

Sreenivas Basudev Vs. Vineet Kumar Kothari

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SooperKanoon Citation : sooperkanoon.com/138416

Court : Guwahati

Decided On : Mar-17-2006

Judge : I.A. Ansari, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 75 and 151 - Order 8, Rules 1, 9 and 10 - Order 5, Rules 1(1) and 2 - Order 7, Rule 14, 14(1) and 14(3) - Order 26; [Constitution of India](#) - Article 227

Appeal No. : WP(C) No. 8457 of 2005

Appellant : Sreenivas Basudev

Respondent : Vineet Kumar Kothari

Advocate for Def. : O.P. Bhati, Adv.

Advocate for Pet/Ap. : S.P. Roy, Adv.

Judgement :

I.A. Ansari, J.

1. Can service of summons on a defendant be regarded as complete if a copy of the plaint is not delivered to him along with the summons Is a plaintiff bound to submit to the court copies of documents If so, when is he so bound Does the court have the power to direct a plaintiff to furnish to a defendant copy of a document If so, when and under what circumstances such a direction can be given If a plaintiff

does not furnish to a defendant copy of a document despite directions given, in this regard, to the plaintiff by the court, can, while computing the a period of 90 days for filing of written statement, as envisaged under Order VIII, Rule 1 of the Civil Procedure Code, the period during which the copy of the document remained unfurnished to the defendant be excluded If a plaintiff does not furnish to a defendant copy of a document despite directions given, in this regard, to the plaintiff by a . court, can the court insist that it is the duty of the defendant to file written statement within the extended period of 90 days from the date of service of summons These are some of the intricate questions, which the present writ petition has thrown up for determination in this writ petition.

2. The material facts leading to the present writ petition may, in brief, be set out as follows:

(i) The plaintiff-respondent herein instituted Title Suit No. 103/ 2003, in the Court of the learned Civil Judge (Senior Division) No. 1, Guwahati, seeking ejectment of the defendant-petitioner herein d from the suit premises and also for realization of rent, the plaintiffs case being, briefly stated, thus: The plaintiff had, vide a registered sale deed, dated 23.8.2002, purchased the suit property, which is a multi-storied building, from the erstwhile owner thereof and became absolute owner of the suit property. The ground floor of the said building and some other parts thereof have had been in the e possession of the defendant as a tenant, the defendant having entered into an agreement of tenancy, in this regard, with the erstwhile owner thereof undertaking to pay Rs. 1,895 as rent, in advance, within the first week of each month. Having purchased the suit property, as stated hereinbefore, the plaintiff as well as the f vendor, who had sold the suit property to the plaintiff, informed, vide their letters, dated 5.12.2002, the defendant about the purchase of the suit property by the plaintiff and requested the defendant to attorn to the plaintiff as the land-owner and make payment of rents to the plaintiff accordingly ; but the defendant has not paid the rents to the plaintiff since the month of December 2002, and has become a defaulter. The defendant is, therefore, liable to be evicted from the suit premises and also to pay, inter alia, the arrear rents.

(ii) On institution of the suit aforementioned, summons were issued by the Court, on 24.4.2003, fixing 14.5.2003 for service report. The summons were served on the defendant on 18.4.2003. However, as the service report had not been received by the Court, the Court fixed 9.7.2003 as the date for receipt of the service report. On 9.7.2003, the defendant appeared in the suit and filed a petition stating to the effect, inter alia, that it had not received copies of the plaint and also the documents, relied upon by the plaintiff, and that on account of non-furnishing of the copies aforementioned, the defendant had not been able to file its written statement. By this petition, the defendant sought for directions to be given to the plaintiff to furnish the copies aforementioned to the defendant and also to fix a date for filing of written statement. On the petition, so made, the learned trial Court passed an order, on 9.7.2003 itself, directing the suit to be fixed on 30.7.2003 for supply of copies of the plaint and documents to the defendant and also for filing of written statement. In course of time, when the suit came up, on 9.9.2003, the defendant filed a petition stating to the effect, inter alia, that despite directions having been given to the plaintiff, the plaintiff had not supplied copies of the documents to the defendant and that on account of non-furnishing of the copies of the documents, written statement could not be prepared and filed. The defendant, accordingly, sought for necessary directions. The learned trial Court, then, passed an order, on 9.9.2003 itself, allowing time for filing of written statement and fixed 31.10.2003 for filing of written statement. The defendant filed its written statement on 23.2.2004 and when the suit came up on 5.4.2004, it was submitted, on behalf of the plaintiff, that the written statement, having been filed beyond the period of 90 days from the date of furnishing of the copies, written statement was not acceptable in law. The learned trial Court acceded to the submissions so made on behalf of the plaintiff and refused to accept the written statement and, further, directed that the suit be fixed for ex parte hearing on 10.5.2004. '

