

**IN THE COURT OF MOHD. FARRUKH: ADJ:SW  
PILOT COURT: DWARKA COURT: NEW DELHI**

CS No.656/2017

Nirmala Gupta

versus

Rajesh Kumar Garg & Ors.

**ORDER**

1. By virtue of this common order, I shall dispose off two applications, one filed by the defendant nos.1 & 2 under Order 8 Rule 1 & 9 read with Section 151 CPC seeking extension of time in filing the written statement and second application under Order 8 Rule 10 CPC filed by the plaintiff to struck off the defence of the defendant nos.1 & 2.

2. Brief facts leading to the controversy between the parties are that the present suit has been filed by the plaintiff seeking declaration, possession and damages/use of

occupation charges/mesne profits and permanent injunction. Defendant nos.1 & 2 were served on 04.08.2017 thereafter defendant nos.1 & 2 instead of filing of written statement preferred to file an application under Section 10 read with Section 151 CPC seeking stay of the trial of the suit. The said application of defendant nos.1 & 2 was dismissed by this court vide order dated 31.10.2017. In the meantime, the plaintiff filed an application under Order 8 rule 10 CPC to struck off the defence of defendant no.1 & 2 since these defendants have not filed written statement within the statutory period despite the opportunity.

3. In the application under Order 8 Rule 1 & 9 read with Section 151 CPC filed by the defendant no. 1&2, it is averred that they could not file written statement bonafidely believing that if their application under Section 10 CPC is allowed, there would be no purpose in filing a detailed written statement.

4. Heard. Record Perused.

5. As per the record, statutory proper of 30 days and

further extended period of 60 days for filing the written statement has already expired. Admittedly, the written statement has been filed beyond the statutory period. The parameters for extending the time granted by Order VIII, Rule 1 of CPC have been delineated by the Hon'ble Supreme Court in ***Kailash v. Nanhku and Ors.*** 2005(4) SCC 480 and it was held as under:-

“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 CPC 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.

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.**

*(Emphasis supplied)*

6. From the ratio laid down in the above case, it is crystal clear that the Court is not powerless to accept the written statement which was filed after the expiry of 90 days prescribed in Order VIII, Rule 1 CPC but the restriction on the part of the Court in accepting the written statement after the expiry of 90 days mentioned in Order VIII, Rule 1 CPC is that the Court should see and satisfy itself whether there are sufficient reasons for the delay in filing the written statement by the defendant and also as to whether the non-acceptance of the written statement would cause injustice to the defendant.

7. In the factual circumstances and settled law discussed above, this Court is of the considered view that though the ground taken by defendant nos.1 & 2 for seeking extension in filing the written statement on the premise that their application under Section 10 CPC seeking stay was pending, is not sufficient, however, injustice would be caused to the defendant nos.1 & 2 if their defense is not taken on record. Moreover, for fair disposal of the present suit and also that injustice would be caused to the defendant nos.1 & 2, if the written statement

which has already been filed, is to return only because it happens to be accepted after the expiry of 90 days and therefore, application under 8 Rule 1 & 9 read with Section 151 CPC filed by defendant nos.1 & 2 is allowed however, subject to cost of Rs.5,000/- to be paid by the defendant nos.1 & 2/applicants to the plaintiff to compensate her for the delay and inconvenience caused to her.

8. In view of the above reasons, application U/o 8 Rule 1 & 9 read with Section 151 CPC filed by the defendant nos. 1 & 2 is allowed and accordingly application under Order 8 Rule 10 read with Section 151 CPC filed by the plaintiff is dismissed. It is made clear to defendant nos.1 & 2, their written statement would be taken on record subject to payment of cost. Accordingly, both the applications are disposed off.

Announced in the open court  
today i.e. on 14.11.2017

(MOHD. FARRUKH)  
ADJ- SW:PILOT COURT  
DWARKA COURT/NEW DELHI

