

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 14th September, 2021

SINGLE BENCH: THE HON'BLE ACTING CHIEF JUSTICE MRS. JUSTICE MEENAKSHI MADAN RAI

W.P.(C) No.28 of 2021

Petitioners : Shanti Subba and Others

versus

Respondent : Jashang Subba

Application under Articles 226 and 227
of the Constitution of India

Appearance

Mr. Zangpo Sherpa, Advocate for the Petitioners.

Mr. N. Rai, Senior Advocate with Mr. Sushant Subba, Advocate
for the Respondent.

J U D G M E N T

Meenakshi Madan Rai, ACJ.

1. The Petitioners are before this Court seeking directions for setting aside the impugned Order, dated 30.03.2021, of the Learned District Judge, Special Division-II, Sikkim at Gangtok, in Title Suit No.14 of 2018 (*Shri Jashang Subba vs. Smt. Shanti Subba and Others*), vide which the Learned Trial Court disallowed the Petitioners from filing their Written Statements in the Title Suit.

2.(i) The facts relevant for the present purposes are narrated in *seriatim* hereinbelow for clarity.

(ii) On 29.09.2018, the Respondent filed a Suit before the Learned Trial Court against the Petitioners for Declaration, Recovery of Possession, Injunction and other Consequential Reliefs, pertaining to a Plot of land situated at Tumlabong, Ranipool, East Sikkim. Summons was received by the Petitioners on 08.10.2018

and appearance through Counsel made before the Learned Court on 26.10.2018, the date previously fixed. The matter was posted for filing of Written Statement on 05.12.2018. On the relevant day i.e. 05.12.2018, instead of filing the Written Statement, the Petitioners filed an Application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (for short, "CPC") seeking rejection of the Plaint. A fortnight later, on 21.12.2018, the Respondent filed his Response to the said Application which came to be heard and rejected by the Learned Trial Court on 11.03.2019.

(iii) Pursuant thereto, on 28.03.2019, the Petitioners filed an Application under Section 151 of the CPC seeking leave of the Court to file their Written Statements beyond the period prescribed under Order VIII Rule 1 of the CPC. Objection to this Application, was filed by the Respondent on 24.04.2019. Both the Petition and the Objection were taken on record but not heard on the same day.

(iv) On 14.07.2020, the Respondent filed an Application under Order VIII Rule 10 read with Section 151 of the CPC, Response to which was filed by the Petitioners on 10.08.2020. On the same date (10.08.2020), the Petitioners also filed an Application under Order I Rule 9 read with Section 151 of the CPC, Reply to which the Respondent filed on 15.09.2020.

(v) On 22.03.2021, the Learned Trial Court heard both, the Application of the Petitioners filed under Section 151 of the CPC and the Application of the Respondent filed under Order VIII Rule 10 read with Section 151 of the CPC. The impugned Order came to be passed on 30.03.2021.

(vi) It is relevant to mention that in the interregnum, on the Petitioners' Application under Order VII Rule 11 read with Section 151 of CPC being rejected by the Learned Trial Court vide Order, dated 11.03.2019, the Petitioners were before this Court on 26.04.2019, assailing it. Civil Revision Petition No.01 of 2019 (*Shanti Subba and Others vs. Jashang Subba*) was registered in this Court and vide Judgment pronounced on 26.06.2020, the Revision Petition of the Petitioners was rejected.

3.(i) Learned Counsel for the Petitioners while reiterating the facts as reflected hereinabove, advanced the argument that the Learned Trial Court had passed the impugned Order, dated 30.03.2021, arbitrarily, having failed to consider that on 05.12.2018, which was the second date on which the Petitioners appeared before the Court, they had filed their Application under Order VII Rule 11 read with Section 151 of the CPC seeking rejection of the Plaint on the ground of non-disclosure of cause of action. That, the Order, dated 05.12.2018, reflected that the Petitioners were allowed to file their respective Written Statements on the next date fixed i.e. 18.12.2018. However, on 18.12.2018, the Respondent sought time to file Response to the Application of the Petitioners under Order VII Rule 11 read with Section 151 of the CPC, thereafter the matter was fixed for hearing on the Application. That, it was only on 11.03.2019 that the said Application was disposed of and there was no specific Order passed by the Learned Trial Court till then with regard to filing of Written Statement by the Petitioners. Relying on the ratio of ***Saleem Bhai and Others vs. State of Maharashtra and Others***¹, it was canvassed that the Learned Trial Court failed to consider that there was no delay in filing the Written

