IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O.84 of 2022
Sudip Kumar Kanjilal
VS.
Ankush Mitra & Anr.

For the petitioner :Mr. Dipak Kumar Mookherjee, Adv.

For the Opposite Party no.1 :Sailesh Kumar Gupta, Adv.
For the Opposite Party no. 2 :Guddu Singh, Adv.

Heard On :24.09. 2024, 19.11.2024, 27.11.2024

Judgement On :07.01.2025

Bibhas Ranjan De, J. :

1. Albeit the instant revision application has been filed challenging seven (7) orders passed by Ld. 9th bench, City Civil Court at Calcutta in connection with MAC Case no. 223 of

2015 but, Ld. Counsel, Mr. Haradhan Banerjee appearing on behalf of the petitioner only pressed three (3) orders i.e. Order no. 18 dated 31.07.2017, Order no. 24 dated 04.07.2018 & Order no. 31 dated 10.06.2019.

Brief facts:-

2. From the rival contention and argument advanced by the Ld. Counsel on behalf of the parties to this revision application, it appears that challenge in this revision application is the Order No. 18 dated 31.07.2017, Order no. 24 dated 04.07.2018 and order no. 31 dated 10.06.2019 passed in connection with Motor Accident Claim Case no. 223 of 2015 by the Ld. 9th Bench, City Civil Court at Calcutta.

3. By the Order no. 18 dated 31.07.2017 Ld. Trial Judge allowed one amendment application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (for short CPC) on the ground that the proposed amendment was not inconsistent with the facts delineated in the claim application. Ld. Judge considered the proposed amendment on some subsequent facts i.e. expenditure incurred for the treatment of the claimant.

4. By the order no. 24 dated 04.07.2018 the Ld. Trial Judge refused to entertain the application for recalling the order dated 31.07.2017 on the ground that nobody represented on behalf of the opposite party no. 1 on the day of hearing of application under order 6 Rule 17 read with Section 151 of the CPC up to 03.05 p.m. After rejection of the application Ld. Judge provided an opportunity to the opposite party no. 1 to file written statement and additional written statement by fixing a date on 27.08.2018.

5. By the Order no. 31 dated 10.06.2019 Ld. Judge accepted the written statement filed on behalf of opposite party no. 2 at the belated stage i.e. after lapse of two years and six months. Ld. Judge, considering the in ordinate delay, imposed cost of Rs. 5000/-.

Arguments:-

6. Mr. Haradhan Banerjee, appearing on behalf of the petitioner assailed the order no. 18 dated 31.07.2017 and submits that the application under order 6 Rule17 of CPC was allowed in absence of the Ld. Advocate appearing on behalf of the petitioner before the trial court. It has been further submitted

that the provision of Order 6 Rule 17 CPC has not been considered in its letter and spirit at the time of allowing the same that too in absence of other side. Mr. Banerjee, in support of his contention relied on a case of ***Rajesh Kumar Aggarwal and others vs. K.K. Modi and others*** reported in ***(2006) 4 SCC 385***.

7. Mr. Banerjee has further contended that one application was filed on behalf of the petitioner for recalling the order dated 31.07.2017 but, Ld. Judge by his order no. 24 dated 04.07.2018 rejected the same on the same ground as envisaged in the order dated 31.07.2017.

8. With respect to order no. 31 dated 10.06.2019 Ld. Judge accepted the written statement filed by the opposite party no. 2/National Insurance Company on 07.02.2018 i.e. after two years six months whereas notice was served upon the opposite party no. 2 on 06.08.2015 only on the ground - *" In order to meet the end of justice."* Mr. Banerjee has submitted that written statement cannot be accepted beyond the statutory period without any plausible reason. In support of his contention, He relied on ***Mohammed Yusuf vs. Faij***

Mohammad & Ors reported in 2009 (3) SCC513 & Kailash vs. Nanhku & Ors reported in ***AIR 2005 Supreme Court 2441.***

9. Per contra, Mr. Sailesh Kumar Gupta, Ld. Counsel, appearing on behalf of the opposite party/claimant has submitted that the opposite party no. 1/petitioner herein appeared in the case on 31.08.2015 after filing of the claim application on 23.07.2015, but petitioner filed WS on 01.03.2016 i.e. after seven months.

Analysis:-

10. In **Rajesh Kumar Aggarwal** (supra) Hon'ble Apex Court handed down the following ratio in paragraphs 13 to 17:-

> ***"13.*** *We have carefully gone through the relevant pleadings, annexures and the judgment rendered by the learned Single Judge and of the learned Judges of the Division Bench of the High Court.*
>
> *"17. Amendment of pleadings.—The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of*

determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

This rule declares that the court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter for which amendment is sought before the commencement of the trial.

15. *The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.*

16. *Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall)*

and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17. *In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit."*

11. **First part** of the provision of Rule 17 deals with the power of the court to allow either party to alter or amend his pleading at any stage of trial when such amendment or alteration is required for the purpose of determining real question in controversy between the parties. But, the **Second part** restricts the power of the Court to allow any such alteration or amendment after the commencement of trial unless it is satisfied that in spite of due diligence the concerned party could not have raised the matter before the commencement of trial.

12. In the case at hand, the impugned order dated 31.07.2017 clearly deals with a subsequent event with regard to document showing expenditure for treatment. Therefore, in the case at hand, proviso to Rule 17 has no application. In that case, the Ld. Judge possessed the power of granting prayer for amendment.

13. From the order dated 31.07.2017 it appears that on the same date the application under Order 6 Rule 17 CPC was fixed for hearing and both the Ld. Counsel appearing on behalf of the parties filed hazira but at the time of hearing opposite party no.1/petitioner herein was not represented till 03.05 p.m.

