

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3741 OF 2004

Shri Uttam Ambadas Rai (Kalal) .. Petitioner

Vs

Shri Yogesh Navinchandra Rai (Kalal)

and ors. .. Respondents

Ms Leena Patil, for the petitioner.

Mr P.S.Dani, for respondent nos. 1 to 3.

CORAM : D.B.BHOSALE, J.

DATE : 30.11.2005.

PC:

1. Heard the learned counsel for the parties.

2. The petitioner has impugned the order dated 16th March, 2004 passed by the trial Court by which it has extended the time to file written statement on record beyond the time prescribed under Order 8 rule 1 of the Code of Civil Procedure subject to payment of cost of Rs.400/- It is challenged solely on the ground that the trial Court has no power to extend the time and allow the defendants to file written statement beyond the period prescribed under Order 8 rule 1 of CPC.

2. The law is now well settled that the provisions of Order 8 rule 1 of CPC are directory in character and not mandatory. Though they cast an obligation on the defendants to file written statement within the time prescribed therein, the provisions do not deal with nor specifically take away the power of the Court to take written statement on record though filed beyond the time as prescribed for therein. This is also settled by the Supreme Court in **Kailash Vs. Nankhu and ors, (2005) 4 SCC 480**. This Court also had taken the similar view in **Shailaja A.Sawant Vs. Sayajirao Ganpatrao Patil, 2004 (2) Mah.Law Journal 419**. Thus, it is clear that the Court has power to take the written statement on record beyond the time as prescribed under Order 8 rule 1. Keeping the aforesaid well settled position of law in view, I find absolutely no reason to interfere with the order impugned in the instant writ petition in extremely limited jurisdiction of this Court under Article 227 of the constitution of India. The learned trial Court has rightly exercised its jurisdiction which does not warrant interference on any ground whatsoever in the instant writ petition. The writ petition, therefore, fails and is dismissed as such.

(D.B.Bhosale,J.)