CASE NO.:
Appeal (civil) 7000 of 2004

PETITIONER:
Kailash

RESPONDENT:
Nanhku & Ors.

DATE OF JUDGMENT: 06/04/2005

BENCH:
CJI R.C. Lahoti, D.M. Dharmadhikari & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T

R.C. Lahoti, CJI

Facts in brief

Elections of Uttar Pradesh Legislative Council were held pursuant to the Presidential notification dated 7.11.2003. The appellant was declared elected. Respondent No. 1 filed an election petition under Section 80 of the Representation of the People Act, 1951 (hereinafter 'the Act', for short) laying challenge to the election of the appellant.

The appellant was served with the summons, accompanied by a copy of the election petition, requiring his appearance before the Court on 6.4.2004. On the appointed day, the appellant appeared through his counsel and sought for one month's time for filing the written statement. The Court allowed time till 13.5.2004 for filing the written statement. On 13.5.2004, the appellant again filed an application seeking further time for filing the written statement on the ground that copies of several documents were required to be obtained. The Court adjourned the hearing to 3.7.2004 as, in between, from 13.5.2004 to 2.7.2004, the High Court was closed for summer vacation. On 22.6.2004, appellant's advocate's nephew expired. However, the written statement was drafted and kept ready for filing. The registered clerk of the advocate was deputed for filing the same in the Court on the appointed day. The clerk reached Allahabad, the seat of the High Court, from Gazipur where the appellant and his advocate resided. On 1.7.2004, that is, two days prior to the day of hearing, the affidavit of the appellant annexed with the written statement, was sworn in at Allahabad. However, (as is later on stated), on account of lack of understanding on the part of the registered clerk, the written statement could not be filed on 3.7.2004 but the same was filed on 8.7.2004 accompanied by an application for condonation of delay in filing the written statement briefly stating the reasons set out hereinbefore. On 23.8.2004, the High Court rejected the application filed by the appellant and refused to take the written statement on record for the reason that the same was filed beyond a period of 90 days from the date of service of summons, the period of limitation as provided by the Proviso to Rule 1 of Order VIII of the Code of Civil Procedure, 1908 (hereinafter 'the CPC', for short), as introduced by Act 22 of 2002 with effect from 1.7.2002. Feeling aggrieved by the said order, the winning candidate i.e. the defendant-respondent

before the High Court, has filed this appeal by special leave.

We have heard Shri Vijay Hansaria, the learned senior counsel for the appellant, Shri Vijay Kumar, the learned counsel for the respondent (election petitioner), and also Mr. Rakesh Dwivedi, the learned senior counsel, who has on request appeared Amicus Curiae.

Questions for decisions

The learned counsel for the appellant submitted that the provisions of the CPC do not ipso facto and in their entirety apply to the trial of election petition under Chapter II of the Act. Alternatively, he submitted that rules have been framed by the Allahabad High Court making special provisions relating to the trial of election petitions which would override the provisions of the CPC. In the next alternative, the learned senior counsel submitted that the provisions of Order VIII Rule 1 of the CPC being in the realm of procedural law, the time limit contained therein should be construed as directory and not mandatory assuming the provision is applicable to the trial of election petitions. The learned counsel for respondent No. 1 has disputed the correctness of the submissions so made and argued in support of the impugned order of the High Court.

Three questions arise for decision :-

(1) Whether Order VIII Rule 1 of the CPC is applicable to the trial of an election petition under Chapter II of the Act?

(2) Whether the rules framed by the High Court governing the trial of election petitions would override the provisions of CPC and permit a written statement being filed beyond the period prescribed by Order VIII Rule 1 of the CPC?

(3) Whether the time limit of 90 days as prescribed by the Proviso appended to Rule 1 of Order VIII of the CPC is mandatory or directory in nature?

Relevant Provisions

The Representation of the People Act, 1951 (43 of 1951) has been enacted, as its Preamble indicates, to provide for the conduct of elections and other proceedings relating to such elections, as also for the decision of doubts and disputes arising out of or in connection with such elections. Part VI of the Act deals with 'Disputes Regarding Elections'. The provisions contained therein are elaborate and detailed. This Part is divided into five Chapters. Chapter I incorporates Section 79 which is an interpretation clause giving definitions of certain words and expressions which are relevant for the purpose of Parts VI and VII of the Act. Chapter II deals with presentation of election petitions to High Courts. The jurisdiction to try election petitions is conferred on the High Courts. Provisions are made as to by whom and in what manner an election petition shall be presented; who will be parties to the petition; what an election petition must contain and the reliefs which an election petitioner may claim. Chapter III makes provision for trial of election petitions; procedure before the High Court and several rules of evidence applicable to trial of an election petition. What directions __ principal and incidental __ can be made and issued by the High Court in its judgment disposing of an election petition and the grounds on which such directions can be

