

Karnataka High Court A. Sathyapal And Ors. vs Smt. Yasmin Banu Ansari And Anr. on 27 February, 2004 Equivalent citations: ILR 2004 KAR 1399 Author: T S Thakur Bench: T S Thakur, S A Nazeer ORDER 8 RULE 1 – FILING OF WRITTEN STATEMENT – Whether can be filed beyond the period of 30 days from the date of service of summons – HELD – The defendant has to file his written statement of his defence within 30 days from the date of service of summons upon him. He can be allowed by the Court to file his written statement beyond the said period of 30 days the reasons that the Court must record in writing. Held: The use of the word ‘shall’ prima facie makes that requirement mandatory. The failure on the part of the defendant does not however entirely forbid him from filing the written statement on a later date provided the Court permits him to do so for reasons which it must record in writing. A defendant who fails to file the written statement within 30 days from the date of service of summons upon him, will not therefore ipso facto lose the right to do so beyond that period. He can be allowed by the Court to file his written statement beyond the said period for reasons that the Court must record in writing. The obligation to record reasons implying a duty to apply its mind to the reasons advanced by the defendant for his failure to file the written statement within 30 days. In other words, there is no mechanical extension of time for filing of the written statement. The Court must record the precise reasons for its permitting the defendant to do so beyond the statutory period. (B) CIVIL PROCEDURE CODE, 1908 (CENTRAL ACT NO. 5 OF 1908) (AMENDMENT ACT OF 2002) – ORDER 8 RULE 1 – What is the maximum time permissible to file written statement after the expiry of 30 days – Whether Court has power to extend time beyond 30 days. HELD – Power to grant extension for filing the written statement stands exhausted no sooner the Court grants 60 days beyond the initial period of 30 days regardless whether the extension is granted in one go or in smaller bits from time to time. After the period of 90 days, the defendant loses the right to file the written statement. (C) CIVIL PROCEDURE CODE, 1908 (CENTRAL ACT NO. 5 OF 1908) – (AMENDMENT ACT OF 2002) – ORDER 8 RULE 1 – Whether Court has power to extend time beyond 90 days for filing written statement – HELD – Once the 30 days time period is over, the Court for reasons to be recorded in writing can grant upto a maximum of 60 days and once the same is exhausted, the Court has no power to grant time beyond 90 days for filing written statement from the date of service of summons. (D) CIVIL PROCEDURE CODE, 1908 (CENTRAL ACT NO. 5 OF 1908) (AMENDMENT ACT OF 2002) – ORDER 8 RULE 1 – If Written Statement is to be filed after 30 days from the date of service of summons. HELD – Court can extend the time for filing written statement upto a maximum of 60 days and for granting extension of time for filing written statement the Court has to record the reasons in writing for extending the time to file written Statement. There is no mechanical extension of time for filing of the written statement. The Court must record the precise reasons for its permitting the defendant to do so beyond the statutory period of 30 days. ILR 2003 KAR 2205 S.G. NARAYANA SWAMY v. RAMAKRISHNAPPA and ILR 2003 KAR 2459 A.V. PURUSHOTAM v. N.K.

