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**Amalagiris and Others Vs. M/S. General Nice Mineral Trading Pvt. Ltd.
Through Authorized Representative, Jason Samuel**

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Court : Mumbai Goa

Decided On : Feb-19-2014

Judge : U.V. Bakre

Appeal No. : Writ Petition No. 92 of 2014

Appellant : Amalagiris and Others

**Respondent : M/S. General Nice Mineral Trading Pvt. Ltd. Through Authorized
Representative, Jason Samuel**

Judgement :

Oral Judgment:

1. Heard Mr. Godinho, learned Counsel appearing on behalf of the petitioners and Mr. Grover, learned Counsel appearing on behalf of the respondents.
2. Rule. Rule is made returnable forthwith. The learned Counsel for the respondent waives service of notice. By consent, heard forthwith.
3. By this petition, the petitioners have prayed for quashing and setting aside the order dated 30/10/2013 passed by the learned Civil Judge, Senior Division at Panaji ('trial Court') in Special Civil Suit No. 32/2013/A.

4. The respondent has filed the said Special Civil Suit for recovery of money against the petitioners. The summonses for settlement of issues were served on the petitioners on 05/08/2013 for appearance before the trial Court on 07/08/2013. On 07/08/2013, however, the petitioners remained absent and the matter was adjourned to 04/09/2013 by the trial Court, by giving an opportunity to file written statement/reply on that date. Again on 04/09/2013, the petitioners remained absent and in the interest of justice, one more opportunity was given to them by the trial Court to file written statement on 09/10/2013. On 09/10/2013, no hearing could take place as the learned trial Court was on leave. The matter was adjourned to 22/10/2013.

5. On 22/10/2013, the petitioners filed an application before the trial Court for granting them time to file written statement. It was alleged in the said application that the defendants received the copies of the documents and the plaint, as per the Court records, but the said documents seem to have been lost, misplaced and were not furnished to the learned Advocate for the petitioners. The respondent endorsed its objection on the same application. The respondent alleged that no sufficient cause has been disclosed for non-appearance on 07/08/2013 and 04/09/2013 and that admittedly, the summonses were served on the petitioners on 05/08/2013 to appear on 07/08/2013. It was further alleged that the petitioners had approached the Court with unclean hand and, therefore, no time ought to be granted to them.

6. By order dated 30/10/2013, the learned trial Court dismissed the application. The trial Court held that the petitioners have been very careless and negligent as they not only failed to put up their appearance on 07/08/2013 and 04/09/2013, but have not even taken pains to file an application for extension of time within first 30 days and have filed the application under consideration in a most casual manner. Relying upon the judgment of the Hon'ble Apex Court in the case of **œR. N. Jadi and brothers and others Vs. Subhashchandra?** reported in (2007) 6 SCC 420, the trial Court observed that the defendants did not show sufficient cause for extension of time to file written statement and that the provision of Order VIII, Rule 1 of C.P.C. can be stretched only in rare and exceptional cases, which the petitioners failed to prove. This order is impugned in the present petition.

7. Order VIII, Rule 1 of C.P.C. provides as under:

œO.VIII, R.1.- 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?

8. Thus, from the above provision, it is clear that normally, written statement has to be filed by the defendant within 30 days from the date of service of summons on him. If the defendant does not file the written statement within 30 days then he can be allowed to file the same beyond that day on other dates to be specified by the Court till the completion of 90 days, by recording reasons. The provision does not say that if the defendant is not in a position to file the written statement within 30 days from the date of service of summons on him, then an application for extension of time has to be filed within the first 30 days, or thereafter every time before the expiry of the period specified by the Court. It is well settled that the above provision is directory and not mandatory and it does not specifically take away the power of the Court to take the written statement on record though filed beyond the time as provided for.

9. The learned Trial Court has relied upon the case of œ**Shri Dattaram Krishnanath Pednekar and others Vs. Shri Pandurang K. Pednekar and others?**, reported in [2010 (4) All MR 525], wherein this Court has made reference to the observations of the Apex Court in the case of œ**Rani Kusum Vs. Kanchan Devi and others?** reported in [(2005) 6 SCC 705] and in the case of œ**R. N. Jadi and brothers and others?** (supra). What has been held in the case supra is as under:

œ13. Be that as it may, there can be no dispute that the provisions of Rule 6-A onwards of Order 8, C.P.C. were inserted by the Code of Civil Procedure (Amendment) Act, 1976 w.e.f. 1-2-1977 while the provisions of Rule 1 of Order 8 were substituted by the Code of Civil Procedure (Amendment) Act, 2002 w.e.f. 1-

7-2002. It is well settled by now that the provision of Rule 1, Order 8, is directory and not mandatory and it can be stretched in rare and exceptional cases. Rule 1, Order 8 was intended to cut down laws of delays, intentionally created or otherwise. In this context, it would be apt to refer to the case of **Rani Kusum Vs. Kanchan Devi and others, (2005)6 S.C.C. 705** wherein the Apex Court has stated that Order 8, Rule 1, after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the Court and also does not specifically take away the power of the Court to take the written statement on record though filed beyond the time as provided for. The substituted Order 8, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to plaintiffs and petitioners approaching the Court for quick relief and also to the serious inconvenience of the Court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same.