¹ (2003) 1 SCC 557

Statement by the Petitioners and that there cannot be a direction to file a Written Statement without deciding the Application under Order VII Rule 11 of CPC. That, in fact, immediately on rejection of the Application under Order VII Rule 11 of CPC on 11.03.2019, the Petitioners on 28.03.2019, filed an Application under Section 151 of CPC seeking leave of the Court to file their respective Written Statements, however this Petition came to be disposed of by the impugned Order only on 30.03.2021.

(ii) That, in view of the pendency of the Application under Order VII Rule 11 of CPC read with Section 151 of CPC from 06.12.2018 to 11.03.2019, the limitation for filing of Written Statements by the Petitioners would begin to run only from 12.03.2019. That, adjournments were granted by the Learned Trial Court on several dates without deciding the Application under Section 151 of the CPC. Besides, the Respondent also jointly sought adjournment with the Petitioners on several dates on grounds as reflected in the Order Sheets of the Learned Trial Court. Despite this circumstance, the Respondent with *mala fide* intention, filed an Application under Order VIII Rule 10 read with Section 151 of the CPC on 14.07.2020 to deprive the Petitioners from filing their Written Statements. That, the Learned Trial Court has erroneously based its finding on the ratio-cination of ***SCG Contracts (India) Private Limited vs. K.S. Chamankar Infrastructure Private Limited and Others***² disregarding the fact that the said Judgment was passed in an issue pertaining specifically to a Commercial Dispute while the instant matter is a Title Suit. That, the Hon'ble Apex Court in its Judgment, dated 20.01.2020 in ***Desh Raj vs. Balkishan (Dead) Through Proposed***

² (2019) 12 SCC 210

Legal Representative Ms. Rohini³ has clarified the applicability of the Judgment of **SCG Contracts (India) Private Limited supra**. That, the provisions of Order VIII Rule 1 of CPC is not Mandatory but Directory in nature and the Rules of procedure are the handmaids of justice. Hence, appropriate Orders be issued setting aside the impugned Order and allowing the Petitioners to file their respective Written Statements in the Title Suit.

4. Resisting the contentions of Learned Counsel for the Petitioners, Learned Senior Counsel for the Respondent submitted that firstly, the act of the Petitioners in invoking Section 151 of the CPC seeking extension of time to file the Written Statement is erroneous. Relying on the Judgments of the Hon'ble Supreme Court in **Somar Bhuiya and Others vs. Kapil Kumar Gautam and Others**⁴ and **Smt. Santosh Chopra vs. Teja Singh and Another**⁵, it was contended that it is settled law that where there is a specific provision of law, the provision of Section 151 CPC cannot be invoked. That, the Petitioners ought to have approached the Learned Trial Court under the correct provisions of law seeking extension of time to file their Written Statements, hence the Petition under Section 151 of the CPC deserves no consideration. That, although the Petitioners placed reliance on **R.K. Roja vs. U.S. Rayudu and Another**⁶ wherein the Hon'ble Supreme Court had referred to the case of **Saleem Bhai and Others supra**, the Hon'ble Court has unequivocally stated therein that the liberty to file an Application for rejection under Order VII Rule 11 CPC cannot be a ruse for retrieving lost opportunity to file Written Statement. That, the

³ (2020) 2 SCC 708

⁴ AIR 1974 Patna 289

⁵ AIR 1977 Delhi 110

⁶ (2016) 14 SCC 275

Hon'ble Supreme Court in **SCG Contracts (India) Private Limited supra** has, with lucidity, held that the Written Statement of the Defendant must be taken off the record if the time limit, as statutorily prescribed, is not followed. Accordingly, the Petition deserves a dismissal.

5. The rival submissions of Learned Counsel for the parties were heard *in extenso* and all documents on record meticulously perused including the impugned Order as also the citations made at the Bar.

