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Court : Mumbai Nagpur

Decided On : Jul-14-2014

Judge : A.P. Bhangale

Appeal No. : Writ Petition No. 944 of 2014

Appellant : Rameshlal

Respondent : Yogesh and Another

Judgement :

Oral Judgment:

1. Rule. Rule made returnable forthwith. Heard the Judgment matter by consent of the learned Counsel appearing for both the sides.

2. The petitioner challenges order dated 11.10.2012, passed by learned 4th Joint Civil Judge Junior Division, Nagpur, below Exh.12, in pending Regular Civil Suit No.3620 of 2012, whereby the application filed by the petitioner/defendant for grant of permission to file the written statement on record, was rejected.

3. The facts are, thus:

In pending Regular Civil Suit No.3620 of 2012, the petitioner/defendant had filed an application seeking permission to file the written statement on record, which was objected by the respondents/plaintiffs on the ground that within a period of

limitation as prescribed under Order VIII Rule 1 of the Code of Civil Procedure, written statement was not filed. Order VIII Rule 1 which reads, thus:

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.

The above said provision requires the defendant to furnish the written statement within a period of thirty days from the date of service of summons on him and proviso to the Rule enables the defendant to file the written statement subsequently within a period of ninety days from the date of service of summons.

4. Shri D.R.Adalatwale, learned Counsel appearing for the respondents/plaintiffs has placed reliance to the ruling in the case of Kailash ..vs.. Nankhu and others, reported at 2005(2) Mh.L.J.775 to submit that the petitioner/defendant had not furnished any convincing reason to present the written statement later nor pleaded a valid ground to file the written statement subsequently in the pending regular civil suit.

Shri Adalatwale, learned counsel, has placed the reliance to the ruling in the case of R.N.Jadi and Brothers and others ..vs.. Subhashchandra, reported at (2007)6 SCC 420 wherein the procedural law is interpreted by the Honourable Supreme Court in paragraph Nos.14 and 15, which reads thus:

14. Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

15. It is also to be noted that though the power of the court under the proviso appended to Rule 1 of Order 8 is circumscribed by the words shall not be later than ninety days but the consequences flowing from nonextension of time are not specifically provided for though they may be read by necessary implication.

Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The Courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

It cannot be disputed that the procedure is handmaid of justice and not a resistant in the administration of justice. Therefore, the limitation provided for procedure need to be read as directory and not mandatory though couched in a negative language implying mandatory character, the provision is not free from exception.

Considering the observations made in the cases cited (supra) clarify that if reason pleaded appears satisfactory or sufficient to condone the delay. Delay may be so condoned subject to the payment of reasonable costs.

5. In the present case in hand, Shri Adalatwale, learned counsel, has argued that no any acceptable reason was furnished when the written statement was to be produced during the pendency of the regular civil suit. Learned trial Judge also made reference to the ruling in the case of Kailash ..vs.. Nankhu and others cited (supra) in its order impugned before application Exh.12, moved by the petitioner/defendant for grant of permission to file the written statement on record, was rejected.

6. Coming to the case in hand, according to Shri Y.J.Soni, learned counsel appearing for the petitioner/defendant, the respondents/plaintiffs are sons of original tenant named Namdeorao and are claiming tenancy in respect of the suit property as a result of death of original tenant. According to the respondents/plaintiffs, after the petitioner/defendant had received a summons for his appearance in pending regular civil suit, the petitioner/defendant by engaging an Advocate sought time to file the written statement. Thereafter, the Advocate concerned had also gone abroad and was to return to India on 26.6.2012. Furthermore, on 30.6.2012 the petitioner/defendant was also busy for engagement of his daughter at Mumbai. As there were unavoidable circumstances, the dependency was upon the Advocate to seek the time for filing the written statement. The petitioner/defendant is, therefore, entitled for the benefit of judicial

discretion of the trial Court to extend the time limit to file the written statement beyond period of ninety days as contemplated under the proviso to Order-VIII Rule-1 of the Code of Civil Procedure hence the petitioner/defendant prays for setting aside the impugned order, passed below application Exh.12, moved by him for grant of permission to file the written statement on record.

7. I have considered the submissions in the light of the rulings cited (supra). I think the delay, which resulted in the pending regular civil suit to file the written statement on record, for the reasons pleaded, is condonable provided that the reasonable costs should be imposed as against the petitioner/defendant in the larger interest of justice to ensure that the suit is decided on merits and the real controversy between the parties is settled finally and effectively on merits in accordance with law.

8. In that view of the matter, the writ petition is allowed by setting aside the impugned order subject to payment of costs payable to the respondents/plaintiffs by the petitioner/defendant.

9. Hence, the writ petition is allowed. Impugned order dated 11.10.2012, passed by learned 4th Joint Civil Judge Junior Division, Nagpur, below Exh.12, in pending Regular Civil Suit No.3620 of 2012, is set aside subject to payment of costs of Rs.5,000/- (Rupees Five Thousand Only) payable to the respondents/plaintiffs by the petitioner/defendant as condition precedent for to proceed further in the suit, within a period of four weeks from today. Upon acknowledging the costs by the respondents/plaintiffs, as ordered, and upon tendering the written statement by the petitioner/defendant, learned trial Judge is directed to proceed further to decide pending regular civil suit as expeditiously as possible on merits and in any case preferably within a period of six months from the date of receipt of the writ.

Thus, the writ petition is allowed. Rule is made absolute in above terms. No order as to costs.