founded are provided for. Chapter IV lays down the rules governing the discretion of the court in the matter of permitting withdrawal of election petitions and the procedure relating thereto. Provision is made as to when and subject to what procedure an election petition would abate or substitution would be permitted in case of death of a party to the election petition. Chapter V deals with costs and security for costs. Right of appeal and procedure relating thereto are contained in Chapter IVA.

Two points of significance deserve to be noted and highlighted. On all the subjects, suggested by the titles given to the different Chapters, provisions are already available in the CPC which is a pre-existing law. An election petition is a civil trial and if the Parliament had so wished, all the aspects of trial included in Part VI could have been left to be taken care of by the pre-existing law, that is, the CPC. However, the Parliament has chosen to enact separate and independent provisions applicable to the trial of election petitions and placed them in the body of the Act.

Section 87 of the Act provides as under :-

"87. Procedure before the High Court.-(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition."
(emphasis supplied)

"86. Trial of election petitions.__
(1) to (5) xxx xxx xxx
(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial."
(emphasis supplied)

Sub-section (6) of Section 86 of the Act requires trial of an election petition to be continued from day to day until its

conclusion, so far as is practicable consistently with the interests of justice in respect of the trial, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded. Sub-section (7) requires every election petition to be tried as expeditiously as possible with an endeavour to conclude the trial within six months from the date of presentation of the election petition. Thus, the procedure provided for the trial of civil suits by the CPC is not in its entirety applicable to the trial of election petitions. The applicability of the procedure is circumscribed by two riders; firstly, the CPC procedure is applicable "as nearly as may be"; and secondly, the CPC procedure would give way to any provisions of the Act and of any rules made thereunder.

Section 169 of the Act confers power on the Central Government to make rules for carrying out the purposes of the Act. The Central Government is empowered to make rules which may govern the procedure of trial of election petitions. Although, this subject is not specifically mentioned as one of the matters in sub-section (2) which specifies the topics on which the Central Government may frame rules, however, clause (i) of sub-section (2) is a residuary clause which empowers the Central Government to frame rules regarding "any other matter required to be prescribed by this Act." Sub-section (1) of Section 87 of the Act also gives an indication that the statute contemplates the framing of rules under the Act to govern the procedure of trials before the High Court, which, read with the Preamble to the Act, is the source of power for making the rules laying down the procedure for the trial of election petitions. There is no provision in the Act which empowers the High Court to frame the rules governing the procedure of trials before the High Court. However, the High Court is not entirely powerless in the matter of framing the rules of procedure. Article 225 of the Constitution of India confers powers on the High Court, inter alia, to make rules of court for the purpose of hearing, trying and deciding any matter lying within the jurisdiction of the High Court. The High Court can thus frame rules of procedure regarding the trial of election petitions under Article 225 of the Constitution. This source of power emanates from the Constitution and is, therefore, very potent. Section 129 of CPC is another source of power of High Court to make rules to regulate its own procedure in the exercise of its original civil jurisdiction. This will include election petitions also as they are tried in the original civil jurisdiction of the High Court.

The Allahabad High Court has framed several rules in exercise of the powers conferred by Article 225 of the Constitution. Chapter XV-A, consisting of 13 Rules and entitled "Special provisions relating to the trial of election petitions", was added in the body of the rules vide notification dated 7.3.1967. Following Rules are relevant for our purpose and hence are extracted and reproduced hereunder :-

"1. Scope.\027The provisions of this Chapter shall govern the trial of election petitions under the Representation of the People Act, 1951.

xxx xxx xxx

5. Issue of notice to respondent.\027The election petition shall be laid before the Bench so constituted without delay, and unless it is dismissed under sub-section (1) of Section 86 of the Act or for being otherwise defective, the Bench may direct issue of notice to the respondent to appear and answer the claim on a date to be specified therein. Such notice

shall also direct that if he wishes to put up a defence he shall file his written statement together with a list of all documents, whether in his possession or power or not, upon which he intends to rely as evidence in support of his defence on or before the date fixed; and further, that in default of appearance being entered on or before the date fixed in the notice the election petition may be heard and determined in his absence. The notice shall be in Form No. 34-A.

xxx xxx xxx

12. Court's power to give directions in matters of practice and procedure.\027The Bench may, consistently with the provisions of Section 87 of the Act, give such directions in matters of practice and procedure (including the recording of evidence) as it shall consider just and expedient."