(iii) The defendant, then, made an application for review of the order, dated 5.4.2004, aforementioned. In this review application, the defendant, while narrating the sequence of events, brought it to the notice of the learned trial Court that the copies of all the documents had not been furnished to the defendant in terms of the directions of the Court, passed on 9.7.2003, and that the period of 90 days could have started running from the date of supply of requisite copies of the

documents and since, in the present case, copies of the documents had not been supplied to the defendant, the delay in filing of the written statement was attributable to the laches and negligence on the part of the plaintiff and that the defendant could not have been legally penalized for the laches and negligence on the part of the plaintiff to carry out the directions of the Court. The plaintiff resisted the review application by filing his objection, wherein he contended, inter alia, that since no document had been relied upon by the plaintiff as a part of the plaint, the same was not supplied to the defendant and since on 30.7.2003, the defendant had not raised any objection, it was correctly inferred by the learned trial Court that the copies either stood supplied to the defendant or that the supply of the copies to the defendant was not necessary and, thus, no good ground for acceptance of the belatedly filed written statement could be said to have been made out by the defendant and the learned trial Court had acted, within the ambits of its jurisdiction, in refusing to accept the written statement. By order, dated 26.9.2005, the learned trial Court rejected the application for review on the ground, inter alia, that the defendant had received the copy of the plaint on 30.7.2003 and as the defendant had raised no grievances against non-furnishing of copies of documents, no justifiable reason can be said to have been offered by the defendant for its failure to file written statement within the requisite period of 90 days and, therefore, the mere fact that the Presiding Officer of the Court was not present could not be said to be a ground justifying the delay in filing of the written statement. Feeling aggrieved, the defendant has, now, approached this Court seeking, with the help of the present application made under Article 227 of the Constitution of India, issuance of appropriate writ(s).

3. I have heard Mr. S.P. Roy, learned Counsel for the defendant-petitioner, and Mr. O.P. Bhati, learned Counsel for the plaintiff-respondent.

4. It is submitted by Mr. S.P. Roy, learned Counsel for the defendant-petitioner, that in terms of the directions of the learned trial Court, since the copies of all the documents, relied upon by the plaintiff, had not been furnished to the defendant, the learned trial Court ought not to have held that the filing of the written statement was not acceptable on the ground that the written statement had been filed beyond the period of 90 days as stipulated under Order VIII, Rule 1. In the case at

hand, non-furnishing of all the copies of the documents ought to have been treated, according to Mr. Roy, sufficient ground for accepting the written statement. Support for this submission is sought to be derived by Mr. S.P. Roy from the decision in *Smt Rani Kusum v. Smt. Kanchan Devi and Ors.* reported in : AIR 2005 SC3304 .

5. Controverting the above submissions made on behalf of the defendant-petitioner, Mr. O.P. Bhati, learned Counsel for the plaintiff-respondent, has submitted that one of the reasons assigned by the defendant for failure to file written statement is that the Presiding Officer of the Court was not available. This was, according to Mr. Bhati, no ground to justify the delay in filing of the written statement. This apart, contends Mr. Bhati, there is no law, which makes it mandatory for the plaintiff to supply copies of the documents, particularly, when Yi the plaintiffs suit, as in the present case, is not based on any document. In fact, further contends Mr. Bhati, no good ground for not filing of the written statement within the period of 90 days from the date of the service of summons on the defendant can be said to have been made out by the defendant. In the face of the facts of the present case, the learned trial Court acted, according to Mr. Bhati, within the ambit of a law, in refusing to accept the written statement. In support of his submissions, Mr. Bhati has placed reliance on *Salem Advocate Bar Association, T.N. v. Union of India* reported in : AIR 2005 SC3353 , and *Kailash v. Manhku and Ors.* reported in : AIR 2005 SC2441 .

6. Repelling the submissions made on behalf of the plaintiff-respondent, b Mr. S.P. Roy has submitted that there is no impediment in law, on the part of the Court, to direct, in an appropriate case, the plaintiff to supply the copies of the documents to the defendant, particularly, in a suit of present nature, where the plaintiffs suit, notwithstanding what is submitted on behalf of the plaintiff, rested substantially on documents.

