

Kesar Singh vs Anil Kumar Gupta

CS493/17

24.05.2018

Present: None.

ORDER

1. By this order I shall dispose off application u/o 8 Rule 1 CPC filed on behalf of defendant.

2. It is stated in the aforesaid application that father in law of defendant was ill and on 03.01.2018 he died and due to this reason, defendant could not contact his counsel and file written statement within statutory period. Hence applicant /defendant has prayed to condone the delay in filing the written statement and the same be taken on record.

3 It is argued on behalf of plaintiff that defendant was served on 06.10.2017, however, he filed WS on 25.01.2018, as such, there is a delay of around 109 days. He further argued that copy of plaint as well as documents have been supplied to the defendant on 15.11.2017. Hence, sought dismissal of the application.

4. Submissions heard. Record perused.

5. Record shows that defendant has prayed for

condonation of delay in filing of WS on the ground that his father in law was ill and on 03.01.2018 he died and due to this reason he failed to contact his counsel as well as to file written statement within statutory period.

Record further shows that defendant was served on 06.10.2017 and copy of plaint as well as documents have been supplied to the defendant on 15.11.2017 and thereafter he filed WS on 25.01.2018. As such, there is delay of around 40 days in filing of written statement by defendant which is beyond the statutory period of 30 days and within 90 days.

In case law reported as **R.N Jadi & Brother and Ors. vs. Subhashchandra MANU/SC/7775/2017 AIR 2007SC 2751**, Hon'ble Supreme Court has held that :

14. It is true that procedure is the handmaid of justice. The Court must always be anxious to do justice and to prevent victories by way of technical knockouts. But how far that concept can be stretched in the context of the amendments brought to the code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was party to the decision in *Kailash vs. Nanhku* which held that the provision was directory and

not mandatory. But there could be situation where even a procedural provision could be construed as mandatory, no doubt retaining a power in the Court, in an appropriate case, to exercise a jurisdiction to take out the rigour of that provision or to mitigate genuine hardship. It was in that context that in *Kailash vs. Nanhku* it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inheriting in the Court in terms of Section 148 of the Code. *Kailash* is no authority for receiving written statement, after the expiry of the period permitted by law, in a routine manner.

15. A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with

caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the Court for extension inhering in Section 148 of the Code, has also been restricted by the legislature.”

6. In light of aforesaid judgment, submissions on behalf of parties as well as in the interest of justice, this court is of the considered opinion that defendant has given sufficient reason for condonation of delay in filing of WS and same is not intentional or deliberate. Hence, application for condonation of delay in filing written statement stands allowed. Written statement is taken on record.

Put up for replication if any, admission denial of documents and framing of issues on 20.08.2018

(Dr.Hardeep Kaur)
ADJ-02(SHD)/KKD/Delhi/24.05.2018