A perusal of the several provisions made by the High Court Rules goes to show that the Rules touch many a subject on which provisions are found in the Act itself. Suffice it to observe that in case of conflict, the provisions of the Act and the provisions of the High Court Rules shall, as far as may be, be harmoniously construed avoiding the conflict, if any, and if the conflict be irreconcilable the provisions contained in the Act being primary legislation shall prevail over the provisions contained in the High Court Rules framed in exercise of delegated power to legislate. No such conflict is noticeable, so far as the present case is concerned.

'Trial' of election petition, when it commences?

At this point the question arises : When does the trial of an election petition commence or what is the meaning to be assigned to the word 'trial' in the context of an election petition? In a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial. As held by this Court in several decided cases, this general rule is not applicable to the trial of election petitions as in the case of election petitions, all the proceedings commencing with the presentation of the election petition and upto the date of decision therein are included within the meaning of the word 'trial'.

In Harish Chandra Bajpai v. Triloki Singh 1957 SCR 370, the narrow and wider sense in which the word 'trial' is used came up for consideration of the Court. In its narrow or limited sense, 'trial' means the final hearing of the petition consisting of examination of witnesses, filing documents and addressing arguments. In its wider sense, the word 'trial' indicates the entire proceeding from the time when the petition comes before the court until the pronouncement of decision. In the context of an election petition, it was held that the word 'trial' must necessarily include the matters preliminary to the hearing, such as settlement of issues, issuance of directions and the like. With the receipt of the petition in the High Court, various steps have to be taken before the stage can be set for hearing it. The respondent has to file his written statement and issues have to be settled. The stages of discovery and inspection, enforcing attendance of witnesses and compelling the production of documents do not form part of the hearing in a trial governed by the CPC but precede it. For the purpose of an election petition, the word 'trial' includes the entire proceedings commencing from the time of receipt of the petition until the pronouncement of the

judgment. It was held that hearing of an application under Order VI Rule 17 of the CPC for amending the pleadings would be a stage in the trial of an election petition.

In Om Prabha Jain v. Gian Chand and another 1959 Supp. (2) SCR 516, also this Court refused to assign a restrictive meaning to the word 'trial' in regard to election petitions while interpreting Section 90(3) of the Act as it existed prior to the 1966 Amendment. It was held that an order dismissing an election petition at the very threshold under Section 90(3) for non-compliance with Section 117 would be deemed to be an order at a stage of trial. This view was reiterated by this Court recently in Dipak Chandra Ruhidas v. Chandan Kumar Sarkar (2003) 7 SCC 66, wherein it was held that to be an order passed during the trial of an election petition it is not necessary that at the time of passing of that order there must have been a full dressed trial after taking evidence of the parties; even an order dismissing an election petition summarily for non-compliance with the provisions of Section 81 or 82 or 117 is an order passed during the trial of an election petition.

Two decisions by High Courts deserve to be noticed. They are Duryodhan v. Sitaram & Ors. AIR 1970 Allahabad 1 (FB) and Hari Vishnu Kamath v. Election Tribunal, Jabalpur & Anr. AIR 1958 MP 168. Both the High Courts have taken the view that the word 'trial' undoubtedly has two meanings. It may mean the trial of a controversy that arises from an issue. It may equally mean the trial of an election petition covering the entire process of the litigation from its first seisin by the tribunal (or the Court) to its disposal and would include all the matters even prior to the hearing of the election petition. The matters relating to service of summons, calling for and finalizing the pleadings and settling the issues are all constituent stages of the trial. We find ourselves in agreement with the meaning so assigned to the word 'trial' in the context of election petition.

Receiving written statement being part of 'trial', time can be extended

Once we are clear about the meaning of the word 'trial' in the context of election petition, certain consequences follow. Sub-section (6) of Section 86 of the Act would empower the High Court trying an election petition to adjourn the trial beyond the following day if necessary and for reasons to be recorded. The filing of a written statement being a stage in the trial of an election petition, this provision would empower the High Court to grant a reasonable time for filing of a written statement though for reasons to be recorded. The availability of this power finds support from Rules 5 and 12 of the High Court Rules. Under Rule 5, the High Court has power to fix a date for filing the written statement which power would include the power to fix such date not merely once but again and again depending on the discretion of the High Court. Power to extend time for filing the written statement being a matter of practice and procedure the High Court would be within its power to give such directions in that regard as it shall consider just and expedient within the meaning of Rule 12. This discretion vested in the Court by Rules made under Article 225 for purposes of any special act would not be controlled by the proviso to sub-rule (1) of Order VIII of the CPC.