7. Before entering into the merit of the rival submissions made on behalf of the parties, what may be pointed out is that the Code of Civil Procedure ('the Code') stands, broadly speaking, divided into two parts. While the main body of the Code, which consists of Sections, creates jurisdiction for the civil courts, the Rules

framed under various Orders indicate the procedure for exercise of such jurisdiction. To put it differently, the Rules framed under various Orders of the Code lay down the procedure for exercise of the powers conferred on such courts by various Sections embodied in the Code. Taking note of this strikingly noticeable feature of the Code, observed the Supreme Court, in *Varred Jacob v. Sosamma Greevarghese and Ors.* reported in : AIR 2004 SC3992 , thus, 'The main feature of the Code is its division into two parts. The main body of the Code consists of Sections, which create jurisdiction, while the rules indicate the manner in which the jurisdiction has to be exercised.'

8. Before proceeding any further and entering into the question as to whether, in the facts and circumstances of the present case, the written statement ought to have been accepted by the learned trial Court and whether any case for interference by way of writ jurisdiction with the impugned orders, dated 5.4.2004 and 26.9.2005, could be said to have been made out by the defendant-petitioner, it is necessary to point out the salient features of the law, which govern the facts of the present case.

9. Order VIII, Rule 1 as well as Order VIII, Rule 10 of the Code, which warrant filing of written statement within a period of 90 days from the date of service of summons on the defendant, are part of the procedural law. The procedural law is handmaid of justice and cannot override the necessity to do justice between the parties to the suit. No part of the procedural law and not even Order VIII, Rule 1 or Order VIII, Rule 10 can, in the absence of any explicit legislative intendment, be treated to have disempowered the Court or can be said to stand in the way of the Court to make exception in an appropriate case and accept a written statement beyond the period of 90 days, though, ordinarily and except in rare and compelling circumstances, acceptance of written statement beyond the requisite period of 90 days is not permissible.

10. Making it clear in *Kailash (supra)*, that ordinarily, the time schedule prescribed by Order VIII, Rule 1 has to be honoured, the Apex Court has made it clear that a Court may, for reasons to be recorded, in writing, by way of exception, extend the prescribed period of 90 days if the Court is satisfied, on a prayer made, in writing,

by the defendant, that 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. This aspect of law becomes clear, when one takes note of the observations made in *Kailash* (supra), which run, thus,

27. Three things are clear. Firstly, a careful reading of the language in which order, 8 Rule 1 has been drafted, shows that it 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 (j 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. Secondly, the nature of the provision contained in Order 8, Rule 1 is procedural. It is not a part of the substantive law. Thirdly, the object behind substituting Order 8, Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the 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. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

41. Considering the object and purpose behind enacting Rule 1 of Order 8 in the present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact - the entire life and vigour - of the provision. The delaying tactics adopted by the defendants in law courts are now proverbial as they do stand to gain by delay....'

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 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,

43. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on an affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the court that the prayer was founded on grounds which do exist.

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.

45. However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8, Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order 8, Rule 1, though couched in mandatory form, is directory being a provision in the

domain of processual law.

11. Expressing that all the rules of procedure are the handmaid of justice and unless compelled by express and specific language of a statute, the provisions of the Code and of other procedural enactments ought not to be construed in a manner, which would leave the court helpless to do what is necessary, in the ends of justice, to meet extraordinary situations, the Apex Court, in Smt. Rani Kusum (supra), observed as follows,:

9. Order VIII, 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. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the 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. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

10. 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 fact remains that the object of prescribing procedure is 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.

13. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. (See *Blyth v. Blyth* (1966) 1 All ER 524 (HL). A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed (See *Shreenath and Anr. v. Rajesh and Ors.* : [1998]2SCR709).

14. Processual 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.

12. Cautioning the courts that the rules of procedure are made to advance the cause of justice and not to defeat it, construction of a rule or procedure, which promotes justice and prevents miscarriage, has to be preferred, the rules of procedure are the handmaid of justice and not its mistress and that 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 8, Rule 1, the Apex Court, in *Salem Advocate Bar Association, T.N.* (supra), laid down that the 'time' can be extended only in exceptionally hard cases. This is clear from the observations made, thus,

20. The use of the word 'shall' in Order 8, 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 of procedure are

the 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 8, 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 the 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 the 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 8, 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 8, the Court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order 8, Rule 1. There is no restriction in Order 8, 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 provisions of Order 8, Rule 1 providing for the 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 8, Rule 1.

