

C.R.P(MD)Nos.1853 & 1854 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP(MD)Nos.1853 & 1854 of 2024

and

CMP(MD)Nos.10508 & 10512 of 2024

in CRP(MD)No.1853 of 2024 : -

Ramesh Flowers Private Limited
A-26A, Sipcot Industrial Estate,
Veerapandiapuram,
Tuticorin,
Rep.by its Authorised Signatory,
Mr.Swaminathan

... Petitioner / Petitioner / Plaintiff

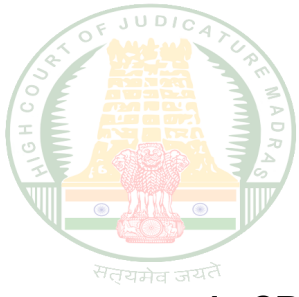
Vs.

Mr.Sumit Srimal

... Respondent /Respondent /Defendant

(cause title was accepted vide order
dated 31.07.2024)

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the order dated 03.07.2024 in I.A No.6 of 2023 in O.S No.140 of 2022 passed by the 1st Additional District and Sessions Court, Thoothukudi and set aside the same.



WEB COPY **in CRP(MD)No.1854 of 2024 : -**

Ramesh Flowers Private Limited
A-26A, Sipcot Industrial Estate,
Veerapandiapuram,
Tuticorin,
Rep.by its Authorised Signatory,
Mr.Swaminathan

... Petitioner / Plaintiff

Vs.

Mr.Sumit Srimal

... Respondent /Defendant

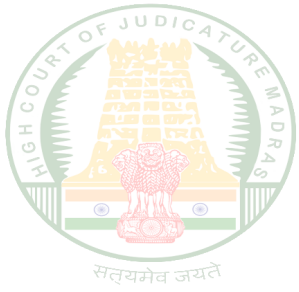
(cause title was accepted vide order
dated 31.07.2024)

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the daily order dated 02.08.2023 in O.S No.140 of 2022 passed by the 1st Additional District and Sessions Court, Thoothukudi and set aside the same.

In both cases : -

For Petitioner : Mr.J.Sivanandaraaj, Senior Counsel
assisted by Mr.S.Karthik Ramaswamy
for Mr.M.Dinesh Hari Sudarsan

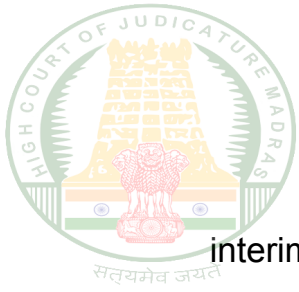
For Respondent : Mr.P.Sunil for Mr.C.Ravichandran



COMMON ORDER

WEB COPY Order 8 Rule 1 of CPC states that written statement should be filed within thirty days from the date of service of summons on the defendant. The proviso to the Rule permits the defendant 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. In ***Salem Advocate Bar Association, T.N. v. UOI (2005) 6 SCC 344***, it was clarified that the upper limit of ninety days is directory. This provision has engaged the attention of the Hon'ble Supreme Court and the High Courts during the last two decades. It, however, appears that the practice of the trial courts is not in consonance with the principles laid down.

2.Let me trace the facts leading to the filing of the above civil revision petitions. The plaintiff in O.S No.140 of 2022 on the file of the First Additional District and Sessions Court, Thoothukudi is the revision petitioner herein. The defendant was a former employee of the plaintiff. According to the plaintiff, the defendant was terminated from service on 08.04.2022. The plaintiff alleges that the defendant is engaged in acts that are detrimental to its interests. Hence, O.S No.140 of 2022 was instituted to restrain the defendant from doing so. The plaintiff sought



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interim injunction against the defendant. The trial court issued only notice without granting ex-parte interim order. Aggrieved by the same, the plaintiff filed CRP(MD)No.1941 of 2022. Interim injunction was initially granted on 22.09.2022. The CRP came to be disposed of on 21.06.2023 in the following terms :

“11.Considering the aforesaid submissions, I am inclined to dispose of this Civil Revision Petition, by directing the learned I Additional District Judge at Tuticorin to dispose I.A.No.2 of 2022 in O.S.No.140 of 2022, within a period of 30 days from the date of receipt of a copy of this order. Pending disposal of the above I.A., the interim order passed by this Court on 22.09.2022, which has been subsequently extended from time to time, shall remain in force. The counter affidavit, which has been filed by the respondent containing statements against the counsel/legal firm shall stand expunged. However, there shall be no restriction on the part of the respondent to file appropriate counter affidavit in I.A.No.2 of 2022. In case, any further statements are made, it is open for the petitioner to contest the same.”