This position of law does not admit of any doubt as was held in Mohan Raj v. Surendra Kumar Taparia & Ors. (1969) 1 SCR 630, that the CPC applies only subject to the provisions of the Act and the rules made thereunder. The

question arose in the context of Sections 82 and 86 of the Act whereunder a candidate against whom the allegations of corrupt practices were made in the petition and so should have been necessarily joined as respondent under Section 82 but was not joined and Section 86 provides for mandatory dismissal of such a petition. It was held that the defect could not be cured by invoking Order 1 Rule 10 or Order 6 Rule 17 of the CPC to avoid the penalty of dismissal of the petition. In Iridium India Telecom Ltd. v. Motorola Inc. JT 2005 (1) SC 50, this Court affirmed the view taken by a Division Bench of the Bombay High Court that the amended provision of Order VIII, Rule 1 of the CPC would not apply to the suits on the Original Side of the High Court and such suits would continue to be governed by the High Court (Original Side) Rules; the High Court Rules were framed in exercise of the power conferred by Section 129 of the CPC and the Letters Patent and, therefore, were saved by Section 4(1) of the CPC.

Section 87 of the Act is a guarded provision as its language indicates. A few things are noteworthy for determining the nature and character of the provision contained in Section 87. Its title reads \026 "Procedure before the High Court". The applicability of the provision is \026 "subject to the provisions of this Act and of any rules made thereunder". The procedure prescribed by the Code for the trial of suits is not just adopted, and as if incorporated into the Act, so as to govern the trial of election petition. The procedure applicable under the Code to the trial of suits has been made applicable to the trial of every election petition "as nearly as may be". The language of sub-Section (1) of Section 87 has to be read in juxtaposition with the language of sub-Section (2), whereby the provisions of the Indian Evidence Act, 1872 have been made applicable in respect to the trial of an election petition by providing that they shall "be deemed to apply in all respects to the trial of an election petition".

In Tarlok Singh v. Municipal Corporation of Amritsar & Anr. (1986) 4 SCC 27, Section 384 of the Punjab Municipal Corporation Act, 1976 came up for the consideration of the Court. It provided for the procedure in the Code, in regard to suits, being followed, "as far as it can be made applicable", in the disposal of certain matters under the Act. The Court held that the relevant provisions of the Code were made applicable for the purposes of guidance of procedure and it is not expected that the procedure of a suit was to be followed technically and strictly in accordance with the provisions contained in the Code.

In Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors. (1990) 2 SCC 715, the expression "as far as applicable" came up for the consideration of the Court. It was held that such expression had the effect of making the rules or provisions contained elsewhere applicable with realism and flexibility, true to life rather than with abstract absolutism.

We are, therefore, of the opinion that, in view of Rules 5 and 12 framed under Article 225 for purposes of the Special Act, the High Court is not powerless to extend the time for filing the written statement simply because the time limit for filing the written statement within the allowance permitted by the Proviso to Order VIII Rule 1 of the CPC has come to an end.

Alternatively, Order VIII Rule 1 of CPC, mandatory or directory?

This leads us to examine the alternative contention of the learned senior counsel for the appellant that, in any event, Order VIII Rule 1 of the CPC is not mandatory but directory in nature, a submission on which both the learned counsel for the parties have forcefully argued and the learned Amicus Curiae has also made detailed submissions.

The CPC which consolidated and amended the laws relating to the procedure of the Courts of Civil Judicature in the year 1908, has in the recent times undergone several amendments based on the recommendations of the Law Commission displaying the anxiety of Parliament to secure an early and expeditious disposal of civil suits and proceedings but without sacrificing the fairness of trial and the principles of natural justice in-built in any sustainable procedure. The Statement of Objects and Reasons for enacting Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976) records the following basic considerations which persuaded the Parliament in enacting the amendments:-

(i) that a litigant should get a fair trial in accordance with the accepted principles of natural justice;

(ii) that every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;

(iii) that the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases.

By Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999) the text of Order VIII, Rule 1 was sought to be substituted in a manner that the power of court to extend the time for filing the written statement was so circumscribed as would not permit the time being extended beyond 30 days from the date of service of summons on the defendant. As is well-known, there was stiff resistance from the members of the Bar against enforcing such and similar other provisions sought to be introduced by way of amendment and hence the Amendment Act could not be promptly notified for enforcement. The text of the provision in the present form has been introduced by Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002) with effect from 1.7.2002. The purpose of such like amendments is stated in the Statement of Objects and Reasons as "to reduce delay in the disposal of civil cases".

The text of Order VIII, Rule 1, as it stands now, reads as under : -

"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."

Three things are clear. Firstly, a careful reading of the language in which Order VIII, 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 VIII, Rule 1 is procedural. It is not a part of the substantive law. Thirdly, the object behind substituting Order VIII, 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.

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 the 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:-

"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 justiciae where the tragic sequel otherwise would be wholly inequitable. \005 Justice is the goal of jurisprudence __ processual, as much as substantive."

In The State of Punjab and Anr. v. Shamlal Murari and Anr. (1976) 1 SCC 719, the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that "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 and Ors. v. Dominion of India and Ors. (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 sub-serve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.

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.

In Sangram Singh v. Election Tribunal, Kotah & Anr. (1955) 2 SCR 1, this Court highlighted 3 principles while interpreting any portion of the CPC. They are:

(i) 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.

(ii) There must be ever present to the mind the fact that 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.

(iii) No forms or procedure should ever be permitted to exclude the presentation of the litigant's defence unless there be an express provision to the contrary.

Our attention has also been invited to a few other provisions such as Rules 9 and 10 of Order VIII. In spite of the time limit appointed by Rule 1 having expired, the court is not powerless to permit a written statement being filed if the court may require such written statement. Under Rule 10, the court need not necessarily pronounce judgment against the defendant who failed to file written statement as required by Rule 1 or Rule 9. The court may still make such other order in relation to the suit as it thinks fit.

As stated earlier, Order VIII, Rule 1 is a provision

contained in the CPC and hence belongs to the domain of procedural law. Another feature noticeable in the language of Order VIII Rule 1 is that although it appoints a time within which the written statement has to be presented and also restricts the power of the Court by employing language couched in a negative way that the extension of time appointed for filing the written statement was not to be later than 90 days from the date of service of summons yet it does not in itself provide for penal consequences to follow if the time schedule, as laid down, is not observed. From these two features certain consequences follow.

Justice G.P. Singh notes in his celebrated work "Principles of Statutory Interpretation" (Ninth Edition, 2004) while dealing with mandatory and directory provisions - "The Study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage LORD CAMPBELL said: 'No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be considered'." (p. 338) "For ascertaining the real intention of the Legislature", points out SUBBARAO, J. "the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered". If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory." (pp. 339-340)

Two decisions, having a direct bearing on the issue arising for decision before us, have been brought to our notice, one each by the learned counsel for either party. The learned senior counsel for the appellant submitted that in Topline Shoes Ltd. v. Corporation Bank (2002) 6 SCC 33, pari materia provision contained in Section 13 of the Consumer Protection Act, 1986 came up for the consideration of the Court. The provision requires the opposite party to a complaint to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum. The Court took into consideration the Statement of Objects and Reasons and the legislative intent behind providing a time frame to file reply and held : (i) that the provision as framed was not mandatory in nature as no penal consequences are prescribed if the extended time exceeds 15 days and; (ii) that the provision was directory in nature and could not be interpreted to mean that in no event whatsoever the reply of the respondent could be taken on record beyond the period of 45 days.

The Court further held that the provision is more by way of procedure to achieve the object of speedy disposal of such disputes. The strong terms in which the provision is couched

are an expression of 'desirability' but do not create any kind of substantive right in favour of the complainant by reason of delay so as to debar the respondent from placing his version in defence in any circumstances whatsoever.

In our opinion, the view of the law so taken by this Court squarely applies to the issue before us and we find ourselves in agreement with the law stated by the two-Judge Bench of this Court in the case of Topline Shoes Ltd. (supra).

The learned counsel for the respondent, on the other hand, invited our attention to a three-Judge Bench decision of this Court in Dr. J.J. Merchant & Ors. v. Shrinath Chaturvedi (2002) 6 SCC 635, wherein we find a reference made to Order VIII, Rule 1 of the CPC vide paras 14 and 15 thereof and the Court having said that the mandate of the law is required to be strictly adhered to. A careful reading of the judgment shows that the provisions of Order VIII, Rule 1 of the CPC did not directly arise for consideration before the Court and to that extent the observations made by the Court are obiter. Also, the attention of the Court was not invited to the earlier decision of this Court in Topline Shoes Ltd. case (supra).