NAGARAJ overruled. (E) CIVIL PROCEDURE CODE, 1908 (CENTRAL ACT NO. 5 OF 1908) – (AMENDMENT ACT OF 2002) – ORDER 8 RULE 1 - SECTIONS 148, 151 – Whether the Court has power to extend time beyond 90 days under Section 148 or 151 CPC – HELD – The provisions of Section 148 or 151 cannot be invoked to grant time beyond the stipulated period of 90 days from the date of service of summons available under the provisions of Order 8 of CPC. It is evident from a bare reading of Rule 1 of Order VIII of the CPC that the defendant has to file a written statement of his defense within 30 days from the date of service of summons on him. The use of the word ‘shall’ prima facie makes that requirement mandatory. The failure on the part of the defendant does not however entirely forbid him from filing the written statement on a later date provided the Court permits him to do so for reasons which it must record in writing. A defendant who fails to file the written statement within 30 days from the date of service of summons upon him, will not therefore ipso facto lose the right to do so beyond that period. He can be allowed by the Court to file his written statement beyond the said period for reasons that the Court must record in writing. The obligation to record reasons implying a duty to apply its mind to the reasons advanced by the defendant for his failure to file the written statement within 30 days. In other words, there is no mechanical extension of time for filing of the written statement. The Court must record the precise reasons for its permitting the defendant to do so beyond the statutory period. The power of the Court to extend the time for filing of the written statement would however be restricted on a plain reading of the proviso to a total period of 90 days reckoned from the date of service of the summons. The provision does not on a plain and literal understanding of the words employed therein empower the Court to extend time beyond 90 days from the date of service of the summons. The words used by the Parliament for conveying its intention are unambiguous and the only logical interpretation that can be given to the provision read as a whole is that the Court cannot extend time for filing the written statement beyond 90 days from the date of service of the summons upon the defendant. The defendant’s right to file a written statement within 30 days from the date of service of summons is unquestionable in the light of Order VIII Rule 1 of CPC. Beyond the said period, the defendant has to seek enlargement of time in terms of the proviso under Rule 1 of Order VIII which proviso itself restricts the power of extension to a total of 90 days reckoned from the date of service of summons. That being so, once the power to grant extension for filing of the written statement is exhausted in terms of proviso to Order VIII Rule 1 of CPC and the defendant fails to file a written statement during the extended period, the right to do so is lost. This would in other words imply that the Court cannot allow filing of a written statement beyond the period stipulated under Order VIII Rule 1 of CPC and the proviso thereto. Resort to Section 148 of the CPC would therefore be wholly out of place in such a situation for three precise reasons. Firstly because the provisions of Order VIII Rule 1 and the proviso are a Code in themselves with an outer time limit prescribed for filing the written statement by the statute itself which cannot be extended by resort to Section 148 of the CPC. It is only in cases where the time is granted or

fixed by the Court that an extension under Section 148 is permissible. Secondly because the power to extend time beyond 30 days prescribed by Rule 1 of Order VIII is wider than that available under Section 148. While the power under Section 148 is limited to extension of 30 days only, the power available under the proviso is exercisable for a period of 60 days beyond the initial period of 30 days prescribed under Rule . Thirdly because the failure of the defendant to file a written statement within the stipulated period or the extended period admissible under the proviso, the right to file a written statement an act otherwise permitted by the Code is lost not because the Court will decline to grant an extension but the Code itself does not envisage any extension beyond 90 days. Reference answered accordingly. ORDER Tirath S. Thakur, J. 1. Divergent opinions expressed by different single benches of this Court have necessitated the present reference to a larger bench to resolve the conflict and the resultant confusion as regards the true and correct interpretation of Order VIII Rules 1 and 9 of the CPC. The precise question that falls for consideration is whether a Court trying a civil action has the power to extend time for filing of a written statement beyond what is stipulated in Order VIII Rule 1 of the Code. The question arises in the following backdrop. 