14. The Apex Court in **R. N. Jadi and Brothers and others Vs. Subhashchandra**, reported in **(2007)6 S.C.C. 420**, has held that the provisions of Order 8, Rule 1 are directory but 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 cases, 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 was also quoted that the laws 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??

10. Admittedly, the summonses/notices in the suit were served on the petitioners on 05/08/2013. Admittedly, on 07/08/2013 which was the date fixed for appearance, when the matter came up for the first time before the trial Court, the trial Court adjourned the case by giving opportunity to the petitioners to file written statement/reply on 04/09/2013 and again, on 04/09/2013 in the interest of justice, gave one more opportunity to them to file written statement on 09/10/2013. The observation of the trial Court that the provision of Order VIII, Rule 1 stipulates that if the defendants do not file the written statement within 30 days then, they should give reasons within 30 days from the date of service of summons as to why the said written statement could not be filed within 30 days is erroneous and not legal. Since the trial Court itself had extended the time to file written statement till 09/10/2013, the question of the petitioners, after 09/10/2013, again specifying reasons till that date did not arise. It should be kept in mind that the adjourned date i.e. 22/10/2013 fell within the prescribed period of 90 days from the date of service of summons as stipulated in Rule 1 of Order VIII of C.P.C. The observation of the learned trial Court that the said provision of Order VIII, Rule 1 of C.P.C. can be stretched only in rare and exceptional cases, applies to the cases wherein extension of time beyond 90 days of the service of summons is sought for. There is no dispute that on 22/10/2013, when the petitioners sought for time to file written statement, the said period of 90 days was not over. No doubt, that does not mean that the petitioners were not required to give reason for extension of time. The petitioners, in the application for adjournment filed on 22/10/2013, specifically stated that though the petitioners had received the copies of the document and plaint, however, the documents seem to have been lost/misplaced and, therefore, they could not be provided to the learned Advocate of the petitioners. In the impugned order, the learned trial Court has not at all discussed as to why the said reason given by the petitioners was not sufficient for extension of time to file written statement. The respondent in the reply, did not claim that the petitioners are deliberately adopting dilatory tactics and that they are delaying the disposal of the case in order to cause inconvenience to them.

11. In paragraph 4 of the petition, the petitioners have stated that the petitioners no. 2 and 3 are permanent residents of Kerala at Kochi and their office in Goa is managed by a staffer by name Ms. Karuna Naik, who received the summons of

the Court on behalf of the Partnership Firm and also on behalf of the Partners and it has been alleged that the Court papers were not sent to Kerala by Ms. Karuna Naik without knowing the implications, contents and urgency of the case and that the documents which were sent to the Partners in Kerala were not received by the petitioners in Kerala on 07/08/2013 as well as on 04/09/2013 and that incomplete documents were received by them at Kerala beyond the period of 30 days. The petitioners have stated that they could not contact their Lawyer in Goa as petitioner no. 2 was suffering from lumbar disc disorder and was confined to bed from 01/08/2013 to 30/11/2013 and could not move out of the bed almost for three months. It has been stated in the petition that the petitioners contacted the Goa office and requested Ms. Karuna Naik to engage a Lawyer and to do the needful. It is alleged that the learned Advocate, who did not receive complete documents, therefore, had filed an application dated 09/10/2013 to obtain documents from the respondents. It is stated in the petition that the documents were obtained on 06/11/2013. In the circumstances above, according to the petitioners, the application seeking time to file written statement was filed by the Advocate. No doubt, the learned Counsel appearing on behalf of the respondent tried to point out certain discrepancies in the averments made in the petition and other records. However, the fact remains that the learned Advocate for the petitioners had given reason as to why extension of time was sought for. The contention of the learned Counsel appearing on behalf of the respondent that the petitioners have not annexed a copy of the written statement to the present petition, bears no substance, since their application for extension of time to file written statement was dismissed by the trial Court. If the petitioners are not granted opportunity to file written statement, then certainly grave and irreparable loss would be caused to them, whereas on the other hand, inconvenience caused to the respondent can be compensated by awarding costs.

12. I am, therefore, of the view that the petition deserves to be allowed, subject to certain conditions.

13. In the result, the petition is allowed.

(a) The impugned order dated 30/10/2013 is quashed and set aside.

(b) The application dated 22/10/2013, filed by the petitioners is allowed.

(c) The petitioners (defendants) shall file their written statement, if any, before the trial Court within 15 days hereof, which shall be accepted subject to costs of Rs. 25,000/- to be deposited by the petitioners in the trial Court, for being paid to the respondent (plaintiff).

(d) Rule is made absolute in the aforesaid terms.

14. The petition stands disposed of accordingly.

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