

IN THE COURT OF SMT RAJ RANI MITTRA:
ADDL. DISTRICT JUDGE-04 : SOUTH-WEST DISTT:DWARKA
COURTS:NEW DELHI:

CS No.936/2018

SMT SANTOSH DEVI
VS
SHRI ASHOK KUMAR VERMA

Date of filing of suit/appeal:	13.02.2018
Date of reserving judgment:	23.07.2018
Date of pronouncement :	25.07.2018

APPLICATION UNDER ORDER VIII RULE 1 CPC FILED ON BEHALF OF
DEFENDANT SEEKING EXTENSION OF TIME IN FILING THE WRITTEN
STATEMENT

ORDER

1. By this order, I shall dispose off an application under Order VIII Rule 1 CPC filed on behalf of defendant whereby the defendant has sought extension of time in filing the written statement.
2. Reply to the aforesaid application has been filed on behalf of the plaintiff.
3. I have heard Rananjay Kumar, learned counsel for the applicant/defendant, Shri Narender Singh, learned counsel for the plaintiff and have gone through the material on record.
4. Learned counsel for the applicant/defendant has argued that defendant was served on 13.11.2017 and appeared before this court on 04.12.2017. He has argued

that the earlier counsel engaged by defendant could not prepare the written statement since he was preparing for his travel to China to attend a programme conducted by China Law Society. He has further argued that the delay may be condoned in filing the written statement.

5. On the other hand, learned counsel for the plaintiff has argued that period of delay has not been mentioned by the defendant in his application and thus tried to mislead the court. He has further argued that no ground for condonation of delay has been made out.

6. Written statement has been filed by the defendant in this case on 13.02.2018 i.e. after about 90 days of service of the defendant. Order VIII Rule 1 states that defendant shall file written statement within thirty days from the date of service of summons on him. Court in exceptional cases can extend the time beyond 90 from the date of service of summons. Further, the time of 120 days can be granted with the discretion of the court. It is also to be noted that though the power of the court under the proviso appended to rule 1 of Order VIII is circumscribed by the words “shall not be later than ninety days” but the consequences flowing from non- extension of time are not specifically provided though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form; Rani Kusum vs Smt Kanchan Devi, AIR

2005 SC 3304.

7. In the interest of justice and on a harmonious construction of Order VIII, Rule 1 and Section 148 it is possible to hold that even in a case where the written statement has not been filed within 90 days of receipt of summons by the defendant, in an appropriate case, on his showing good cause, the court can extend the time beyond the period of 90 days.
8. In view of the facts and circumstances of the case, the written statement filed on behalf of the defendant may be taken on record at this stage, however, plaintiff can be suitably compensated by way of costs. Hence, the application under Order VIII Rule 1 stands allowed. Written statement of defendant filed on 13.02.2018 is taken on record subject to costs of Rs.3000/-.
9. The application stands disposed off accordingly.

**Announced in the open court
on 25.07.2018**

**(RAJ RANI MITTRA)
ADJ-04/SW/DWARKA
NEW DELHI/25.07.2018**