13. Having taken note of its decisions in Rani Kusum (supra), Salem Advocate Bar Association (supra), Kailash (supra), which the learned Counsel for the parties have relied upon, in the present writ petition, the Apex Court, in Shaikh Salim Haji Abdul Khayumsab v. Kumar and Ors. reported in : AIR 2006 SC396 , has reiterated what have already been clarified in Kailash (supra), Rani Kusum (supra)

and Salem Advocate Bar Association (supra) as regard the ambit of Order VIII, Rule 1 and whether it is possible for the court to extend the time for filing of the written statement beyond the period of 90 days from the date of service of the notice on the defendant.

14. What crystallizes from the above discussion is that while it is necessary that a defendant is made to file written statement within, at best, the extended time of 90 days from the date of service of the summons, the courts do have the power, in an appropriate case, to accept the written statement beyond the period of 90 days, though such acceptance is not possible except in rare cases and special circumstances.

15. Bearing in mind what role a procedural law plays in determination of a lis brought before a civil Court and also keeping in view the position of law that though, ordinarily, the time schedule of 90 days prescribed by Order VIII, Rule 1 has to be followed and the legislative intendment reflected by Order VIII, Rule 1 cannot be allowed to be easily defeated, yet the court is not, in an appropriate case, wholly powerless from accepting a written statement beyond the requisite period of 90 days if the defendant can convincingly show that the failure to file written statement was for reasons beyond the control of the defendant and that in the given facts and circumstances of a case, extension of time beyond the prescribed period of 90 days is required to be granted in the interest of justice or else gross injustice would be occasioned thereby, let me, now, turn to Order V, which deals with issuance and service of summons. For clarity of the controversy involved in the present writ petition, let me, first, take note of Sub-rule (1) of Rule 1 of Order V, which it may be noticed, reads as follows:

ISSUE AND SERVICE OF SUMMONS

1. Summons. - (1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiffs claim:

Provided further 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 days 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.

16. Close on the heels of what Order V, Rule 1 states, Order V, Rule 2 lays down,

2. Copy of plaint annexed to summons. - Every summons shall be accompanied by a copy of the plaint.

17. A combined reading of Order V, Rules 1 and 2 shows that summons shall be accompanied by a copy of the plaint. When this requirement is read, in the light of the provisions of Order VIII, Rule 1 or even Order VIII, Rule 10, it clearly emerges that though Order VIII, Rule 1 requires that the defendant shall, within 30 days from the date of service of summons on him, present a written statement of his defence, such service of summons would obviously include not merely service of summons on the defendant, but also service of a copy of the plaint.

18. Consequently, therefore, mere service of summons on a defendant would not make the period of 90 days, as envisaged under Order VIII, Rule 1, start running. When a period does not begin to run, the question of the period having come to an end does not arise at all. Hence, when the service of summons is not accompanied by a copy of the plaint, the period of 90 days, as contemplated under Order VIII, Rule 1, would not begin to run.

19. In the case at hand, notwithstanding the fact that the summons, admittedly, stood delivered to the defendant on 28.4.2003, the fact remains that the summons was not accompanied by a copy of the plaint. The summons cannot, in such a case, be said to have been served on the defendant on 28.4.2003. No wonder, therefore, that on a petition having been filed, in this regard, by the defendant, the learned trial Court had to pass an order, on 9.7.2003, directing the plaintiff to supply, inter alia, copy of the plaint and fixing 30.7.2003 for filing of written

statement. A copy of the plaint was accordingly furnished to the defendant, admittedly, on 30.7.2003. Notwithstanding, therefore, the fact that the summons stood delivered on the defendant as early as on 28.4.2003, the time did not start running against the defendant until, at least, 30.7.2003, when a copy of the plaint was made available to the defendant. Hence, the observations made by the learned trial Court, in its order, dated 26.9.2005, aforementioned to the effect that the defendant ought to have, on receipt of the summons on 28.4.2003, started drafting and preparing the written statement is *ex facie* perverse inasmuch as the question of drafting and preparing the written statement did not arise at all until, at least, 30.7.2003.

20. The question, now, is as to whether, in the cast at hand, the period of 90 days had, as envisaged under Order VIII, Rule 1, really started running with effect from 30.7.2003 and come to an end on 28.10.2003 ?

