



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 12037 OF 2021 (GM-CPC)

BETWEEN:

DEVARAJ
SINCE DEAD BY LRS

1. DEVAMMA
W/O LATE DEVARAJU
AGED ABOUT 70 YEARS
2. MOHAN D
S/O LATE DEVARAJU
AGED ABOUT 45 YEARS
3. JAYAMMA D
S/O LATE DEVARAJU
4. RAGHU
S/O LATE DEVARAJU

PETITIONERS 1 TO 4
ALL ARE RESIDING AT
HUCCHENAKOPPALU
KASABA HOBLI,
HOLENARASIPURA TALUK
HASSAN DISTRICT - 573211

...PETITIONERS

(BY SRI. UMESH MOOLIMANI, ADVOCATE FOR
SRI. S.V.PRAKASH., ADVOCATE)



AND:

1. SANNASWAMY
S/O LATE KENGIAH
AGED ABOUT 67 YEARS
R/O HUCCHENAKOPPALU
KASABA HOBLI,
HOLENARASIPURA TALUK
HASSAN DISTRICT - 573211
2. RAMA
S/O LATE KENGIAH
AGED ABOUT 67 YEARS
R/O HUCCHENAKOPPALU
KASABA HOBLI,
HOLENARASIPURA TALUK
HASSAN DISTRICT - 573211

...RESPONDENTS

(R1-SERVED AND UNREPRESENTED;
NOTICE TO R2-HELD SUFFICIENT V/O DTD:18.07.2024)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DTD.14.03.2019 PASSED BY THE COURT OF LEARNED CIVIL JUDGE AND JMFC, HOLENARASIPURA IN O.S.NO. 117/2018 ON I.A.NO.V, PRODUCED AS PER ANNEXURE-D TO THE WRIT PETITION.

THIS WRIT PETITION, COMING ON FOR HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. The present petition seeks to challenge an order dated 14.03.2019, passed by the learned Civil Judge and JMFC at Holenarasipura, on I.A.No.V in O.S.No.117/2018



[hereinafter referred to as the 'Impugned Order']. By the Impugned Order, an application, I.A.No.V filed under Section 151 of the Code of Civil Procedure, 1908 [hereinafter referred to as the 'CPC'] filed by the original petitioner/defendant [to extend the time to file the Written Statement], has been dismissed by the learned Trial Court, giving a finding that the application has been filed belatedly and at the frog end [*sic* fag end] of the Trial.

2. The learned counsel for the petitioner/defendant submits that while the petitioner/defendant had been served on 10.05.2018, he did not file his Written Statement till 04.01.2019 and along with his Written Statement, he filed an application for condonation of delay. The learned counsel for the petitioner/defendant further submits that although a wrong provision was invoked, the application was filed seeking extension of time to file the Written Statement. He submits that the delay in filing the Written Statement only occurred in view of the fact that the relevant documents could not be



obtained in time. He further submits that the delay was not intentional and would not cause any *prejudice*, since the suit was only filed on 17.04.2018 and it was within the first few months of the filing of the suit that this application was filed.

3. None appears for the respondent No.1/plaintiff, despite service. Given the pendency of the matter for almost five years, and the fact that the stay of the Trial Court proceedings was granted by this Court on 08.07.2021 which has continued as is since then, this Court deems it apposite to hear and decide the matter today.

4. The record reflects that a suit for partition and separate possession was filed by the respondents/plaintiffs on 17.04.2018 against the original petitioner/defendant. It is stated in the suit that the parties are the children of one Kengaiah and Sanna Devamma and that the suit has been



filed for partition of the undivided Joint Family Properties, in which, all the parties have an equal share.

5. It is the case of the petitioner/defendant in the Written Statement that the shares of the parties are not equal. However, the Written Statement was not taken on record by the learned Trial Court, since it was filed after the expiry of a period of 120 days.

6. The learned Trial Court has in the Impugned Order relied on a judgment of the Supreme Court in the case of ***Salem Advocate Bar Association, Tamil Nadu Vs. Union of India***¹, to hold that the provisions of Order VIII Rule 1 of the CPC are not mandatory but directory in nature [since this is a civil suit and not a commercial dispute]. The learned Trial Court further goes on to wrongly rely on the judgment in the case of ***M/s. SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. & Others***², to hold that a delay beyond 120 days in filing the Written Statement is not

¹ (2005) 6 SCC 344

² (2019) 12 SCC 210



extendable. However, the judgment in the ***M/s.SCG Contracts'*** case has been passed in a commercial dispute and would not be applicable in the present facts. The learned Trial Court further sets out that there is an inordinate delay in filing the Written Statement.

7. Order VIII Rule 1 of the CPC provides for a Written Statement to be filed within 30 days, condonable and on an application, for upto 90 days. Order V Rule 1 of the CPC provides that the Written Statement shall be filed within 30 days from the date of summons and where the defendant fails to file the Written Statement, he will be allowed to file the Written Statement, within a period of 90 days from the date thereof. Thus, the Written Statement is ordinarily required to be filed within 90 days of the date of receipt of summons unless the Court for reasons in writing permits additional time. Order VIII Rule 1 of the CPC as well as Order V Rule 1 of the CPC, are set out below:



"Order VIII Rule 1 of the CPC

1. Written Statement.—*The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:*

Provided that where the defendant fails to file the written statement within the said period of thirty days, he 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 ninety days from the date of service of summons.

