

S.K. MuddIn Vs. S.K. Nafees

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Court : Madhya Pradesh

Decided On : Sep-04-2003

Reported in : 2003(4)MPHT93

Judge : S.K. Pande, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 and 151 - Order 8, Rule 1

Appeal No. : Civil Revision No. 550/2003

Appellant : S.K. Muddin

Respondent : S.K. Nafees

Advocate for Def. : None

Advocate for Pet/Ap. : K.P. Verma, Adv.

Judgement :

ORDER

S.K. Pande, J.

1. Arguments heard.

2. This revision is directed against the order dated 4-2-2003, passed by IV Civil Judge, Class I, Jabalpur in C.S. No. 53- A/2002 declining to accept the written

statement filed by the defendant/applicant.

3. As' per impugned order, the defendant/applicant filed written statement after the period of 90 days prescribed under Order 8 Rule 1, CPC. Therefore, the Court below declined to accept it.

4. With reference to decision of this Court in Asarfi Lal v. Smt. Vimla Devi and Ors., 2003(3) M.P.H.T. 14 (NOC) and Smt. Kusum Bat and Anr. v. Ghasiram and Ors., 2003(3) M.P.H.T. 15 (NOC), learned Counsel for the applicant states that the proviso to Order 8 Rule 1 is directory and not mandatory.

5. Where the reason for not filing the written statement within 90 days time was explained, the Court ought not to have declined to accept the written statement. Even otherwise, the Court is not seized of the jurisdiction to accept the written statement on filing of application under Section 151, CPC stating the delay if any. Even under Section 151, CPC, where the circumstances explaining the delay are demonstrated in the case itself, the Court below suo-motu may invoke the inherent jurisdiction in accepting the written statement filed beyond the period of 90 days as stipulated under Order 8 Rule 1, CPC.

6. The revision is accordingly disposed of with the direction to the Court below to accept the written statement as filed by the defendant/applicant and to proceed further with the trial. No order as to costs.

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