindu Marriage Act was filed by the defendant-respondent for litigation expenses remained pending for no fault of the defendant respondent. The matter was sent for mediation and reconciliation, which ultimately failed and immediately thereafter, the petitioner moved an application for condoning the delay in filing the written statement and has filed the written statement along with the said application.

26. Thus in view of judgments referred above, it is settled that the higher court while either setting an appeal or even this Court while

exercising supervisory power under Article 227 of the Constitution of India should not readily interfere with the discretion exercised by the court below unless the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the court has ignored the settled principles of law governing the exercise of discretion.

27. In view of the discussion above, I find that discretion exercised by the court below cannot be said to be perverse or against the settled principles of law and therefore, requires no interference by this Court.

28. So far as, judgment relied upon by the counsel for the petitioner in case of **Aditya Hotels Private Ltd. Vs. Bombay Swadesh Stores Ltd. And others (supra),** the Supreme Court held that where the extension of time is granted under Order 8 Rule 1 of C.P.C.,1908 the reasons are to be recorded in writing, howsoever, the brief they may be, by the court.

29. In the present case, the court below has given reasons for allowing the application and accepting the written statement which was filed with delay by the defendant-respondent. In my considered opinion, no illegality has been committed by the court below in allowing the application filed by the defendant-respondent and taking the written statement filed by defendant-respondent on record.

30. From the perusal of order impugned, it is clear that the trial court while allowing the written statement filed by the defendant- respondent to be taken on record for deciding the suit on merits after affording the full opportunity to the defendants to contest the case and at the same time has also directed for payment of cost to the plaintiff, was in my view is in tune with the observations made by the Apex Court in case of **Sangram Singh Vs. Election Tribunal Kotah & Anr. (supra)** and did substantial justice to both the parties. In my view, order passed by the court below is just and no illegality is committed by the court below in passing the order impugned. Accordingly, the petition fails and is **dismissed.**

31. However, that since the present dispute is a marital dispute under Section 13 of the Hindu Marriage Act and is pending before the Family Court and both the parties has now appeared and filed their respective pleadings before the Family Court. In view of provision of Section 21-B of the Hindu Marriage Act, which contemplates to conclude the trial within six months from the date of service of notice of the petition on the respondent. Section 21-B of the Hindu Marriage Act is quoted as under:

> ***"21-B. Special provision relating to trial and disposal of petitions under the Act****.-(1) The trial of a petition under this Act shall, so far as is practicable consistently with the interest of justice in respect of the trial, be continued from day to day until its conclusion unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.*
>
> *(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.*
>
> *(3) Every appeal under this Act shall be tried as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent."*

32. Additional District & Sessions Judge, F.T.C. Court No. 2, Bijnor is directed to consider and decide the aforesaid pending proceedings before him in accordance with law expeditiously after giving opportunity of hearing to the parties concerned as well as opportunity of leading evidence in respect of their case and without granting unnecessary adjournments to either of the parties provided that there is no other legal impediment, keeping in view the statutory mandate of Section 21-B of the Hindu Marriage Act quoted above.

Order Date: 12.03.2024

Nitika Sri.

(Manish Kumar Nigam,J.)