2. In S.G. NARAYANA SWAMY v. RAMAKRISHNAPPA, , K. Sreedhar Rao, J., while interpreting Order VIII Rules 1, 9 and 10 held that unbridled discretion to grant extension to file written statement stood curtailed by the amended provisions. If the defendant in a suit does not file a written statement within the time stipulated under Order VIII Rule 1, he can for valid reasons seek condonation of the delay in doing so. The Court can in such situation exercise its inherent power and condone the lapse and admit the written statement belatedly while compensating the opposite party for the inconvenience caused to it by awarding costs punitive or otherwise to discourage what the Court described “misuse or the abuse of the provisions”. A rigid or technical view on the interpretation of the provision will observed his Lordship result in multiplicity of avoidable “Off shoot proceedings” like an appeal against the decree. 3. G.C. Bharuka J, in SMT. SAVITH GUPTA v. SMT. NAGARATHNA AND ORS., 2. 2003(4) KAR.L.J. 14 expressed a contrary view. His lordship held that from the amended provisions of Order 8 Rule 1 of the Code of Civil Procedure, it was evident that a defendant loses his right to file a written statement if he fails to do so within the time prescribed by the said provision. The Court has no power declared his Lordship to extend such time even under Section 148 or 151 of the CPC. 4. Kumar Rajaratnam, J., as his Lordship then was, in PRASANNA PARVATHAMBA VAIDYANATHESHWARA TRUST, REP. BY ITS PRESIDENT, MANDYA v. M.S. RADHAKRISHNA DIXIT, interpreted the provisions of Order VIII Rule 1 of the Code as carrying a clear mandate to the effect that written statements must be filed within 30 days from the date of the service of the summons. Failure to do so could be condoned by the Court but not beyond a period of 90 days from the date of the service of the summons. The Court further held that if a written statement was not filed within the extended period also, the Code mandates the Court to pronounce judgment against him or make such order as it thought fit His Lordship further found an enabling provision in Order VIII

Rule 9 of the CPC for filing of a written statement within 30 days from the date the Court invoked the power vested in it under the said provision but cautioned that since the new Code was enacted by the Parliament to cut short delays at various levels, the Courts must be extremely cautious in exercising the said power. 5. B. Padmaraj, J in Civil Revision Petition No. 1494/2003 disposed of on 10.7.2003 held that the provisions of Order VIII Rule 1 of the CPC requiring a written statement to be filed within 30 days or within the outer limit of 90 days from the date of the service of the summons was clearly mandatory in nature. Failure on the part of the defendant to file a written statement within the stipulated period resulted in the defendant losing the right to do so. 6. N. Kumar, J in A.V. PURUSHOTAM v. N.K. NAGARAJ, ILR 2003 KAR 2459 interpreted the provisions of Order VIII Rule 1 of the Code of Civil Procedure to be directory in nature. His Lordship held that even after the Court extended time for filing of written statement under the proviso to Order VIII Rule 1, the failure of the defendant to do so did not result in loss of his right to file such a written statement for all times to come. The rule being procedural in nature could not be construed as mandatory observed the Court. 7. A.C. Kabbin, J., noticed the conflict in the opinions expressed by different Benches and referred the matter to a division Bench for an authoritative pronouncement. That is precisely how these revisions petitions have been placed before us for an answer to what is a question often arising for consideration in the Courts below. 8. We have heard learned Counsel for the parties at length. Order VIII of the Code of Civil Procedure deals with written statement, set-off and counter - claim. Rule 1 of Order VIII before its amendment in the year 1999 was as under: "1.(1) The defendant shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence." Pursuant to the recommendations made by the Law Commission, the Code of Civil Procedure (Amendment) Bill, 1997 was introduced in the Parliament which was enacted as the Code of Civil Procedure (Amendment) Act, 1999. Rule 1 of Order VIII extracted above was in terms of the said amendment substituted by the following: "1. Written statement: The defendant shall at or before the first hearing or within such time as the Court may permit, which shall not be beyond thirty days from the date of service of summons on the defendant, present a written statement of his defence." Before action could be initiated for the enforcement of the amendments brought about by the 1999 amendment Act, the Bar Council of India and certain Bar Associations demanded a fresh look into certain provisions which could according to them cause hardship to the litigants. This led to a debate on the necessity and the desirability of the amendments brought about by the 1999 amendment Act. Even the Law Commission of India in its 163rd report dealt with the Code of Civil Procedure (Amendment) Bill, 1997 based on which the Code of Civil Procedure (Amendment) Act, 1999 was passed. As a result of the debate and the deliberations that followed the 1999 amendments, the Government introduced a Bill to further amend the Code of Civil Procedure, 1908 and to provide for matters connected therewith or incidental thereto. Order VIII Rules 1 and 9 in the form in which they now appear in the statute book were accordingly introduced. The short question is whether the require-