14. In exercising the power under Article 227 of the constitution this Court finds neither any irregularity nor any perversity in the order no.18 dated 31.07.2017.

15. As a sequel, Order no. 18 dated 31.07.2017 & Order no. 24 dated 04.07.2018 stand affirmed.

16. Now, I proceed to the order dated 10.06.2019 assailed in this revision application.

17. In the celebrated judgment of ***Kailash*** (supra) Hon'ble Apex Court observed inter alia:-

> ***39.*** *It was submitted by the learned Senior 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 8 Rule 1 was rigidly followed as an insurmountable barrier. The defendant may have fallen sick, unable to move; maybe 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 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 8 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.*
>
> ***40.*** *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 8 Rule 1.

41. *Considering the object and purpose behind enacting Rule 1 of Order 8 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 — the entire life and vigour — 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 candidate may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may lose 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.*

42. *Ordinarily, the time schedule prescribed by Order 8 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 the 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 8 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.

43. *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 an 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.*

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

45. *However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8 Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order 8 Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law.*

46. *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 a 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 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 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 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 8 Rule 1 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 Order 8 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 8 Rule 1 CPC is not completely taken away.

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded 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 the 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 is needed to be given for 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.

47. *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 1 i.e. the election petitioner in the High Court, within a period of 4 weeks from today.

48. *The appeal stands allowed in the above terms.*

49. *No order as to the costs in this appeal."*

18. ***Mohammed Yusuf*** (supra) highlighted the following ratio:-

9. *It is urged that the provisions of Order 8 Rule 1 of the Code of Civil Procedure having been held to be directory in nature by this Court in Kailash v. Nanhku [(2005) 4 SCC 480] , this Court may not exercise its discretionary jurisdiction under Article 136 of the Constitution of India. Order 8 Rule 1 of the Code of Civil Procedure reads thus:*

"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."

Although in view of the terminologies used therein the period of 90 days prescribed for filing the written statement appears to be a mandatory provision, this Court in Kailash [(2005) 4 SCC 480] upon taking into consideration the fact that in a given case the defendants may face extreme hardship in not being able to defend the suit only because he had not filed written statement within a period of 90 days, opined that the said provision was directory in nature. However, while so holding this Court in no uncertain terms stated that the defendants may be permitted to file written statement after the expiry of period of 90 days only in exceptional situation.

10. *The question came up for consideration before this Court in M. Srinivasa Prasad v. Comptroller & Auditor General of India [(2007) 10 SCC 246 : (2008) 1 SCC (L&S) 1095 : (2007) 5 Scale 173] , wherein a Division Bench of this Court upon noticing Kailash [(2005) 4 SCC 480] held as under:*

*"7. Since neither the trial court nor the High Court have indicated any reason to justify the acceptance of the written statement after the expiry of time fixed, we set aside the orders of the trial court and that of the High Court. The matter is remitted to the trial court to consider the matter afresh in the light of what has been stated in Kailash case [(2005) 4 SCC 480] . The appeal is allowed to the aforesaid extent with no order as to costs." [**Ed.**: As observed*

in Aditya Hotels (P) Ltd. v. Bombay Swadeshi Stores Ltd., (2007) 14 SCC 431 p. 433, para 7.]

11. *The matter was yet again considered by a three-Judge Bench of this Court in R.N. Jadi & Bros. v. Subhashchandra [(2007) 6 SCC 420] . P.K. Balasubramanyan, J., who was also a member in Kailash [(2005) 4 SCC 480] in his concurring judgment stated the law thus: (R.N. Jadi case [(2007) 6 SCC 420] , SCC p. 428, paras 14-15)*

"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 Ltd. [(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?"

19. Therefore, Order 8 Rule 1 CPC deals with the limitation for filing written statement by the defendant who must have to file written statement within the time period of not more than 120 days from the date of service of summons, and thereafter upon expiration of this period the defendant will forfeit his right to file the written statement and the Court shall not allow the same to be taken on record.

20. But, it is no longer *res integra* that the nature of provision is directory, not mandatory. Thus the power of the Court to provide an extension to the schedule time for filing the written statement is not completely taken away. The extension beyond the limitation period can be recorded only in exceptional circumstances wherein the occasions reasoned by the defendant was beyond his control or if not granted grave injustice would happen to the defendant in any non-commercial suit. Actually, intention of the legislature was to avoid delay in the commencement of a matter that further

affects the principles of speedy justice ultimately affecting the principles of the rule of law.

21. In ***Kailash*** (supra) Hon'ble Apex Court observed that 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, shall the defendant 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 the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

22. In the case at hand, impugned order suggests that the written statement was filed by the insurance company after two years and six months from the date of receipt of summons and the same has already been taken on record after imposing cost of Rs. 5000/- which has already been paid by the insurance company/opposite party no. 2 herein.

23. From the Order dated 10.06.2019, it further appears that written statement was taken on record to meet the ends of

justice. It is pertinent to mention here that the issue between the parties is a claim for compensation on account of motor accident and not only that, representation of the insurance company is required for compliance of the final order if passed in favour of the claimant.

24. Therefore, prying into the track of ratio in paragraph 44 of ***kailash*** (supra), I resist myself to interfere with the order no. 31 dated 10.06.2019.

25. With the aforesaid observation, the revision application being no. C.O. 84 stands dismissed.

26. Interim Order, if there be any, stands vacated

27. Connected applications, if there be, also stand disposed of accordingly.

28. Parties to act on the server copy of this order duly downloaded from the official website of this Court.

29. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]