

CNR No: WBSP01-012157-2018

Present: Subhra Som Ghosal

J.O Code: WB00984

MAT Suit No: 01 of 2021

Order No. 34, dated: 05-04-2024.

Both parties to this proceeding are present by filing their respective haziras through their Ld. Advocates.

As stipulated by the previous order today is fixed for reconciliation by the Id. Presiding Officer who was in charge of this Court on the previous date. However, it has appeared that the W/S is yet to be accepted.

Toady a petition has been filed under Order VIII rule 01 of the Code of Civil Procedure. Copy of the petition has been served on the Ld. Advocate for the other side.

On call Ld. Advocates for both the parties are found to be present.

Hence the case record is taken up for hearing of the petition filed under Order VIII rule 01 of the Code of Civil Procedure, 1908.

Heard Ld. Advocates for both sides.

Before proceeding to dispose the petition, I find it condign to give a vignette of the chronicles of this case. This suit was filed by the petitioner/wife before the Learned District & Sessions Judge, North 24 parganas, praying restitution of conjugal rights under section 22 of the Special Marriage Act, 1954. At that time the suit was numbered as Mat Suit No. 78 of 2018. Prior to filing of such suit, the respondent herein filed a suit praying for divorce before the Learned District & Sessions Judge, South 24 parganas at Alipore and it was numbered as Mat Suit No. 97 of 2018 and it is now pending before this Court. While both suits were pending in different jurisdictions, the petitioner/wife moved the Hon'ble High Court by filing C.O No. 1436 of 2018 and prayed for transfer to the Mat Suit No. 78 of 2018 from Learned District & Sessions Judge, North 24 parganas to any Court at Alipore. Such prayer was allowed by the Hon'ble High Court and the Mat Suit No. 78 of 2018 was transferred from Learned District & Sessions Judge, North 24 parganas to the Court of Learned Additional District & Sessions Judge, 14th Court, Alipore. Before the Learned Additional District & Sessions Judge, 14th Court, Alipore the suit was renumbered as MAT Suit No. 01 of 2021. Thereafter the suit was transferred to the Court of Learned Additional District & Sessions Judge, Fast Track, 02nd Court, Alipore by the order of the Learned District & Sessions Judge, South 24 parganas at Alipore. Again the suit was transferred from Learned Additional District & Sessions Judge, Fast Track, 02nd Court, Alipore to this Court. While the MAT Suit No. 78 of 2018 was pending before the Learned District & Sessions Judge, North 24 parganas, the respondent/husband filed the petition under Section 10 of the Code of Civil Procedure. Such petition has been disposed of by order dated 08-01-2024 and both the suits are now being tried analogously. Thereafter the W/S has been filed by the respondent in this suit.

By filing the petition, the petitioner has prayed for fixing this suit for ex parte hearing. The Ld. Advocate for the petitioner in resonance to the petition has submitted that there has been a delay of six years in filing the W/S and such enormous delay cannot be condoned by this Court as the respondent has failed to show any plausible explanation. The prayer was opposed by the Ld. Advocate for the respondent, and it was argued that in the peculiar facts and circumstances of this case, the case was never fixed for ex parte hearing and the

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respondent has filed the W/S at the first opportunity. It was also argued that the delay that has been manifested by the petitioner is not at all attributable to the respondent and no culpability can be attached to the respondent. In the lights of the above submissions the Ld. Advocate for the respondent prayed for acceptance of the W/S and giving fair opportunity to the respondent to contest the prayer of the petitioner.

The prayer of the petitioner is based on the rigors of Order VIII Rule 01 of the Code of Civil Procedure, 1908. The provision provides that the defendant shall file his/her written statement within 30 days from the date of service of summons. However, the proviso attached to Rule 01 provides that in case, defendant fails to file the written statement within the stipulated period of 30 days, then he/she shall be allowed to file the same on such other day as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than 90 days from the date of service of summons.