ment of filing a written statement within 30 days from the date of service of the summons or within such extended period as the Court may grant not exceeding 90 days from the said date is mandatory. In other words, whether the power to extend time for filing the written statement can be exercised by the Court trying the suit even beyond the period stipulated under the proviso to Rule 1 of Order VIII which now runs as under: “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.” A careful reading of the above would show that although the defendant is required to file his written statement within 30 days from the date of service of the summons and although that requirement is signified by the use of word ‘shall’ in Rule 1, the failure on the part of the defendant to meet that requirement does not conclude the matter or disable him from filing the written statement on a date subsequent to the expiry of 30 days provided the Court permits him to do so for reasons to be recorded in writing. It is manifest from a plain and literal reading and understanding of the provision that the defendant has every right to file a written statement within a period of 30 days stipulated for the purpose. But, once he fails to do so, his right to file written statement is controlled by the proviso under which the filing or the entertainment of any such statement would depend upon the Court concerned permitting him to do so for reasons that it must record in writing. The requirement of recording reasons in writing clearly implies that an extension beyond 30 days cannot be granted as a matter of course or just for the asking. The Court must while granting such an extension apply its mind to the reason which prevented the defendant from filing the written statement within the period prescribed. It must then record the reason for the grant of extension prayed for. This procedural safeguard is intended to ensure that the power to grant or refuse permission to file a written statement beyond 30 days is not exercised in an arbitrary nor whimsical. Thus for there is no difficulty in placing an interpretation upon the provision. The difficulty arises when the power of the Court to grant an extension for filing of written statement under the proviso exhausts itself by reason of one or more than one opportunities granted for doing the needful within a period of 90 days from the date of the service of the summons upon the defendant. 9. Two distinct viewpoints were urged before us by learned Counsel for the parties, just as two distinct views have been expressed in the decisions rendered by different single benches of this Court. One view canvassed the proposition that the provisions of Order VIII is at the most a provision that is procedural in content. While the procedure generally prescribed for trial of suits may require or be amended so as to provide for expeditious disposal of cases, the procedure remains a hand maid for doing justice between the parties. The use of the word ‘shall’ in Order VIII Rule 1 or the negative phraseology used in the proviso limiting the Courts power to grant extension were in that view inconsequential according to the

learned Counsel. Reliance was also placed upon the provisions of Order VIII Rule 9 which empowers the Court to call for a written statement at any time. The availability of such power with the Court, implies that the loss need not be one for good and would largely depend upon whether the Court finds it a proper case in which it should even beyond the stipulated period, permit the defendant to file a written statement. Section 148 was in any case available according to this school of thought to grant an extension beyond 90 days stipulated under the proviso which according to the learned Counsel showed that the requirement of filing a written statement within 90 days was neither sacrosanct nor inviolable in all situations. 10. The contrary view expressed drew support from the phraseology used in Order VIII Rule 1 of the CPC. The use of the word 'shall' thrice in the said provision according to the counsel was indicative of the clear legislative intent to make the provision mandatory. So also, the negative phraseology used in the proviso limiting the power of the Court to grant extension was a clear indication that the power exhausted itself no sooner the stipulated period of 90 days lapsed from the date of the service of the summons. Super added to all this was the background in which the legislation was introduced in the Parliament. The dominant purpose behind the amended provisions according to the learned Counsel supporting this view was to cut short delays in the disposal of cases. One of the bottlenecks which prevented the start of a trial was according to the Law Commission and the Parliament the stage when defendant is required to file his written statement. The statement of objects and reasons accompanying the Bill as also the reports that have been referred to in the same left no manner of doubt that the intention behind the amendment was to make it mandatory for the defendant to file a written statement within the stipulated period beyond which neither the defendant had the right to file one nor the Court had the power to entertain any such statement. 