

In The High Court Of Madhya Pradesh
At Jabalpur

Before

Hon'ble Shri Justice Duppala Venkata Ramana

On The 21st Of May, 2024

Misc. Petition No. 2644 Of 2024

Between:-

1. M/S Sai Baba Collection Through Its Proprietor Mr Jai Kishan Choithwani Office At 486 Opposite V.K. Studio Garhaphatak Jabalpur (MP)
2. Mr. Jai Kishan Choithwani S/O Mr. Prakash Choithwani, Aged About 40 Years, R/O H.No.220 Motilal Nehru Ward Sarafa Hanumantal Jabalpur (MP)

.....Petitioners

(By Shri Sheersh Agrawal - Advocate)

And

Canara Bank is A Body Corporate Constituted Under 3 The Banking Companies (acquisition And Transfer Of Undertakings) Act,1970, Having Its Head Office At Jayachamarajendra Road, Banglore And Among Others As Branch Office At 17818-Garha Bazar Branch, Yadav Colony Jabalpur (MP) Pin 482-002 Through Branch Manager Charu Tiwari And Holder Of Power Of Attorney/Authority Letter from The Plaintiff Bank

.....Respondent

(None appeared)

This petition coming on for admission this day, the court passed the following:

ORDER

Feeling aggrieved and with dissatisfaction, the present petition is filed by the petitioners (defendants) against the order dated 21.03.2024 passed by

the 22nd Civil Judge, Senior Division, Jabalpur in case No.RCS/B/88/2023 wherein the petitioner's right to file written statement has been closed by the trial Court.

2. The facts necessary for adjudication the present petition are in narrow compass. The plaintiffs/respondents herein filed a suit for recovery of money for a sum of Rs.5,55,468.17/-. The learned trial Court vide order dated 03.08.2023 directed the respondents to issue a notice to the petitioners and when the petitioners/defendants entered appearance and filed Vakalatnama on 17.10.2023 and assured that complete set of plaint and other relevant documents were given to the petitioner and further directed the petitioners/defendants filed written statement on 17.01.2024. When the matter came up for hearing on the aforesaid date, the defendants/petitioners sought time to file Written Statement and posted the matter on 21.03.2024 and when the matter came up for filing Written Statement, there was no representation from the petitioners/defendants and no application for giving reasons for non-filing of Written Statement and right to file Written Statement has been closed by the trial Court on 21.03.2024.

3. Challenging the order dated 21.03.2024 passed by the 22nd Civil Judge, Senior Division, Jabalpur in case No.RCS/B/88/2023 filed the present miscellaneous petition seeking to set-aside the impugned order dated 21.03.2024 and permitting the petitioner to file Written Statement.

4. Counsel for the petitioners/defendants contended that the impugned order dated 21.03.2024 striking out the defence of the petitioners/defendants is very harsh and against the law on the subject and further contended that the time limit for filing Written Statement under Order VIII Rule 1 CPC is not mandatory, therefore, he seeks permission permitting the petitioner to file Written Statement condoning the delay in filing the same.

5. Admittedly, no application was filed on behalf of the petitioners/defendants under Order 8 Rule 1 CPC praying for taking Written Statement on record by condoning the delay of days. Without there being filing the above said application approached this Court filed Miscellaneous Petition seeking to set-aside the order dated 21.03.2024 permitting the defendant to file Written Statement.

6. Before we look into the provisions under Order VIII Rule 1 CPC, we need to record that the learned counsel appearing for the petitioners/defendants contended before this Court that the provisions for filing the written statement under Order VIII Rule 1 is directory in nature and therefore, it was open to the Court to condone the delay in filing the Written Statement and such written statement filed by the petitioners/defendants could be accepted.

7. Before we consider the provisions under Order VIII Rule 1 CPC is mandatory or directory in nature. We need to consider the provisions under Order VIII Rule 1 CPC which runs 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.”

8. Considering the above provision, the defendants should file an application for condoning the delay in filing Written Statement, but this Court is not in a position to hold the petitioners had not filed any application to receive the Written Statement to condoning the delay even after expiry of the

period mentioned in the proviso to under Order 8 Rule 1 CPC. After reading the provision, in a particular proviso Order VIII rule 1 CPC, we are unable to hold that the provision under Order VIII Rule 1 are mandatory in nature.

9. In *Salem Advocate Bar Assn. v. Union of India*¹, it has been clearly held that the provisions including the proviso to Order VIII Rule 1 CPC are not mandatory but directory. It has been held in that decision that the delay can be condoned and the Written Statement can be accepted even after the expiry of 90 days from the date of service of summons in exceptionally hard cases. It has also been held in that decision that the use of the word “shall” in Order 8 Rule 1 CPC by itself is not conclusive to determine whether the provision is mandatory or directory. The use of the word “shall” is ordinarily indicative of mandatory nature of the provision but having regard to the decision in that case, the same can be construed as directory. Para 20 as follows :-

“20. The use of the word ‘shall’ in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word ‘shall’ is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.”

1 (2005) 6 SCC 344

10. The above judgments read together, the principles laid down in the above decisions, as noted herein-above, it would be open to the Court to permit the petitioners/defendants to file written statement if exceptional circumstances have been made out.

11. In the present case, the Written Statement could not be filed within a period of limitation. Such being the position, this Court is of the view the facts stated would constitute sufficient cause for condoning the delay in filing Written Statement and it has to be taken that the non-supply of complete set of plaint and other relevant documents much before the date of filing Written Statement dated 17.01.2024 and causes for delay filing Written Statement within a period of limitation which in my view is an exceptional case constituting the sufficient cause for condoning the delay in filing the Written Statement.

12. Accordingly, the matter is remanded back to the trial Court for reconsideration, directed the petitioners/defendants to file an application within two months from the date of this order for condoning the delay along with Written Statement. On such application, the learned Trial Court considers for condoning the delay and receive the Written Statement.

13. Accordingly, this Miscellaneous Petition is allowed to the aforesaid extent setting aside the impugned order dated 21.03.2024 with cost of Rs.1,000/- paid by the petitioners/defendants to the District Legal Services Authority, Jabalpur.

14. Accordingly, this Miscellaneous Petition stands disposed of.

DUPPALA VENKATA RAMANA,J