The learned advocate for the petitioner has tried to impress this Court that this provision has a compelling effect and in the facts and circumstances there is no room to allow the respondent to file his W/S. With due respect to the same, I cannot concur with such view for the reasons enumerated herein after. In case of ***Salem Advocate Bar Association Tamil Nadu v. Union of India (2005) 6 SCC 344***, the Hon'ble Supreme Court has held that the provision of Order VIII Rule 01 of the Code of Civil Procedure, 1908 providing for the upper limit of 90 days to file the written statement is discretionary. Again in case of ***Zolba v. Keshao and others*** reported in ***(2008) 11 SCC 769***, the Hon'ble Supreme Court following the judgment of Salem Advocate Bar Association (supra) held in paragraph 15 as under:-

"15. Therefore, following the principles laid down in the decision, as noted hereinabove, it would be open to the court to permit the appellant to file his written statement if exceptional circumstances have been made out. It cannot also be forgotten that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Therefore, unless compelled by express and specific language of the statute, the provisions of Order 8, Rule 1 of CPC or any procedural enactment should not be construed in a manner, which would leave the court helpless to meet extraordinary situations in the ends of justice."

The Hon'ble Supreme Court in case of ***Desh Raj v. Balkishan (D) Through Proposed LR Ms. Rohini; 2020 (2) SCC 708*** held in paragraph no. 16 as under:-

"16. However, it would be gainsaid that although the unamended Order VIII Rule 1 of CPC is directory, it cannot be interpreted to bestow a free hand to on any litigant or lawyer to file written statement at their own sweetwill and/or to prolong the lis. The legislative objective behind prescription of timelines under the CPC must be given due weightage so that the disputes are resolved in a timebound manner. Inherent discretion of Courts, like the ability to condone delays under Order VIII Rule 1 is a fairly defined concept and its contours have been shaped through judicial decisions over the ages. Illustratively, extreme hardship or delays occurring due to factors beyond control of parties despite proactive diligence, may be just and equitable instances for condonation of delay."

The Hon'ble Supreme Court in ***Sangram Singh v. Election Tribunal Kotah & Anr. AIR***

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1955 SC 425 has held as under:-

"A code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

Again the Hon'ble Supreme Court in case of ***Rajinder Tiwari v. Kedar Nath (Deceased) Thr L.Rs. & Ors. ; 2019 (14) SCC 286*** has held in paragraph 18 as under:

"18. It is a settled law that all the contesting parties to the suit must get fair opportunity to contest the suit on merits in accordance with law. A decision rendered by the Courts in an unsatisfactory conducting of the trial of the suit is not legally sustainable. It is regardless of the fact that in whose favour the decision in the trial may go."

From the observations of the Hon'ble Supreme Court as enunciated above, it is well settled that the provision of Order VIII Rule 01 of the Code of Civil Procedure, 1908 is discretionary and this Court in exercise of its discretion may permit the respondent to file written statement even after the statutory period of 90 days, as provided by Order VIII Rule 1 of the Code of Civil Procedure, 1908. Definitely this discretion has to be exercised reasonably for advancement of justice.

As mentioned above, there is a long history of this litigation and after travelling through several Courts, this suit is now pending before this Court. Hence the delay cannot be attributed to the respondent alone. At this stage, I must hasten to articulate that all the rules of procedure are handmade of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. The reason for the delay has to be understood in its proper spirit and keeping in mind the philosophy and purpose of Order VIII rule 01 of the Code of Civil Procedure, 1908. The provision must not be readily invoked to curtail the right of the respondent to ventilate his case against the prayer of the petitioner rather is to be applied in a proper perspective taking a pragmatic justice oriented and not pedantic approach.

In the facts and circumstances of this case, this Court finds that the W/S that has been filed needs to be accepted and the case must proceeding balancing the rights and liabilities of both the parties, especially when it is now being tried analogously with the suit for divorce.

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Fix 30-04-2024 for reconciliation.

Typed to the dictation directly;
corrected on the system.

Sd/-Subhra Som Ghosal

Additional District and Sessions Judge,
01st Court, Alipore, South 24 parganas.

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01st Court, Alipore, South 24 parganas.