

CS No. 1044/2016
Harish Chander Kural v. Jagdish & Anr.

01.07.2022

Present : Sh. M.N.Kural, Id. Counsel for Plaintiff.
Sh. Vireshwar Tyagi, Ld. Counsel for defendant no.1.
Defendant no.2 is already proceeded exparte.

1. I have heard arguments on application under Order 8 rule 1 CPC dated 11.04.2016 filed by the defendant No.1.
2. Ld. Counsel for defendant submits that certain documents required for preparing the Written Statement were to be traced out and it took some time to file the defence and which resulted in delay in filing written statement. Ld Counsel further states that he also moved an application U/s 148 CPC on 26.10.2015 for extension of time to file the written statement. He submits that the said application has also not been disposed of. He submits that the delay caused in filing the defence as also mentioned in application is neither deliberate nor intentional. Ld. Counsel thus has prayed for condonation of delay in filing the Written Statement. In support of his submissions, ld. Counsel has relied upon the judgment in **Siddalingayya v. Gurulingappa & Ors., 2018(3) CLJ 193 S.C** and **Sugandhi (Dead) through LRs v. P.Raj Kumar**, (Decided on 13.10.2020 by Hon'ble Apex Court).
3. Ld. Counsel for plaintiff objects to the application and

contends that defendant was served in June 2015 as is evident from the order dated 06.07.2015, when defendant appeared in person with his advocate. It is submitted that the application, however, has been filed only on 11.04.2016 and the reasons mentioned therein are completely baseless and frivolous. He submits that plaintiff's application under Order 8 rule 10 CPC dated 13.08.2019 seeking pronouncement of judgment is also pending disposal.

4. Though the language of proviso to Rule 1 order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from such non-compliance. (*A.V.Purushottam vs. N.K.Nagaraj AIR 2003 Kant 417*). The provision being in the domain of procedural law, has to be held directory and not mandatory and as such the Court's power to extend the time for filing Written Statement beyond the time schedule provided in Order 8 rule 1 CPC is not completely taken away.
5. I am aware of the settled law laid down by Hon'ble Superior Courts which mentions that there is no straight jacket formula which can be uniformly applied in all the cases without reference to the peculiar facts and circumstances of a given case while considering the case of condonation of delay. Liberal construction of the expression "*sufficient cause*" is intended to advance substantial justice which by itself presupposes no negligence or inaction on the part of the

applicant, to whom want of bonafide is imputable. The decisive factor in considering the condonation is not the length of delay but sufficiency of a satisfactory explanation.

6. Coming to the facts of present case, the defendant appeared on 06.07.2015 but did not file written statement. Instead defendant moved an application on 26.10.2015 seeking extension of time in filing his defence. Prima facie the same was not entertainable, given the mandate of the provision itself which stipulates that the said period cannot be enlarged for more than thirty days in total. It is further noteworthy to mention that defendant did not move any application seeking condonation of delay at the earliest after his first appearance. Present application was filed by defendant only on 11.04.2016 i.e. after a period of more than nine months of service of summons. There is no explanation muchless plausible one for such delay.
7. I observe that the reasons cited by defendant in application are not seemingly to be appealing ones, more particularly, the reason for not filing the application seeking condonation of delay immediately after coming to know of proceedings. However, the matter is at the nascent stage. The procedural violations may not seriously caused any prejudice to the other side. The courts must lean towards substantial justice rather than relying upon procedural or technical violations. I feel that declining an opportunity to put forth the defence of

defendant may cause prejudice and the matter should be taken up on merits.

8. Hence, I feel it appropriate to allow the application subject however, to costs of Rs. 10,000/- to be paid to plaintiff within a week. Subject to compliance of the aforesaid, Written Statement of defendant no.1 is taken on record.
9. Relist the matter for filing of replication, if any and affidavits for the purpose of admission-denial of the documents (copies be exchanged) and settlement of issues on 29.10.2022. Parties may file proposed issues.

(RAVINDER BEDI)
Additional District Judge-02
Shahdara/KKD/Delhi : 01.07.2022