6. The questions that fall for consideration before this Court are:

- (1) Whether the Petition invoking Section 151 of the Code of Civil Procedure, 1908, deserves to be disregarded by the Court, being the inappropriate provision for the purpose of seeking extension of time to file Written Statement?
- (2) Whether the Proviso to Order VIII Rule 1 of the Code of Civil Procedure, 1908, would apply in the facts and circumstances of the present case?

7. The narrative of the events before the Learned Trial Court have already been reflected hereinabove. While addressing the first question formulated above, in **K. K. Velusamy vs. N. Palanisamy**⁷, the Hon'ble Supreme Court relying on a catena of decisions pertaining to the scope of Section 151 of the CPC held that the submission of the Respondent therein that Section 151 of the CPC could not be used for reopening evidence or for recalling witnesses was unacceptable. The Court observed that Section 151 of the CPC is not a substantive provision which creates or confers any power or jurisdiction on Courts, it merely recognizes the discretionary power inherent in every Court as a necessary corollary

⁷ (2011) 11 SCC 275

for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong.' In other words, to do all things necessary to secure the ends of justice and prevent abuse of its provisions. Nevertheless, the powers under Section 151 or for that matter Order XVIII Rule 17 of the Code are not intended to be used routinely at the drop of a hat.

8. In *Rupa Ashok Hurra vs. Ashok Hurra and Another*⁸ it was opined *inter alia* as hereunder;

"69. True, due regard shall have to be had as regards opinion of the Court in Ranga Swamy [(1990) 1 SCC 288] but the situation presently centres around that in the event of there being any manifest injustice would the doctrine of *ex debito justitiae* be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and the present phase of socio-economic conditions of the society. Manifest injustice is curable in nature rather than incurable and this Court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. **There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an order stands out to create manifest injustice, would the same be allowed to remain in silentio so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem?**In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system, **technicality ought not to outweigh the course of justice – the same being the true effect of the doctrine of *ex debito justitiae*.** The oft-quoted statement of law of Lord Hewart, C.J. in *R. v. Sussex Justices, ex p McCarthy* [(1924) 1 KB 256 : 1923 All ER Rep 233 : 93 LJKB 129] that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seen to be done, had this doctrine underlined and administered therein."

(Emphasis supplied)

The pronouncements extracted hereinabove lend succour to the expectation that technicality should not come in the way of meting out even handed justice. In the instant matter, the Petitioners have filed a petition under Section 151 of the CPC instead of filing it under Order VIII Rule 1 and the Proviso thereof, however, manifest injustice cannot be perpetuated on grounds of technicality.

⁸ (2002) 4 SCC 388

Procedure is to be seen as a mechanism to advance the course of justice and by no means to thwart the process. Hence, there is no reason to disregard the Application under Section 151 of the CPC merely for the reason that the appropriate provision was not invoked.

9.(i) While dealing with the second question *supra*, we are concerned with the provisions of Order VIII Rule 1 of the CPC, which are extracted hereinbelow for easy comprehension of the matter;

"ORDER VIII
WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM

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."

From a bare reading of the provision, it is evident that the Defendant is required to file a Written Statement of his defence within thirty days of service of Summons on him. Nevertheless, failure on the part of the Defendant does not debar him from filing a Written Statement at a later date, subject to the Court allowing him to do so for reasons which the Court is required to record. This is evident from the Proviso to Order VIII Rule 1 of the CPC. That having been cleared, it is essential now to consider whether the Petitioners have made out a case for exercise of the discretionary powers of the Court in their favour.

(a) On 29.09.2018, Title Suit No.14 of 2018 was registered before the Learned Trial Court. The Suit was accompanied by an Application under Order XXXIX Rules 1 and 2 read with

Section 151 of the CPC, which was ordered to be listed for hearing on 01.10.2018.

(b) On 01.10.2018, the Petitioners were ordered to maintain *Status Quo* with regard to the disputed property and Notice issued to the Petitioners returnable by 26.10.2018.

(c) On 26.10.2018, the Petitioners entered appearance through their Counsel and the Learned Trial Court recorded *inter alia* as follows,

".....
Now to come up for filing of W.S, if any.
To: 05.12.2018.
....."