3.After the CRP was disposed of, on 02.08.2023, the defendant filed memo by enclosing the copy of the order dated 21.06.2023 along with his written statement. The trial court took the written statement on file. Thereafter, the plaintiff filed I.A No.6 of 2023 for rejection of the



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written statement. The court below vide order dated 03.07.2024 dismissed I.A No.6 of 2023. Questioning the same, the plaintiff filed CRP(MD)No.1853 of 2024. CRP(MD)No.1854 of 2024 has been filed challenging the order dated 02.08.2023 whereby the written statement was taken on file.

4.The learned Senior Counsel appearing for the plaintiff/revision petitioner reiterated all the contentions set out in the memo of grounds of revision and called upon this Court to set aside the impugned orders and allow the civil revision petitions as prayed for.

5.Per contra, the learned counsel appearing for the defendant/respondent submitted that the impugned orders are well reasoned. He pointed out that on 26.09.2022, vakalat was filed by the defendant in the suit. The matter was adjourned to 14.10.2022 and then to 10.11.2022. It was adjourned from time to time for filing written statement. When the matter was posted on 02.08.2023, written statement was filed. His contention is that since the court itself had on its own extended the time for filing written statement, it cannot be stated that there was delay in filing. He relied on the decision reported in **2007 (4) CTC 326 (R.N.Jadi and Brother v. Subhashchandra)**. He called upon this Court to dismiss the civil revision petitions.



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6.I carefully considered the rival contentions and went through the materials on record. Order 8 Rule 1 of CPC states that the defendant shall within thirty days from the date of service of summons on him present a written statement of his defence. The proviso to the said rule reads as follows :

“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.”

Even while holding that the upper limit of 90 days is directory, in **Salem Advocate Bar Association, T.N. v. UOI (2005) 6 SCC 344**, it was cautioned that the order extending time to file written statement cannot be made in routine and that time can be extended only in exceptionally hard cases. The court has to bear in mind that the legislature has fixed the upper limit of 90 days and that discretion of the court to extend the time shall not be frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1. In **Kailash v. Nanhku and others (2005) 4 SCC 480**, it was held as follows :



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*“42....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.”*



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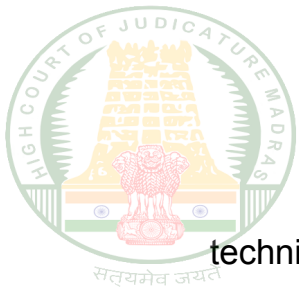
7.In **Atcom Technologies Limited vs. Y.A.Chunawala and**

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Company (2018) 6 SCC 639, it was held that the onus upon the defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within thirty days. In **Desh Raj v. Balkishan (D) through Proposed LR, Ms.Rohini 2020 (1) CTC 586**, it was held as follows :

“16.However, it would be gainsaid that although the unamended Order 8 Rule 1 CPC is directory, it cannot be interpreted to bestow a free hand to on any litigant or lawyer to file written statement at their own sweet will and/or to prolong the lis. The legislative objective behind prescription of timelines under CPC must be given due weightage so that the disputes are resolved in a time-bound manner. Inherent discretion of courts, like the ability to condone delays under Order 8 Rule 1 is a fairly defined concept and its contours have been shaped through judicial decisions over the ages. Illustratively, extreme hardship or delays occurring due to factors beyond control of parties despite proactive diligence, may be just and equitable instances for condonation of delay.”

8.The learned counsel appearing for the respondent relied on the decision of the Hon'ble Supreme Court in **R.N.Jadi and Brother v. Subhaschandra 2007 (4) CTC 326**. It had been emphasized therein that all the rules of procedures are handmaid of justice and that



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technical adherence to the rules should not take away the valuable right of the defendant to file written statement. In that case, the trial court had itself adjourned the case from time to time for filing written statement. The Hon'ble Supreme Court invoked the maxim of equity, namely, **actus curiae neminem gravabit** (an act of court shall prejudice no man) in favour of the defendant. The learned counsel for the respondent points out that in this case also, the case has been adjourned from time to time for filing written statement. When the case was listed on 05.06.2023, it was adjourned to 02.08.2023 for filing written statement. On 02.08.2023, written statement was filed and that therefore, according to the respondent, the aforesaid maxim will come into play.

9.I am not able to agree with the contention of the learned counsel appearing for the respondent. No doubt, the mistake of the court should not harm a party. But, no party can take advantage of the lapse committed by the court particularly when it is contrary to the statute. It was held in ***Athiappa Gounder v. Athiappa Pandaram (1967) 1 MLJ 392 (FB)*** that the maxim could be invoked and applied in individual cases to a party who has done all he should do under the statute and is prejudiced solely by the delay or mistake of the court. When the statute has prescribed a certain time line, it was incumbent on the part of the

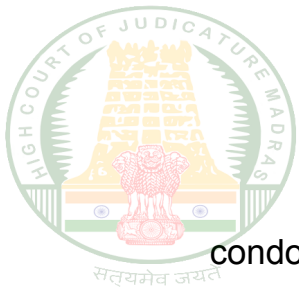


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defendant to adhere to the same. If he is unable to do so, he must offer a proper explanation and seek condonation. Without doing so, the defendant cannot ride piggy back on the mechanical endorsements made by the trial court. I hold that the defendant cannot take advantage of the aforesaid maxim.

