

IN THE HIGH COURT OF HIMACHAL PRADESH  
AT SHIMLA

CMPMO No.57 of 2006.

Date of Decision: 26<sup>th</sup> June, 2006.

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Jagdish Ram and others. Petitioners.

Versus

Neelam Kumari and another. Respondents.

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Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting<sup>1</sup>?

For the petitioners: Mr. Onkar Jairath, Advocate.

For the respondent: Mr. Bhupender Gupta, Senior  
Advocate, with Mr. Janesh  
Gupta, Advocate, for  
respondent No.1.

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V.K.Gupta, C.J. (Oral)

In this petition filed under Article 227 of the Constitution of India legality and the correctness of the order dated 27<sup>th</sup> January, 2006 passed by the learned Civil Judge (Junior Division), Court No.1, Una in CMA No. Nil. 6/06 (in Civil Suit No.3/2005) is under challenge. By the impugned order the learned Court below has allowed an application filed by respondent No.1 - plaintiff in terms of Order 8 Rule 10 of the Code of Civil Procedure, praying inter alia therein that since the petitioners-

defendants in the suit had failed to file the written statement within the period prescribed under Order 8 Rule 1 of the Code of Civil Procedure the Court may pronounce the judgment against them, or alternatively make such order in relation to the suit as it may think fit. By allowing the aforesaid application filed by respondent No.1 - plaintiff, the learned Court below has ordered the striking off of the defence of the petitioners-defendants, meaning thereby that their right to file the written statement has been closed.

The petitioners-defendants put in their appearance for the first time in the Court below on 1<sup>st</sup> February, 2005. The case was fixed for filing the written statement for 7<sup>th</sup> March, 2005. On that date the learned Presiding Officer of the Court below was on leave and accordingly the case was adjourned for 6<sup>th</sup> April, 2005, for "proper orders". On this date also the written statement was not filed by the petitioners and the Court below adjourned the matter for filing of the written statement on 10<sup>th</sup> May, 2005. On this date also the written statement was not filed because the Presiding Officer was on leave and accordingly the case was adjourned for 10<sup>th</sup> June, 2005 for "proper orders". The written statement was filed by the petitioner on this date. Application under Order 8

Rule 10 was also filed by respondent No.1 - plaintiff on 10<sup>th</sup> June, 2005 for appropriate orders and as noticed at the outset, it is on this application that the learned Court below passed the impugned order on 27<sup>th</sup> January, 2006.

If a case is listed before a Court on a particular date and on that date the Presiding Officer of that Court is not present in the Court, either owing to his being absent on leave or otherwise and if that particular case on that date is handled by a ministerial staff of that court, the member of the ministerial staff handling the case on that particular date owing to the absence of the Presiding Officer merely notes the absence of the Presiding Officer on the file in the minute sheet meant for that date and puts off the matter for another date. In common parlance it is called as putting off the case on the next date "for orders". In other words, a member of the ministerial staff of the Court, not having any power or authority to pass any effective order because of the absence of the Presiding officer merely informs the parties about the case being put off because of the absence of the Presiding officer and on the next date thus "fixed" by the ministerial staff the case is taken up by the Presiding Officer for passing "proper orders". The member of the ministerial staff of the Court thus

only completes the record by noting the absence of the Presiding Officer because in the minute sheet of the file something has to be recorded as to why the case was being adjourned. Being a necessary corollary, therefore, on the next date when the matter comes up for "proper orders", undoubtedly no previous direction having been issued qua a party, that party may not be bound to act in a particular manner on the said date fixed by the ministerial staff for "proper orders" but this will not absolve the party concerned of complying with a statutory requirement of doing a particular act within a particular time bound schedule. Let me illustrate and elaborate.

Order 8 Rule 1 of the Code of Civil Procedure reads thus:-

"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."

A bare perusal of this provision clearly stipulates that it is the statutory obligation of a defendant in a suit to file written statement within a period of 30 days from the date of service of summons on him. The proviso to Rule 1 (supra) of course stipulates that where the defendant fails to file the written statement within the said period of 30 days he may be allowed to file the same on some other day as may be specified by the Court, for the reasons to be recorded in writing but such other day shall not be later than 90 days from the date of service of summons. Rule 1 (supra), therefore, clearly prescribes an outer limit of 90 days for a defendant to file the written statement from the date of service of summons upon him and even though some recent pronouncements of the Supreme Court on the subject have laid some guidelines, in ordinary circumstance, in the absence of compelling reasons a defendant is always under statutory obligation to present the written statement in the Court within the outer limit of 90 days.