11. What then is the true purport of Order VIII Rule 1 of CPC after its amendment by the 2002 Act is the primary question that arises for consideration. The answer to that question would necessarily depend upon the true and correct interpretation of the said provision. It is trite to say that the sole purpose underlying any exercise involving interpretation of a statute is to ascertain the legislative intent of the lawmakers. Of the numerous principles that judicial pronouncements have consecrated over the years, one principle which is perhaps the most well established and universally accepted is that if the statute is certain and free from ambiguity a bare reading of the same should suffice. In *SHRIRAM v. STATE OF BOMBAY*, the Court held that if the words of a statute are themselves precise and unambiguous, those words should be expounded in their natural and ordinary sense. And yet it is truism to say that language howsoever rich and ancient it may be, is often found to be an unsatisfactory medium for expression of ideas and thoughts. The words used by the Legislature may be capable of being understood to be conveying more than one meaning. The expressions appearing in the Statute may be ambiguous or their meaning uncertain requiring interpretation in order to ascertain what the legislators meant. It is immaterial whether the legislature intent has remained obscure for one reason or the other. That is because the object of interpretation is to ascertain what was the legislative

intent and to give effect to the same. The Court need not labour to identify the reason that made the legislative intent vague or uncertain. 12. Legislative intent and legislative purpose thus assumes great significance in cases where the language employed may give rise to two or more interpretations. One of the well established rules of interpretations of vintage value is what is called the Rule of ‘purposive construction’ or the ‘mischief rule’ first enunciated in Heydon’s case (1584) 3 Co. Rep. 7a: 1976 ER 637]. In *BENGAL IMMUNITY CO. v. STATE OF BIHAR*, S.R. Das, C.J., explained the mischief rule as under: “It is a sound rule of construction of statute firmly established in England as far back as 1584 when Heydon’s case was decided that for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: 1st. What was the common law before the making of the Act, 2nd What was the mischief and defect for which the common law did not provide. 3rd What remedy the Parliament had resolved and appointed to cure the disease of the commonwealth, and 4th The true reason of the remedy. And then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privata commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.” In *KANAILAL SUR v. PARAMNIDHI SADHUKHAN*, their Lordships of the Supreme Court described the rule laid down in Heydon’s case as having attained the status of a classic. It is also fairly well settled that if the statute uses the word “shall”, it must normally be construed to mean ‘Shall’ and not ‘may’ for the distinction between the two is fundamental. Crawford on Statutory Construction CEDN 1940, ART. 261 P. 516) has approvingly extracted the following passage from an American decision: “The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other”. In *KHUB CHAND v. STATE OF RAJASTHAN*, the Court declared that the term ‘shall’ in its ordinary significance is mandatory and the Court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature to the collected from other parts of the Act. The same principle was expressed in *HARIDWAR SINGH v. BEGUM SUMBRUT*, and *RE, PRESIDENTIAL ELECTION*’ AIR 1974 SC 1682. In the later of the Judgments, their Lordships declared it to be a duty of the Courts to get at the real intention of the legislature by carefully attending to the whole scope of the provision to be construed. The Court observed: “The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole”. In *GOVIND LAL CHAGGAN LAL PATEL v. THE AGRICULTURE PRODUCE MARKET COMMITTEE AND ORS.*, their Lordships