Order V Rule 1 of the CPC

1. Summons.— (1) *When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:*

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he 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 ninety days from the date of service of summons."

8. The Supreme Court in the case of **Kailash Vs. Nanhku & Ors.**³ has held that since the provisions of Order VIII Rule 1 of the CPC are directory in nature, the delay in filing the Written Statement could be

³ (2005) 4 SCC 480



HC-KAR

compensated with costs. The relevant extract is set out below:

"27. Three things are clear. Firstly, a careful reading of the language in which Order 8 Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. **The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Secondly, the nature of the provision contained in Order 8 Rule 1 is procedural.** It is not a part of the substantive law. Thirdly, the object behind substituting Order 8 Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

28. **All the rules of procedure are the handmaid 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. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.** The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State of Bihar* [(1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6)



HC-KAR

"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence — processual, as much as substantive."

29. *In State of Punjab v. Shamlal Murari [(1976)1 SCC 719:1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCC p. 720)*

"Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. *Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."*

In Ghanshyam Dass v. Dominion of India [(1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.

30. **It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 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 for though they may be read in 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.

[Emphasis Supplied]

9. This judgment in the ***Kailash's*** case has been followed by the Supreme Court in several judgments including the cases of ***Bharat Kalra v. Raj Kishan Chabra***⁴ and ***R.N.Jadi & Brothers and others Vs. Subhashchandra***⁵ as well. It has been held in ***R.N.Jadi's*** case that the amendments to the CPC introducing time limits for filing written statements were intended to prevent delays caused by defendants and speed up trials. Although, the provision is directory and not strictly mandatory, courts should not grant extensions casually. Delay beyond 90 days can be condoned only in rare and exceptional circumstances with proper reasons, otherwise the purpose of the amendment would be defeated. The relevant extract of ***R.N.Jadi's*** case is mentioned below:

"11. It is notorious that suits were being dragged on by the defendants in suits by not filing their written statements within a reasonable time. We are not unaware of cases where written statements were not filed even

⁴ 2022 SCC OnLine SC 613

⁵ (2007) 6 SCC 420



within two or three years of the filing of the suits. The control expected to be exercised by courts, by the scheme of the Code, was not being exercised leading to slackness in the matter of filing of pleadings in defence. It was in that context that the relevant provisions of the Code of Civil Procedure were amended, the laudable object being to avoid delay in the disposal of suits. **The amended Order 8 Rule 1 fixes a time-limit for the filing of written statements. But, Parliament did not stop with amending Order 8 Rule 1 alone i.e. introducing a time-limit for filing written statements and restricting the power of the court to grant extension of time for filing written statements as 90 days from the date of service of summons. The power for extension of time granted to the court under Section 148 of the Code was curtailed by introducing an outer time-limit of 30 days from the date originally fixed or granted. Thus, the legislative intent to limit or curtail the power of the court to extend the time for filing a written statement is obvious from a conjoint reading of these provisions.**

12. **In addition to the time-limit prescribed in Order 8 Rule 1 of the Code, it is provided in Order 5 Rule 1 that the summons issued to the defendant should itself provide that he has to appear and file his written statement within one month of receipt of it and limiting the power of the court to extend the time for written statement to 90 days. The summons is to be accompanied by a copy of the plaint.** It simultaneously introduced Rule 14 to Order 7 providing that where the plaintiff sues upon a document or relies upon a document in his possession or power, in support of his claim, he shall enter such documents in a list and shall produce it in court when the plaint is presented by him and shall at the same time deliver the document and copy thereof to be filed with the plaint. Sub-rule (3) was introduced to provide that if the document is not included in the list, or is not produced with the plaint, it was not to be produced without the leave of the court and without the leave of the court it shall not be received in evidence on his behalf at the hearing of the suit.

xxx

xxx

xxx



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 a party to the decision in Kailash v. Nanhku [(2005) 4 SCC 480] which held that the provision was directory and not mandatory. But there could be situations 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 v. Nanhku [(2005) 4 SCC 480] 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 inhering in the court in terms of Section 148 of the Code. Kailash [(2005) 4 SCC 480] is no authority for receiving written statements, 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 a 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. ***It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays***



in the disposal of suits filed in courts. The lament of Lord Denning in Allen v. Sir Alfred McAlpine & Sons [(1968) 2 QB 229 : (1968) 2 WLR 366 : (1968) 1 All ER 543 (CA)] that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?"

[Emphasis Supplied]

10. Concededly, the defendant was served on 10.05.2018 and the Written Statement was filed shortly thereafter on 04.01.2019. The reasons as set forth for the delay is that the defendant did not have all the documents available with him and took some time to collate the documents. Thus, it is contended that the Written Statement was delayed.

11. From the facts above, it is clear that there is a delay, however, this delay cannot be said to be 'inordinate'. In addition, the suit cannot be at the 'fag end' of the trial, since the suit was filed only in the year 2018 and pleadings were yet to be completed.

12. Accordingly, and in view of the settled law, the Impugned Order dated 14.03.2019, passed by the learned Civil Judge and JMFC at Holenarasipura, on



I.A.No.V in O.S.No.117/2018, is set aside. The Written Statement filed by the petitioner/ defendant shall be taken on record, subject to payment of total costs in a sum of Rs.5,000/- [Rupees Five Thousand] to be paid to each of the respondents/plaintiffs.

13. The petition is ***allowed*** in the foregoing terms. All pending applications stand closed.

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

BMV*/YN
List No.: 2 Sl No.: 18