Statute having prescribed an outer limit for filing a written statement, irrespective of whether a matter (suit) is fixed for "proper

orders", as has been noticed above owing to a minute sheet prepared earlier by the ministerial staff of the Court or otherwise, if it is taken up by the Court on a particulate date the defendant cannot be absolved from his statutory responsibility of presenting the written statement within the statutory period because, whether a matter is taken up for "proper orders" on a particular date or it is taken up otherwise, the time period for filing the written statement does not stop running as it is always reckoned from the date of service of summons upon the defendant. No defendant, therefore, can be permitted to take advantage of the fact that on a particulate date when the matter was fixed for "proper orders" he did not file the written statement because he was not obliged to do so. This is a gross misunderstanding of the binding nature of Order 8 Rule 1 CPC which specifically enjoins upon a defendant a statutory duty of filing written statement within the period of 30 days or the outer limit of 90 days, as the case may be. The failure to do so can result into adverse consequences against the defaulting defendant, including the adverse consequence stipulated in Order 8 Rule 10 (supra).

In future, therefore, all defendants and other parties to the suit and all the learned Courts must take note of this binding observation and

direction touching upon the interpretation of Order 8 Rule 1 to make sure that the time does not stop running nor is it suspended merely because a suit is listed for "proper orders" before a Court on a particular date and because of that listing of the suit for "proper orders", the defendant is absolved from filing written statement on that date. If a defendant does not file the written statement on a date when the matter is listed for "proper orders", he shall be doing so entirely at his own risk because the time spent or gone by, owing to the listing of the case for "proper orders" shall not and cannot be excluded from the total outer statutory limit during which the defendant is required to file the written statement.

Based on the aforesaid observations, I have no hesitation in holding that the petitioners-defendants in the present case misunderstood the aforesaid legal provision and it is perhaps because of this misunderstanding that they did not file the written statement on 7<sup>th</sup> March, 2005.

As the impugned order would show that the suit was taken up on 6<sup>th</sup> April, 2005 when admittedly it had not been listed for "proper orders" and on that date the presiding Officer was also holding the Court. No explanation has been given by the

defendants for not filing the written statement on 6<sup>th</sup> April, 2005.

Undoubtedly the defendants had been very careless and grossly negligent in not filing the written statement within the statutory period and in normal circumstances, therefore, I should have had no hesitation in confirming and upholding the impugned order passed by the Court below. I, however, find an extenuating circumstance in this case and that is that on 10<sup>th</sup> June, 2005 when the application was filed by respondent no.1 - plaintiff under Order 8 Rule 10 the defendants had already filed the written statement. This extenuating circumstance in my opinion should have been enough by itself to enable the Court below to have taken the written statement on record. Because what I find from a reading of the earlier orders was that on 6<sup>th</sup> April, 2005 the learned Court below itself had permitted the defendants to file the written statement by listing the case on 10<sup>th</sup> May, 2005. 10<sup>th</sup> May, 2005 was a date which admittedly was beyond the period of 90 days reckoned from 1<sup>st</sup> February, 2005 when the defendants had appeared for the first time in the Court below and yet the learned Court below had itself passed the specific order permitting the defendants to file the written statement. Fortunately for the defendants, of



course on 10<sup>th</sup> May, 2005 the Presiding Officer was on leave and, therefore, no adverse order against them could have been passed owing to their failure in not filing the written statement on that date. In effect and substance, therefore, perhaps the aforesaid extenuating circumstance could be invoked and applied in favour of the defendants and written statement filed by them on 10<sup>th</sup> June, 2005 ought to have been taken on record.

For the foregoing reasons this petition is allowed. The impugned order is set aside. The written statement filed by the defendants on 10<sup>th</sup> June, 2005 is permitted to be taken on record and consequently the application filed by respondent No.1 - plaintiff under Order 8 Rule 10 CPC shall be considered to have been rejected. This of course is subject to the petitioners' paying Rs.1,000/- as costs to respondent No.1.

The petition is disposed of.

CMP No.109 of 2005.

In view of the disposal of the main petition, this petition is disposed of. Interim order dated 22<sup>nd</sup> March, 2006 shall stand vacated.

26<sup>th</sup> June, 2006.  
(tr)

(V.K. Gupta), C.J.