held that while the use of word ‘shall’ or may is not conclusive whether the particular requirement of law is mandatory or directory, but the circumstances that the legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. 13. It is evident from a bare reading of Rule 1 of Order VIII of the CPC that the defendant has to file a written statement of his defense within 30 days from the date of service of summons on him. The use of the word ‘shall’ prima facie makes that requirement mandatory. The failure on the part of the defendant does not however entirely forbid him from filing the written statement on a later date provided the Court permits him to do so for reasons which it must record in writing. A defendant who fails to file the written statement within 30 days from the date of service of summons upon him, will not therefore ipso facto lose the right to do so beyond that period. He can be allowed by the Court to file his written statement beyond the said period for reasons that the Court must record in writing. The obligation to record reasons implying a duty to apply its mind to the reasons advanced by the defendant for his failure to file the written statement within 30 days. In other words, there is no mechanical extension of time for filing of the written statement. The Court must record the precise reasons for its permitting the defendant to do so beyond the statutory period. 14. The power of the Court to extend the time for filing of the written statement would however be restricted on a plain reading of the proviso to a total period of 90 days reckoned from the date of service of the summons. The provision does not on a plain and literal understanding of the words employed therein empower the Court to extend time beyond 90 days from the date of service of the summons. The words used by the Parliament for conveying its intention are unambiguous and the only logical interpretation that can be given to the provision read as a whole is that the Court cannot extend time for filing the written statement beyond 90 days from the date of service of the summons upon the defendant. 15. Let us now test the correctness of the above conclusion by applying the Rule of ‘Purposive Construction’ to the provision. The provision as it existed before its amendment by the 1999 Act or the Amendment Act of 2002 did not place any limitation on the right of the defendant to file a written statement of his defense. All that it said was that “the defendant shall at or before the first hearing or within such time that the Court may permit” present a written statement of his defense. The Court’s power to permit filing of a written statement was therefore not hedged in by any limitations. The result was that a defendant could avoid filing of the written statement on one pretext or the other. Usually, such avoidance was by filing of one or the other application for Orders like production and discovery of documents or service of interrogatories on the plaintiff. The dilatory tactics adopted by the defendants postponing the trial of the suit indefinitely is what was found to be objectionable. The burden of the recommendations made by the Law Commission in this regard was that the citizens of the country were on account of notorious delays involved in trial of cases frustrated with the judicial systems. The efficacy of the substantive laws opined the Law Commission depended upon the quality of the



procedural laws. Unless the procedure was simple, expeditious and inexpensive, the substantive laws however valuable were bound to fail in their purpose and object. The Commission also read Article 39-A to be casting a positive duty on the State to so structure the judicial system as to ensure that its operation promotes justice, on the basis of equal opportunity for grant of speedy relief to those who approached the Courts. 16. It was on the basis of the above recommendations that the Government presented the Code of Civil Procedure Amended Bill of 1997 with the object of expediting the disposal of the civil suits so that administration of justice may not be delayed. The Statement of Objects and reasons for the 1997 Amendment Bill referred to the resolve of the United Front Government to introduce judicial reforms and a Bill for speedy disposal of pending cases. One of the important changes which the Statement of Objects and Reasons of the Bill referred to was an amendment in the Code to the effect that the written statement shall be accompanied by all the documents and shall be filed within a period of 30 days from the date of service of summons. There is no gain saying that the delay in filing of the written statement and consequent postponing of the trial was seen as a bottleneck that called for remedial measures by making a suitable provision requiring the defendant to file his written statement within a period of 30 days. The Bill passed in the year 1999 however generated a countrywide debate on the fairness and desirability of some of the provisions contained therein. Apart from deliberations held by the Government with eminent jurists, the Law Commission also had an occasion to examine the need for any changes in the amendments introduced by the 1999 Act. In its 163rd Report, the Law Commission while dealing with the provisions of Order VIII Rule 1 of the CPC as amended by the 1999 amendment Act felt that the time limit prescribed in Rule 1 was harsh and might result in failure of justice in some cases especially where the Government happened to be the defendant. While agreeing with the need for speedy disposal of the suits by curtailing the period for filing the written statement, the Law Commission opined that the period so stipulated deserved to be extended. These recommendations set the stage for further amendments to the Code. 17. The statement of objects and reasons for