21. While considering the question posed above, what is imperative to note is that it is the case of the writ petitioner that on his appearance in the learned trial Court, he had also sought for a direction from the Court to the plaintiff to furnish copies of the documents, which the plaintiff had relied upon, and the learned trial Court had accordingly directed, on 9.7.2003, the plaintiff to supply the copies of documents too to the defendant. It is the case of the defendant-petitioner that despite the directions, so given, on 9.7.2003, to the plaintiff-respondent, the copies of all the documents, which the plaintiff had relied upon, had not been furnished to the defendant. This submission is countered, on behalf of the plaintiff-respondent, by saying that it was not mandatory, in law, to furnish copies of the documents to the defendant-petitioner. Let me, now, test the correctness of the assertions so made on behalf of the plaintiff-respondent.

22. My quest for an answer to the above question brings me to Order VII, Rule 14, which, if I may quote, runs as follows :

Order VII, Rule 14

14. Production of document on which plaintiff sues. - (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the

plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.

23. A close analysis of Sub-rule (1) of Rule 14 of Order VII shows that when the plaintiff institutes a suit based on a document or where a plaintiff relies upon a document, which is in his possession or power, to support his claim, he shall enter such a document in a list and shall produce the same in the court along with the plaint, when the plaint is presented, and shall, at the same time, deliver the documents as well as the copies thereof to be filed with the plaint. As correctly contended by Mr. Bhati, there is nothing in Order VII, Rule 14 to indicate that copy of a document based on which the plaintiff institutes a suit or copy of a document, which the plaintiff relies to support his claim, shall be made available to the defendant.

24. Sub-rule (3) of Rule 14 makes it clear that a document, which ought to be produced in court by the plaintiff, when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit. Sub-rule (3) of Rule 14, which stands introduced into the Code with effect from 1.7.2002, makes it clear that the legislative intendment is that ordinarily, and except in special and exceptional circumstances, a plaintiff shall not be allowed to introduce into the evidence any document, which the plaintiff, while presenting the plaint, ought to have delivered

to the court along with a copy thereof and which document the plaintiff ought to have entered into the list to be added, or annexed, to the plaint. The harsh consequences flowing from failure to produce a document along with the plaint are, thus, clearly emphasized in Sub-rule (3) of Rule 14 of Order VII.

25. When Order VII, Rule 14 is read, in the light of what Order v. embodies, it becomes abundantly clear that while annexing of a copy of the plaint with the summons is a condition precedent for effective service of summons on a defendant, furnishing of copy of a document, based on which a plaintiff institutes a suit, or a document, on which a plaintiff relies in support of his claim, need not be furnished to the defendant. Does this, however, mean that a court is powerless, in a given case, to direct the plaintiff to furnish copies of the documents, based on which the plaintiff has instituted the suit, or copies of the documents, on which' the plaintiff relies to support his claim?

26. While considering the above aspects of the matter, one has to bear in mind that Section 151 of the Code saves the inherent power of the courts and makes it clear that nothing contained in the Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. A bare reading of Section 151 shows that nothing contained in the Code shall be deemed to limit or otherwise affect the inherent power of the court to, inter alia, make such orders as may be necessary for the ends of justice meaning thereby that in a given case, the court does have the power to direct the plaintiff to furnish of a copy of a document to the defendant if the court is of the view that furnishing of such a copy of the document is necessary or imperative in the interest of justice.

27. In *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal* : AIR 1962 SC527 , the Apex Court, speaking through R. Dayal, J, observed and held, inter alia, thus, '...the provisions of Section 151 of the Code make it clear that the inherent powers are not controlled by the provisions of the Code. Section 151 reads :

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of the

justice or to prevent abuse of the process of the Court.

A similar question about the powers of the Court to issue a commission in the exercise of its power under Section 151 of the Code in circumstances not covered by Section 75 and Order XXVI, arose in *Padam Sen v. The State of Uttar Pradesh* : 1961 CriLJ322 and this Court held that the Court can issue a commission in such circumstances. It observed at page 887, thus :

The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and, therefore, it must be held that the Court is free to exercise them for the purpose mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature.

These observations clearly mean that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in Section 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the Legislature. This restriction, for practical purposes, on the exercise of these powers is not because these powers are controlled by the provisions of the Code but because it should be presumed that the procedure specifically provided by the Legislature for orders in certain circumstances is dictated by the interests of justices.