(d) On 05.12.2018, the Petitioners were before the Court with an Application under Order VII Rule 11 read with Section 151 of the CPC instead of a Written Statement. The Respondent sought time to file Reply to this Petition which was permitted and the next date fixed on 18.12.2018. The Order of the Court, dated 05.12.2018, *inter alia* reads as follows;

".....
Ld. Counsel for the defendants prays for time to file W.S.
Ld. Counsel for the defendants also files applications under Order VII Rule 11 r/w section 151 of C.P.C.
Ld. Counsel for the plaintiff prays for time to file reply to the same.
Considered, time allowed.
To: 18.12.2018.
For: filing of reply."
....."

Pausing here for a moment, it may pertinently be noticed that the Court fixed the next date for filing of "reply" to the Application of the Petitioners under Order VII Rule 11 read with Section 151 of the CPC but made no mention of the fate of the Written Statement. It was for the Court at this juncture to have spelt out whether the Written Statement was to be filed or whether the Petitioners were to await disposal of the aforementioned Application. The Order of the Court is silent on these aspects.

(e) On 18.12.2018, the Respondent sought further time to file the Reply. No reference is made to the filing of Written Statement by the Petitioners, either by the Petitioners themselves nor was it brought to the notice of the Court by either of the parties. The Court itself too neglected to mention the non-filing of the Written Statement in its Order. The next date was fixed on 21.12.2018.

(f) On 21.12.2018, Reply by the Respondent to the Application of the Petitioners under Order VII Rule 11 read with Section 151 of the CPC came to be filed. 06.02.2019 was fixed for hearing on this Petition. No reference was made by the Petitioners about their Written Statements neither did the Court raise a question on this count.

(g) On 06.02.2019, adjournment was sought by the Respondent on grounds that the conducting Senior Counsel was out of station. The Court considered and granted time till 25.02.2019 for hearing of the Application under Order VII Rule 11 read with Section 151 of the CPC and still failed to consider that Written Statement had not yet been filed.

(h) On 25.02.2019, the Petition under Order VII Rule 11 read with Section 151 of the CPC finally came to be heard and the matter was listed for orders on 11.03.2019.

(i) On 11.03.2019, the Order was pronounced rejecting the Petition filed by the Petitioners. It is only on this date that the Court broached the subject of Written Statement and recorded *inter alia* as follows;

"11.03.2019

Date is fixed for Order.

Order pronounced vide separate sheets of papers.

No Written statement on behalf of the defendants has been filed.

*Now to come up for examination of parties under Order X of C.P.C.
....."*

The next date was fixed on 28.03.2019.

(j) On 28.03.2019, the Counsel for the Petitioners filed an Application under Section 151 of the CPC seeking extension of time to file their Written Statements. The Respondent sought time to file Reply to this Petition. Without considering the Petition filed on that day and after permitting the Respondent to file Response to it, strangely enough before deciding the Application, the Court proceeded to examine the Respondent under Order X of the CPC on the same day.

(k) On 24.04.2019, the Respondent filed his Reply and the Court fixed the date for hearing on 03.05.2019.

(l) On 03.05.2019, the Learned Presiding Officer was out of station to attend Training for Judicial Officers and the date was deferred to 23.05.2019.

(m) On 23.05.2019, the Case File was transferred to the Court of the Learned District Judge, Special Division-II, Sikkim by an Order of this Court. On the same date, the Learned Court of Special Division-II posted it to 24.05.2019 for further Orders.

(n) On 24.05.2019, the Learned Trial Court, recorded *inter alia* as follows;

".....

At the outset, Ld. Counsel for the defendants submit that they have filed a Revision Petition before the Hon'ble High Court of Sikkim against the Order passed by the Ld. District Judge, East Sikkim at Gangtok vide Order dated: 11.03.2019.....

.....

In view of the aforesaid submissions and the Order dated:23.05.2019 of the Ld. District Judge, East at Gangtok, let the matter be fixed on 06.06.2019."

(o) From 06.06.2019, the matter was adjourned on grounds that the Revision Petition was pending before the High Court from where it was forwarded for Mediation. In fact, the Orders reveal that the parties jointly sought time from 26.09.2019 on grounds that the matter was fixed for Mediation. On 05.03.2020, the Learned Trial Court was informed that the matter could not be settled by Mediation and was fixed for hearing before the High Court. The Learned Trial Court thus fixed 31.03.2020 for further orders. Meanwhile, the country was plagued by the Covid-19 Pandemic and Nation wide lockdown was declared.