accompanied the Amendment Bill No. LXXXII of 2000 inter alia gave the background in which the earlier amendments had been suggested from time to time. The relevant portion of the statement of objects and reasons is as follows: 'STATEMENT OF OBJECTS AND REASONS The Code of Civil Procedure, 1908 (hereinafter referred to as the Code, contains the law relating to the procedure in suits and civil proceedings. The Code has been amended from time to time by various Acts of Central and State Legislatures. Recently, the code of Civil Procedure (Amendment) Act, 1999 was enacted by Parliament with a view to cutting short the delays at various levels. After its enactment, a large number of representations were received both for and against its enforcement. The Law Commission of India in its 163rd Report also dealt with the Code of Civil Procedure (Amendment) Bill, 1997 which was enacted later on as the Code of Civil Procedure (Amendment) Act, 1999. 2. Before action could be initiated for enforcement of the said Act, the Bar Council of India and certain local Bar Association asked the Government to re look into certain provisions

which could cause hardship to the litigants. Accordingly the provisions of the Code of Civil Procedure (Amendment) Act, 1999 and other proposals to reduce delay in the disposal of civil cases were discussed with legal luminaries. The Government has further considered the matter in all its aspects after consulting the Bar Council of India and others concerned and based on the outcome of the deliberations, it is now proposed to further amend the Code of Civil Procedure, 1908, consistent with the demands of fair play and justice. 3. The proposed amendments inter alia seek to provide that - a) plaintiff shall produce documents and pay requisite fee for service of summons on the defendants within seven days from the date of order by the Court for issue of summons. b) The summons would be served on the defendant by the Court either by its process servers or through private courier agencies approved by the Court. In addition to the service of summons by the Court, the plaintiff may also serve summons on the defendant; c) A defendant is to file written statement within thirty days from the date of service of summons but such date can be extended up to ninety days by the Court for reason to be recorded in writing." It is therefore evident that the Civil Procedure Code Amendment Act of 2002 was intended to among others deal with the mischief flowing from an unhindered right of the defendant to file his written statement without any limitations as to the time within which he could do so. The amended provision of Order VIII Rule 1 of the CPC effectively deals with the cause of delay in disposal of cases arising out of the unamended provision. That being so, any interpretation of Order VIII Rule 1 of the CPC which may remove the legal barrier of a time frame for filing of the written statement would result in the unamended provision re-emerging and as a consequence the mischief sought to be remedied reappearing. If the amended provision of Order VIII Rule 1 of the CPC are also interpreted to mean that there is no real obligation for the defendant to file a written statement within 30 days or the extended period of 90 days from the date of service of the summons, it would have the effect of defeating the legislative intent of expediting the trial of suits by stipulating that the defendant must file a written statement within the period prescribed for the same. 18. The use of negative words in the proviso to Rule 1 of Order VIII is also fairly significant. Crawford has summed up the legal position regarding use of negative words in statutes in the following paragraph: "Prohibitive or negative words can rarely, if ever, be directory, or as it has been aptly stated, there is but one way to obey the command"thou shall not", and that is to completely refrain from doing the forbidden act. And this is so, even though the statute provides no penalty for disobedience. Accordingly, negative, prohibitory and exclusive words is to be mandatory, but their absence does not , of itself conclusively indicate a legislative intention that the statute is permissive, for affirmative words may imply a negative, although, of course, their absence is a circumstance to be considered. Nevertheless, where affirmative words are used , if a negative is neither expressed or implied, the statute is merely directory." K. Subba Rao, J., speaking for the Supreme Court in *M. PENTIAH AND ORS. v. MUDDALA VEERAMALLAPPA AND ORS.*, held that negative words are clearly prohibitive and are ordinarily used as a legislative device to make a statute imperative. Applying that principle, Section 80