28. From what have been pointed out in *Manohar Lai* (supra), it is abundantly clear that the inherent powers are not controlled by the provisions of the Code, though this power cannot be exercised in conflict, with the provisions of the Code or against the legislative intendment. The inherent power under Section 151 recognizes that the court has such powers, which are imperative to be exercised in Order to enable it to discharge its duty of rendering justice and that the inherent power is in addition to, and also complementary to, the powers conferred on g the courts by the Code either in express terms or by necessary implication.

29. In the backdrop of the nature and ambit inherent powers of the courts as indicated hereinabove, when I revert to the factual matrix of the present case, what attracts my attention, most prominently, is that in the case at hand, it has been submitted, on behalf of the plaintiff-respondent, that the plaintiff had not based his suit on any document. While considering the submission, so made, on behalf of the defendant-respondent, what is necessary to note is that the plaintiff was, admittedly, not the original owner of the suit property and that the defendant was not the tenant of the plaintiff. It was, according to the plaintiff, on the strength of a sale deed, dated 23.8.2003, that the plaintiff had become the absolute owner of the suit property. In support of his claim, therefore, that he has become the absolute owner of the suit property, the plaintiff, according to the plaint, clearly relied on the sale deed, dated 23.8.2002, aforementioned. Similarly, it is the case of the plaintiff that he as well as his vendor had written to the defendant, on 5.10.2002, informing the defendant about the purchase of the suit property by the plaintiff and also asking the defendant to attorn to the plaintiff as land-owner and make payment of the rents to him accordingly. The plaintiff, thus, not only relied on the sale deed, dated 23.8.2002 aforementioned to support his claim of ownership to the suit property, but also placed reliance upon the two letters aforementioned for the purpose of sustaining his suit. In view of the fact that in the face of the pleadings in the plaint, the plaintiff derived title to the suit property from a registered sale deed, it is but natural to infer that a copy of this sale deed ought to have been filed with the plaint. Similarly, when the plaintiff claims that it was through the letters, dated 5.12.2002, aforementioned that the defendant was informed about the purchase of the suit property by the plaintiff and was requested to attorn to the plaintiff as the land-owner and make payment of the rents to the plaintiff accordingly, it is quite evident that the plaintiff had relied on the letters, dated 5.12.2002, too, to prove that despite being informed, the defendant had not attorned to the plaintiff-respondent as land-owner and had not, despite having the notice of the fact that the plaintiff-respondent had become the absolute owner of the suit property, paid no rents to the plaintiff-respondent. The present one was, thus, not a suit, which was not based on any document nor was it a suit in which the plaintiff did not rely upon any document in support of his claim.

30. In a case of present nature, the Court was not wholly powerless and could have, if deemed by it necessary, in the interest of justice and in Order to cut short the possible delay in filing of the written statement, directed the plaintiff to supply to the defendant the copies of the documents, which the plaintiff had relied upon. The direction, therefore, given by the learned trial Court to the plaintiff to supply to the h defendant the copies of the documents cannot be said to be without jurisdiction. In fact, there may be a variety of circumstances, wherein a court may be required to direct a plaintiff to furnish to a defendant a copy of the document on which the plaintiff relies. In the case at hand, when the Court had already directed the plaintiff to furnish copies of the documents and the plaintiff had expressed no grievance against this order, the plaintiff cannot, now, be heard to say that the Court could not have directed the plaintiff to furnish any copy of any document. As a matter of fact, the plaintiff had not even contended, in the learned trial Court, that the learned trial Court had no jurisdiction or power to pass an Order directing the plaintiff to furnish copies of documents to the defendant. Far from this, the stand of the plaintiff was that the document, in terms of the directions given by the Court, had already been furnished to the defendant on 30.7.2003 itself. Whether this assertion of the plaintiff was or was not correct is an aspect of the case, which I shall, now, deal with.

31. In the context of the facts pointed out above, when I turn to the records of the case, I find that it was the specific case of the defendant, on 9,7.2003, that he had not been supplied with a copy of the plaint and the documents relied upon by the plaintiff and for these reasons, the written statement could not be filed. The learned trial Court, then, on 9.7.2003 itself, directed the plaintiff to supply to the defendant not only a copy of the plaint, but also copies of the documents. This Order clearly indicates that there were copies of more than one document, which the learned trial Court had directed the plaintiff to supply to the defendant. Whether such direction could have been given in a case of present nature is not material in this writ petition, for, the direction, so given, was never objected to by the plaintiff-petitioner. Since the learned trial Court, as already pointed out above, had the jurisdiction to pass such an Order and had, in exercise of such jurisdiction, did pass the order, this Court, in the absence of any challenge posed to the direction, so given, cannot determine if the facts and attending circumstances of

the case really warranted passing of such a direction or not. Suffice it to mention here that when the learned trial Court had, in exercise of its jurisdiction, passed an order, on 9.7.2003, directing the plaintiff to supply to the defendant copies of not only the plaint, but also of the documents, the plaintiff was bound to carry out the direction so given and the plaintiff could not have avoided carrying out such a direction on the ground that no copy of any document was required to be furnished to the defendant.