10. There is another reason which impels me to interfere. The parties were engaged in fighting out the civil revision proceedings before the High Court. Only after its conclusion, the plaintiff also turned his attention to pursuing the suit. On the hearing date that fell after the disposal of the CRP, the written statement was filed. The delay occasioned deserved to be condoned. This is because the plaintiff cannot be said to be suffered any real prejudice. But then, the defendant could not have filed a memo as if the High Court had authorised the belated filing of the written statement. The order of the High Court made in CRP(MD)No.1941 of 2022 had nothing to do with the filing of written statement. The order dated 02.08.2023 taking the written statement on file proceeds on the premise that the written statement had been filed as per the order of the High Court. This was incorrect. Secondly, filing of written statement after the expiry of thirty days can be accepted only if there is an application in writing for

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condonation of delay. This is mandatory in view of the law laid down in

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Kailash v. Nanhku. Order 8 Rule 1 of CPC envisages recording of reasons by the court for permitting belated filing of written statement. When the court is expected to record reasons, it is obvious that there must be an application for condonation in writing. It also presupposes that the defendant offers proper explanation for the delay. When there is no such application either for condonation of delay in filing the written statement or for extension of time for filing the written statement, the court ought not to on its own extend time for filing the written statement while granting adjournments. Doing so would be contrary to Order 8 Rule 1 of CPC. It is the basic principle of law that if the power is given to do certain thing in a certain way, the thing must be done in that way.

11.CPC was amended in 2002. Salem Bar Association decision was rendered in 2005. We have travelled quite some distance since then. Commercial Courts Act, 2015 and The Consumer Protection Act, 2019 contain stiff deadlines. There is an interesting article “Adhering to Statutory Timelines: A Step Towards Better Case Management of Civil Trials” by Hasit B. Seth (2021 SCC OnLine Blog Exp 6) dealing with the culture of delay in filing of pleadings in courts. The author says that the situation can be remedied only by strict enforcement of the time lines.

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He laments “*despite the courts cautioning all along that relaxation of time limit under Order 8 Rule 1 must be exceptional, nearly universal forgiveness of delays in filing written statements has become the norm with cost imposed at times*”.

12.Let me reiterate. The trial courts shall not on their own extend the time for filing the written statement after the expiry of thirty days. It can be done only at the request of the defendant. The request cannot be made orally. It should be in writing. It should contain good reasons. Any written statement filed after thirty days can be accepted only upon condonation of delay in filing the same. The defendant must submit an application and offer proper explanation for the delay. The trial court must bear in mind the caution administered by the Hon'ble Supreme Court in *Salem Bar Association, Kailash vs. Nanhku and Desh Raj v. Balkishan*. The orders condoning delay must contain reasons and cannot be mechanically passed. While condonation of delay is discretionary, recording of reasons is mandatory. Courts should also consider awarding costs while condoning the delay.

13.Let me come back to the facts on hand. Order 7 Rule 11 CPC provides for rejection of plaint. There is no provision for rejection of



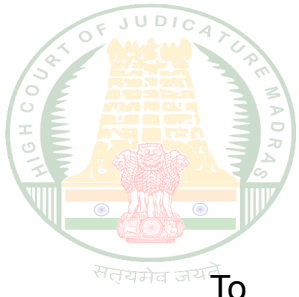
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written statement. The question of invoking inherent jurisdiction for this purpose does not arise. The observation of the court below in this regard is well founded. However, as already held, the reception of the written statement is not in order. Once it is held that the order dated 02.08.2023 is liable to be set aside, the petition for rejection of written statement becomes infructuous.

14.CRP(MD)No.1854 of 2024 is allowed and the order dated 02.08.2023 in O.S No.140 of 2022 on the file of the First Additional District Judge, Thoothukudi is set aside. CRP(MD)No.1853 of 2024 is closed as infructuous. The respondent is granted liberty to file his written statement along with a petition for condonation of delay. If the respondent avails this liberty, the court below shall allow the condone delay petition and receive the written statement. Connected miscellaneous petitions are closed.

13.09.2024

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Index : Yes / No
Internet : Yes/ No
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1. The 1st Additional District and Sessions Court, Thoothukudi

Copy to :

The Record Keeper,
V.R Section,
Madurai Bench of the Madras High Court.



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VERDICTUM.IN



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G.R.SWAMINATHAN, J.

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