REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6731 OF 2008
(Arising out of SLP (C) No. 14562 of 2006)

Sambhaji & Ors. ...Appellants

Versus

Gangabai & Ors. ...Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Bombay High Court dismissing the Writ petition filed by the appellants questioning correctness of the order passed by the trial court rejecting the application for setting aside the order directing that no written

statement was to be accepted and also not allowing the appellants who are the defendants in RCS No.99 of 2003 filed by respondent No.1 the plaintiff to file written statement. Rest of the respondents are the defendants in the suit. Admittedly an order was passed stating that the written statement was not filed within the period of 90 days. An application was filed alongwith the written statement with two prayers; first prayer was to set aside the earlier order relating to non-filing of the written statement and second to accept the written statement along with the application. The trial court held that in terms of the amended Order VIII Rule 1 of the Code of Civil Procedure, 1908 (in short the 'CPC'), there was no scope for accepting a written statement filed beyond the fixed period of 90 days. The order was challenged before the High Court which noted that though the view of the trial court that it had no power to accept the written statement filed after 90 days was not correct in the circumstances of the case no case for interference was made out.

3. Learned counsel for the appellants submitted that the factual scenario clearly showed that the trial court and the High Court erred in not accepting the prayers made.

4. Learned counsel for the respondent No.1 on the other hand stated that the plaintiff is an old lady in her 80's and with a view to prolong the proceedings the appellants are deliberately trying to harass her.

5. The Code of Civil Procedure enacted in 1908 consolidated and amended the laws relating to the procedure of the Courts of Civil Judicature. It has undergone several amendments by several Acts of the Central and State Legislatures. Under Section 122 CPC the High Courts have power to amend by rules, the procedure laid down in the orders. In exercise of these powers various amendments have been made in the orders by various High Courts. Amendments have also been made keeping in view the recommendations of the Law Commission. Anxiety of Parliament as evident from the amendments is to secure an early and expeditious disposal of civil suits and proceedings without sacrificing the fairness of trial and the principles of natural justice inbuilt in any sustainable procedure. The Statement of Objects and Reasons for enacting the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976) (in short "the 1976 Amendment Act") highlights the following basic considerations in enacting the amendments:

"5. (*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."

6. By the 1999 Amendment Act the text of Order 8 Rule 1 was sought to be substituted in a manner that the power of the 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. Due to resistance from the members of the Bar against enforcing such and similar other provisions sought to be introduced by way of amendment, the Amendment Act could not be promptly notified for enforcement. The text of the provision in the present form has been introduced by the Amendment Act 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".

7. The text of Order 8 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:
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> 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."

8. Order 8 Rule 1 after the amendment 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. Further, the nature of the provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law. Substituted Order 8 Rule 1 intends to curb

the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases, causing inconvenience to the plaintiffs and the petitioners approaching the court for quick relief and also 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. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

9. All the rules of procedure are the handmaids 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.

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

11. 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. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.

12. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A Procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

13. It is also to be noted that though the power of the court under the proviso appended to Rule 1 of 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 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.

14. Challenge to the constitutional validity of the Amendment Act and the 1999 Amendment Act was rejected by this Court in *Salem Advocate Bar Association* v. *Union of India [2003(1) SCC 49]*. However, to work out modalities in respect of certain provisions a committee was constituted. After receipt of the committee's report the matter was considered by a three-Judge Bench in *Salem Advocate Bar Assn.* v. *Union of India [2005(6)SCC 344]*. As regards Order 8 Rule 1 the committee's report is as follows: (SCC pp. 362-63, paras 15-18)

"*15*. The question is whether the court has any power or jurisdiction to extend the period beyond 90 days. The maximum period of 90 days to file written statement has been provided but the consequences on failure to file written statement within the said period have not been provided for in Order 8 Rule 1. The point for consideration is whether the provision providing for maximum period of ninety days is mandatory and, therefore, the court is altogether powerless to extend the time even in an exceptionally hard case.

16. It has been common practice for the parties to take long adjournments for filing written statements. The legislature with a view to curb this practice and to avoid unnecessary delay and adjournments, has provided for the maximum period within which the written statement is required to be filed. The mandatory or directory nature of Order 8 Rule 1 shall have to be determined by having regard to the object sought to be achieved by the amendment. It is, thus, necessary to find out the intention of the legislature. The consequences which may follow and whether the same were intended by the legislature have also to be kept in view.

17. In *Raza Buland Sugar Co. Ltd.* v. *Municipal Board, Rampur [AIR 1965 SC 895]* a Constitution Bench of this Court held that the question whether a particular provision is mandatory or directory cannot be resolved by laying down any general rule and it would depend upon the facts of each case and for that purpose the object of the statute in making out the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

In *Sangram Singh* v. *Election Tribunal, Kotah [AIR 1955 SC 425]* considering the provisions of the Code dealing with the trial of suits, it was opined that: (SCR pp. 8-9)

'Now 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.

Next, 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. 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.' " [See: SK. Salim Haji Abdul Khyumsab v. Kumar (2006(1) SCC 46)] and R.N. Jadi & Bros. v. Subhashchandra [2007(6) SCC 420]

15. In the instance case the trial court proceeded on the erroneous premises that there was no scope to accept the written statement after 90 days. The High Court by the impugned order held that though it had power, no case was made out to accept the prayer. We have considered the grounds

indicated by the appellants seeking acceptance of the written statement filed belatedly. They cannot be considered to be trivial or without substance. In the case of this nature where close relatives are litigants a liberal approach is called for. In the circumstances we set aside the impugned order of the High Court affirming the order passed by the trial court refusing acceptance of the written statement. The matter is not very complex. We request the trial court to complete trial of the suit within the period of six months. The appeal is allowed without any order as to costs.

…….....J.
(Dr. ARIJIT PASAYAT)

…….....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
November 20, 2008