32. Coupled with what is pointed out above, it may be further noted that it was again, on 9.9.2003, that the defendant submitted before the learned trial Court to the effect that the plaintiff had not supplied the copies of the documents to the defendant. In the Order passed on 9.9.2003, the learned trial Court appears to have not addressed itself to the grievance so raised by the defendant. The direction, therefore, given by the Court, on 9.9.2003, for supplying of copies of documents to the defendant had, according to the defendant, not been carried out by the plaintiff till 9.9.2003. The learned trial Court, however, passed no Order holding that the documents had been supplied to the defendant as directed by it nor did it direct the plaintiff to supply the copies of the documents in terms of the directions already issued on 30.7.2003. The learned trial Court did not even observe that notwithstanding its earlier directions given, on 9.7.2003, to the plaintiff to supply to the defendant the copies of the documents, no such copies need be furnished to the defendant. The order, dated 9.9.2003, aforementioned, thus, suffers from complete non-application of mind. It is in this context that the order, dated 5.4.2004, whereby the learned trial Court declined to accept the written statement, needs to be, now, examined.

33. While considering the above aspect of the matter, it is of immense importance to note that in its order, dated 5.4.2004, aforementioned, whereby the learned trial Court had declined to accept the defendant-respondent's written statement, the learned trial Court observed, 'On perusal of the CR it appears that the defendant received copies on 30.7.2003 and filed his W/S on 23.2.2004, which is beyond the period of 90 days and hence the W/S filed by the defendant is not accepted and shall proceed exparte against the defendant.'

34. While considering the observations so made by the learned trial Court, it is of great significance to note that the learned trial Court has recorded that perusal of the record 'appears' to suggest that the defendant had received the copies on 30.7.2003. Is this finding tenable in the facts of the present case? The answer to this question is not very far to seek, for, there was absolutely no finding reached by the learned trial Court, in its order, dated 9.9.2003, that the petitioner's grievance, made on 9.9.2003, that the copies of the documents had not been supplied to the defendant, were unfounded and/or that the copies of the documents, as directed by the Court, had been furnished to the defendant. Moreover, a microscopic reading of the objection filed, by the plaintiff-respondent to the defendant-petitioner's prayer for review of the order, dated 25.4.2004, aforementioned, reveals that the plaintiff-respondent, on this aspect of the case, averred, thus : 'It is submitted that though it is reflected from the Order sheet dated 9.7.2003 that this Court directed the plaintiff to supply the copies of plaint and documents, the copy of the plaint was supplied on 30.7.2003. Since the documents relied upon by the plaintiff were not made the part of the plaint and filed separately, the same were not supplied. At the time of receipt of the documents on 30.7.2003, the defendant did not object for non-supply of documents and consequently, this Court was pleased to fix 9.9.2003 for written statement. Had the objection been raised, this Court would not have fixed 9.9.2003 for written statement.'

35. From a close reading of what have been averred by the plaintiff-respondent, it clearly transpires that the plaintiff-respondent did not, as a matter of fact, furnish to the defendant-petitioner the copies of the documents in term is of the directions given by the learned trial Court. In the face of this admitted position, there can be no escape from the conclusion that the finding of the learned trial Court, in its order, dated 5.4.2004, to the effect that the copies of the documents had been supplied to the defendant-petitioner was wholly perverse. No wonder, therefore, that even in the Order passed by the learned trial Court, in the review application on 26.9.2005, the learned trial Court, in fact, did not record a positive finding that the copies of the documents had, indeed, been supplied to the plaintiff-respondent.