It was submitted by the senior learned counsel for the appellant that there may be cases and cases which cannot be foretold or thought of precisely when grave injustice may result if the time limit of days prescribed by Order VIII, Rule 1 was rigidly followed as an insurmountable barrier. The defendant may have fallen sick, unable to move; may be he is lying unconscious. Also, the person entrusted with the job of presenting a written statement, complete in all respects and on his way to the court, may meet with an accident. The illustrations can be multiplied. If the schedule of time as prescribed was to be followed as a rule of thumb, failure of justice may be occasioned though for the delay, the defendant and his counsel may not be to blame at all. However, the learned counsel for respondent No.1 submitted that if the court was to take a liberal view of the provision and introduce elasticity into the apparent rigidity of the language, the whole purpose behind enacting Order VIII, Rule 1 in the present form may be lost. It will be undoing the amendment and restoring the pre-amendment position, submitted the learned counsel.

We find some merit in the submissions made by the learned counsel for both the parties. In our opinion, the solution __ and the correct position of law __ lie somewhere midway and that is what we propose to do placing a reasonable construction on the language of Order VIII, Rule 1.

Considering the object and purpose behind enacting Rule 1 of Order VIII in the present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact \026 the entire life and vigour \026 of the provision. The delaying tactics adopted by the defendants in law courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because by delaying the trial of election petition, the successful candidates may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may loose the battle at the end. Therefore, the judge trying the case must handle the prayer for adjournment

with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence.

Ordinarily, the time schedule prescribed by Order VIII, 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 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 VIII, Rule 1 of the Code 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.

A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the Court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the Court that the prayer was founded on grounds which do exist.

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, the defendant shall 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 asking and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order VIII Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order VIII Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law.

We sum up and briefly state our conclusions as under:-

(i) The trial of an election petition commences from the date of the receipt of the election petition by the Court and continues till the date of its decision. The filing of pleadings is one stage in the trial of an election petition. The power vesting in the High Court to adjourn the trial from time to time (as far as practicable and without sacrificing the expediency and interests of justice) includes power to adjourn the hearing in an election petition affording opportunity to the defendant to file written statement. The availability of such power in the High Court is spelled out by the provisions

of the Representation of the People Act, 1951 itself and Rules made for purposes of that Act and a resort to the provisions of the CPC is not called for.

(ii) On the language of Section 87(1) of the Act, it is clear that the applicability of the procedure provided for the trial of suits to the trial of election petitions is not attracted with all its rigidity and technicality. The rules of procedure contained in the CPC apply to the trial of election petitions under the Act with flexibility and only as guidelines.

(iii) In case of conflict between the provisions of the Representation of the People Act, 1951 and the Rules framed thereunder or the Rules framed by the High Court in exercise of the power conferred by Article 225 of the Constitution on the one hand, and the Rules of Procedure contained in the CPC on the other hand, the former shall prevail over the latter.

(iv) The purpose of providing the time schedule for filing the written statement under Order VIII, Rule 1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 of Order VIII of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order VIII, Rule 1 of the CPC is not completely taken away.

(v) Though Order VIII, Rule 1 of the CPC is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded

by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.

In the case at hand, the High Court felt satisfied that the reason assigned by the defendant-appellant in support of the prayer for extension of time was good and valid. However, the prayer was denied because the High Court felt it had no power to do so. The written statement has already been filed in the High Court. We direct that the written statement shall now be taken on record but subject to payment of Rs.5000/- by way of costs payable by the appellant herein to respondent No.1 i.e. the election petitioner in the High Court, within a period of 4 weeks from today.
The appeal stands allowed in the above terms.

No order as to the costs in this appeal.
Before parting we would like to state that the issue raised in this appeal arises frequently before the courts and is of some significance affecting a large number of cases, and so, in spite of the parties being represented by learned counsel, we thought it fit to request Mr. Rakesh Dwivedi, Senior Advocate and former Additional Solicitor General of India to assist the Court as Amicus Curiae. He responded to the call of the Court and presented the case from very many angles bringing to the notice of the Court a volume of case law some of which we have referred to hereinabove. We place on record our appreciation of the valuable assistance rendered by Mr. Rakesh Dwivedi, Senior Advocate.