(p) The Judgment of this High Court rejecting the Revision Petition was pronounced on 26.06.2020. On 14.07.2020, the parties appeared before the Learned Trial Court and placed the Judgment of this Court before it. On the same date, the Respondent also filed an Application under Order VIII Rule 10 read with Section 151 of the CPC and the matter was listed on 31.07.2020 for further orders. It is apposite to remark here that till then on several dates the parties had jointly sought adjournment and the Respondent did not object to the non-filing of the Written Statement by the Petitioners for almost two years. Due to the Pandemic still ravaging the country, the matter was not taken up and came to be heard finally only on 22.03.2021 and the impugned Order pronounced on 30.03.2021.

(ii) From the Orders reflected hereinabove, it is evident that the Court fixed 05.12.2018 for filing of Written Statements by the Petitioners but the said Order did not reflect as to whether the Petitioners had been granted further time or whether further time to file the Written Statements was declined, indicating

that the Court was also remiss in its duty, as already observed *supra*. Thereafter the Orders reflect that no reference was made to the filing of the Written Statement and on 11.03.2019, the Court came to the sudden realization that no Written Statement was filed on behalf of the Petitioners but proceeded to fix the matter for examination of the parties under Order X of the CPC, without recording its disinclination to permit filing of the Written Statements. Although the Application under Section 151 of the CPC was filed by Learned Counsel for the Petitioners on 28.03.2019 seeking extension of time to file their Written Statements, the Learned Court while allowing the Petitioners to file Response, kept the matter pending for several months and instead of considering the Petition and pronouncing its decision, examined the Respondent under Order X of the CPC on that date. The Petition was disposed of a year later, on 30.03.2021 vide the impugned Order. In *Saleem Bhai and Others supra* relied on by Learned Counsel for the Petitioners, the short common question that arose for consideration in the Appeals, was whether an Application under Order VII Rule 11 of the CPC ought to be decided on the allegations in the Plaint and filing of Written Statement by the contesting Defendant is irrelevant and unnecessary. Answering this question, the Hon'ble Supreme Court, after duly considering the matter, at Paragraph 9, observed thus;

"9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity."

(Emphasis supplied)

The matter was thereafter remitted back to the Learned Trial Court for deciding the Application under Order VII Rule 11 of the CPC on the basis of the averments in the Plea, after affording an opportunity of being heard to the parties in accordance with law. This ratio therefore observes that an Application under Order VII Rule 11 of the CPC ought to be disposed of before an Order for filing of Written Statement is made for the reasons mentioned therein.

(iii) It may relevantly be noticed that in the case of **R.K. Roja supra**, as correctly pointed out by Learned Senior Counsel for the Respondent, the Hon'ble Supreme Court, while making a reference to the case of **Saleem Bhai and Others supra**, as extracted hereinabove, had added the observation in its Judgment, *inter alia*, as follows;

"6.However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement."

It is, however, worthwhile noticing that although the Hon'ble Court, after hearing the Learned Counsel appearing for the Appellant on the Application under Order VII Rule 11 of the CPC, was satisfied that the Application did not come within the purview of any of the situations under Order VII Rules 11(a) to (f) of the CPC, concluded that nevertheless in the peculiar facts of the case, the Appellant be given an opportunity to file the Written Statement within two weeks from the date of disposal of the Appeal.

(iv) Learned Senior Counsel for the Respondent had buttressed his submissions by relying on **SCG Contracts (India) Private Limited supra**. On this aspect, we may relevantly refer to the ratio of the Hon'ble Supreme Court in **Desh Raj vs. Balkishan (Dead) Through Proposed Legal Representative Ms. Rohini (supra)**, wherein it clarified

that the Commercial Courts Act, 2015 through Section 16, amended the CPC in its application to Commercial Disputes. Section 16 of the Commercial Courts Act, 2015, provides as under;

"16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.—(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a specified value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a specified value.

(3) Where any provision of any rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908, by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail."