36. While considering what has been pointed out above, it is of paramount importance to note that when a Court directs a plaintiff to furnish copy of a document to the defendant to enable the defendant to file written statement, time will not start running against the defendant until the copy of the document is made available to the defendant by the plaintiff. In the case at hand, as a result of the plaintiff's omission to supply the copies of the documents to the defendant, when the time had not started running against the defendant, the fact that the defendant had filed the written statement did not absolve, nor can it be held to have absolved, the plaintiff from the responsibility of furnishing the copies of the documents to the defendant. In fact, the plaintiff-respondent had been playing hide and seek with the directions given by the learned trial Court. In the face of these facts, the delay, which had occurred in filing the written statement, could not have been regarded as delay at all, for, the defendant was not obliged under the law to file written statement even on 25.4.2004 inasmuch as the plaintiff, despite clear directions given by the Court, had not furnished to the defendant the copies of the documents as indicated hereinbefore. The fact that the defendant had, eventually, filed the written statement, though not within 90 days of the receipt of the summons, could not have condoned the defiance of the plaintiff to carry out the directions of the Court passed in this regard and the defendant could not have been allowed to reap the benefit of its own omissions and wrong to carry out, deliberately and intentionally, the directions of the Court, for, it has been the consistent case of the plaintiff that the defendant was not entitled to copy of any documents. I have already held hereinabove that in a given case, it is within the powers of the civil court to direct the plaintiff to supply to the defendant copy of such document(s), which the court considers necessary in the interest of justice. When the directions given by the learned trial Court in its order, dated 9.7.2003, to the plaintiff to supply to the defendant copies of the documents, had remained unchallenged and had attained finality, the defendant was bound to obey and act in terms of these directions and could not have avoided to carry out the directions so given without leave of the Court and, at the same time, reap the consequential benefits thereof.

37. I may also hasten to add and reiterate that what emerges from the observations made in Rani Kusum (supra), Salem Advocate Bar Association

(supra), Kailash (supra) and Shaikh Salim Haji Abdul Khayumsab (supra) is that procedural law is handmaid of justice and cannot be made an obstruction in the court's way to do justice. The consequence flowing from such an interpretation of Order VIII, rule is that in an appropriate case, court can extend the period of 90 days for filing of the written statement if a plaintiff has not, in terms of the directions of the court, supplied to a defendant the copy of the plaint. Ideally, therefore, the learned trial Court ought to have excluded, while computing, as envisaged in Order VIII, Rule 1, the period of 90 days, the period during which the plaintiff, despite directions having been given, in this regard, to the plaintiff by the learned trial Court, had not furnished to the defendant the copies of the documents, which the plaintiff had relied upon.

38. In the backdrop of the fact that the court is not disempowered, under Order VIII, Rule 1, to accept, in an appropriate case, a written statement filed beyond the period of 90 days of the service of summons on the defendant, when the facts of the present case are considered, it clearly emerges that the plaintiff-respondent having not, in terms of the directions given by the learned trial Court, furnished to the defendant the copies of the documents, could not have legally objected to the acceptance of the written statement. In fact, as already indicated hereinabove, the 'time' had stopped running against the defendant due to omission, on the part of the plaintiff, to supply to the defendant the copies of the documents and, in such circumstances, the learned trial Court ought to have accepted the defendant's written statement rather than penalising the defendant, in short, when the defendant had already filed written statement without the copies of the documents having furnished to the defendant, the learned trial Court ought to have, in the facts and attending circumstances of the present case and the law relevant thereto, accepted the written statement. Viewed, thus, the order, dated 5.4.2004, whereby the learned trial Court declined to accept the written statement as well as the order, dated 26.9.2005, which was made on the review application, are all orders, which suffer from total non-application of mind. Such orders, as the ones, which stand impugned in the present revision, shall, if, allowed to stand good on record, cause serious miscarriage of justice. this Court, therefore, in exercise of its, at least, supervisory jurisdiction under Article 227 of the [Constitution of India](#), must step in and remedy the wrongs caused to the defendant-petitioner.

39. Because of what have been pointed out above, I do not find that the present one is a case, where the defendant-petitioner's written statement could have been declined to be accepted by the Court.

40. In the result and for the reasons discussed above, this writ petition succeeds. The impugned orders, dated 5.4.2004 and 26.9.2004, are hereby set aside and quashed. The learned trial Court is hereby directed to pass, in the light of the observations made in the preceding paragraphs of this judgment, appropriate order(s) on the written statement filed by the defendant-petitioner.

41. In view of the fact that the suit needs to be expeditiously disposed of, the parties to the suit are hereby directed to appear in the learned trial Court on 4.4.2006 and the learned trial Court shall, then, deal with the suit in accordance with law and dispose of the same expeditiously and, preferably, within a period of four months from today.

42. With the above observations and directions, this writ petition shall stand disposed of.

43. No Order as to costs.