

CS 616/18

Prashant Sharma Vs. Deputy Director (HORTICULTURE)

07.12.2022

Present: Sh. J.K. Chawla, ld. counsel for plaintiff.
Sh. Jatin Handa, ld. proxy counsel for defendant no.1.

Arguments on the application seeking opening of the defence and thereby permitting the defendant no.1 to place on record written statement heard at length.

Ld. counsel for applicant/defendant submits that due to internal delay and latches within the Government Department and non approval of the Brief Transmission Form, the written statement could not be filed well within the time and thus, this court closed the right to file the written statement vide order dated 03.04.2019. In support, he has relied upon case titled as “***Kailash Vs. Nanhku & Ors.” Appeal (Civil) 7000 of 2004***, decided by Hon'ble Supreme Court on 06.04.2005, wherein it is held that Order VIII Rule 1 of CPC is not mandatory, but directory in nature.

Per contra, strongly opposed by ld. counsel for plaintiff on the ground that merely because the defendant is a government body, the statutory period to file the written statement would not extend automatically. Further, even after grant of sufficient opportunities and imposition of cost vide order dated 26.02.2019, written statement was not filed which reflects the state of affairs and disregard of the judicial system by the defendant. He further submits even the instant application was filed at the stage of cross-examination of PW1 and defendant no.1 deserves no leniency from this court as it would seriously prejudice the rights accrued in favour of the plaintiff. In support, he has relied upon case titled as “***Sham Kapoor Vs. Suraj Prakas Kapoor & Ors.***” AIR 2004 Delhi 302, wherein it is held that:

“7. In the present case, there is no denying the fact that in
Contd....

spite of more than enough opportunities granted to the appellant-defendant to enable him to file his written statement, he kept on postponing filing of his written statement on one pretext or the other. Indulgence shown to him by the learned single Judge from time to time was stretched by the appellant-defendant to an extent of misusing the liberty granted to him in that regard. Even the condition that failure to file his written statement within ten days in terms of order dated 06.02.2003, would automatically lead to closure of his right to file the written statement, did not add to urgency and the appellant-defendant took his own time in approaching the learned single Judge with an I.A. No.8910/03 seeking enlargement of time to file his written statement.”

Submissions heard. Record perused. Considered.

Admittedly, in this matter, sufficient opportunities were granted to the defendant to file written statement even beyond the statutory period prescribed under CPC. Further, despite imposition of cost vide order dated 26.02.2019, the defendant no.1 paid no heed to the direction of this court and did not file written statement even on the extended period allowed to defendant no.1. This conduct on the part of defendant no.1 is highly condemnable. Further, merely because the defendant no.1 is a government body, ipso facto does not entitle them to hoodwink the process of law. Even the judgment relied upon by the counsel for defendant no.1 in support of his contention is not applicable as it pertains to the stage of order VIII Rule 1 CPC. However, the instant application is filed at the stage of cross-examination of PW1.

In these circumstances, considering the conduct of defendant no.1 and since no reasonable ground shown for non-filing of the written statement, I am not inclined to grant any further opportunity to defendant no.1 to delay the present matter.

Accordingly, the application stands dismissed.

Put up for cross-examination of PW1 on 17.03.2023.

(Ajay Garg)
Additional District Judge-01
(East), KKD Court, Delhi/07.12.2022