Accordingly, Commercial Disputes defined under Section 2(c) of the Commercial Courts Act, 2015, are governed by the CPC as amended by Section 16 of the said Act, while Non-Commercial Disputes fall within the ambit of the original provisions of the CPC. It was also observed that the ratio in **SCG Contracts (India) Private Limited supra**, concerning the mandatory nature of the timeline prescribed for filing of the Written Statement and the lack of discretion of the Courts to condone any delay, is applicable only to Commercial Disputes as the Judgment was undoubtedly rendered in the context of a Commercial Dispute. The ratio in **SCG Contracts (India) Private Limited supra** is not applicable thereby to the case at hand.

(v) In **Atcom Technologies Limited vs. Y.A. Chunawala and Company and Others**⁹, the Hon'ble Supreme Court while examining the provisions of Order VIII Rule 1 of the CPC and the extension of period of filing of Written Statement from thirty days up to ninety days, observed that as per the said provisions, the Defendant is obligated to present a Written Statement of his defence within thirty

⁹ (2018) 6 SCC 639

days from the date of service of summons. That the Proviso thereto enabled the Court to extend the period up to ninety days from the date of service of Summons for sufficient reasons. It was held *inter alia* as follows;

"20. This provision has come up for interpretation before this Court in number of cases. No doubt, the words "shall not be later than ninety days" do not take away the power of the court to accept written statement beyond that time and it is also held that the nature of the provision is procedural and it is not a part of substantive law. At the same time, this Court has also mandated that time can be extended only in exceptionally hard cases. We would like to reproduce the following discussion from *Salem Advocate Bar Assn. (2) v. Union of India* [*Salem Advocate Bar Assn. (2) v. Union of India*, (2005) 6 SCC 344] : (SCC p. 364, para 21)

"21. ... There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". **Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory.** Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1."

21. In such a situation, 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. When that is a requirement, could it be a ground to condone delay of more than 5 years even when it is calculated from the year 2009, only because of the reason that writ of summons was not served till 2009?"

(Emphasis supplied)

(vi) On the anvil of the ratiocinations of *Atcom Technologies Limited* and *Salem Advocate Bar Association vs. Union of India*¹⁰ (*supra*), it emerges that the words "shall not be later than ninety days," does not divest the Court of its discretionary powers to accept Written Statement beyond the time stipulated in the said provision. In fact, it is propounded that the provision of Order VIII Rule 1 providing for the upper limit of ninety days to file Written Statement is Directory. However, it must also be borne in mind that although the Court has wide powers to make such Order in relation

¹⁰ (2005) 6 SCC 344

to the Suit as it thinks fit, the Order extending time to file the Written Statement cannot be exercised in a routine manner and frequently to nullify the period fixed by Order VIII Rule 1 of the CPC. Both the ratiocinations *supra* have observed that time can be extended only in exceptionally difficult cases.

(vii) Based on this principle, in view of what transpired before the Learned Trial Court, as has been reflected from the Orders extracted *supra*, in my considered opinion, it is apparent that the Petitioners were awaiting the disposal of their Petition filed under Order VII Rule 11 read with Section 151 of the CPC. They were evidently of the opinion that pursuant thereto only they were either to file Written Statements or would be debarred from filing it. After rejection of the Petition under Order VII Rule 11 read with Section 151 of the CPC, they have filed an Application under Section 151 of the CPC, the hearing of which the Learned Court procrastinated for approximately two years sans reasons, which is thus unjustified.

(viii) The facts placed before this Court sufficiently provide for exercise of discretion in favour of the Petitioners in terms of the Proviso to Order VIII Rule 1 of the CPC. The Petitioners cannot be penalized for the Learned Trial Court also being unmindful of its role, as already discussed hereinabove. The discussions that have emanated *supra*, soundly answers the second question formulated.

10. Consequently, the impugned Order, dated 30.03.2021, deserves to be and is hereby set aside.

- 11.** The Petitioners are afforded the opportunity of filing their respective Written Statements in the above-mentioned Title Suit on or before 23.09.2021.
- 12.** Writ Petition disposed of accordingly.
- 13.** Pending applications, if any, also stand disposed of.
- 14.** No order as to costs.

(Meenakshi Madan Rai)
Acting Chief Justice
14.09.2021