and 87B of the Code of Civil Procedure, 1908, were held to be mandatory in 'BHAGCHAND v. SECRETARY FOR STATE, AIR 1927 PC 165 'GAEKWAR BARODA STATE RAILWAY v. HAFIZ HABIB-UL-HAQ, AIR 1938 PC 165 and MOHANLAL JAIN v. SAWAI MAN SINGHJI, On the same principle, a provision requiring not less than three months notice was held to be mandatory by their Lordships of the Supreme Court in LACHMI NARAIN v. UNION OF INDIA, . 19. It is true that the rule of interpretation enunciated in the above decisions may not be without exceptions. But neither the scheme of the Code nor the backdrop in which the provision has been enacted shows that the use of negative words notwithstanding, the intention of the Parliament simply was to make a directory provision without meaning to make compliance with the same compulsive. 20. The general rule regarding the filing of the written statement is that the same should be filed within 30 days from the date of service of summons upon the defendant. The proviso which carves out an exception empowers the Court to extend that period but the power so granted is limited to a total of sixty days beyond the initial 30 days or 90 days from the date of service of the summons. The real question that one ought to ask is whether the Court has the power under Order VIII Rule 1 of the CPC to grant an extension beyond 90 days from the date of service of the summons. If the answer be in the negative, the provision must be held to be mandatory unless there is some other source of power which the Court can invoke to grant an extension. The answer in the instant case certainly is that the power to grant extension for filing the written statement stands exhausted no sooner the Court grants 60 days beyond the initial period regardless whether that extension is granted in one go or in smaller bits from time to time. The use of negative words in the proviso thus emerges as a notable feature indicative of the legislative intent behind the provision. The absence of any specific consequence flowing from violation of the provision is in the words of Crawford in the passage extracted earlier inconsequential. But, it is not as though the Code does not provide for what the Court ought to do in case the defendant does not file the written statement. Order VIII Rule 10 of the CPC makes a specific provision for any such contingency. It reads: "10. Procedure when party fails to present written statement called for by Court - Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up." A plain reading of the above would show that failure of the defendant to file a written statement empowers the Court to pronounce judgment. The availability of the power to pronounce judgment on the failure of the defendant to file a written statement is nothing but a consequence which the statute provides for the failure. The fact that the provision also gives to the Court the discretion to make such other order as it may think fit does not change the nature of the provision which continues to provide for the consequences flowing from the failure to file the written statement. The approach to be adopted in choosing the consequence of the failure of the defendant has been succinctly stated by the Supreme Court

in 'BALRAJ TANEJA v. SUNIL MADAN, in the following words. "xxxx in a case, specially where a written statement has not been filed by the defendant, the Court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the Court's satisfaction and, therefore, only on account of deemed admission, the Court can conveniently pass a judgment against a defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression the Court may, in its discretion require any such fact to be proved' used in Sub-rule (2) of Rule 5 of Order 8, or the expression may make such order in relation to the suit as it thinks fit used in Rule 10 of Order 8." Two other aspects need be noticed at this stage. One of these relates to the provisions of Order VIII Rule 9 of CPC governing subsequent pleadings while the other pertains to the power of the Court to extend time under Sections 148 and 151 of the CPC. Order VIII Rule 9 of the CPC reads as under: "9. Subsequent pleadings - No pleadings subsequent to the written statement of a defendant other than by way of defence to set-off or counter - claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same." The provision is in two parts. The first deals with filing of pleadings subsequent to the written statement of the defendant. The Rule provides that no such pleading subsequent to the written statement shall be presented except when the same is by way of a defence to a set off or counter claim. The Court may however permit the filing of such a pleading upon such terms as it may think fit. This part does not obviously deal with the filing of the written statement. It deals with a stage subsequent to the written statement in which the defendant may either make a counter claim or claim a set off. The second part deals with the power of the Court to require either a written statement or an additional written statement from any of the parties and fix a time of not more than thirty days for the same. This part of the provision does not however create a right in the defendant to file a written statement or additional written statement on his own if he has not already filed one. The requirement which the provision deals with is that of the Court and not of the defendant. It is only when the Court in the facts and circumstances of the case is of the opinion that a written statement or additional written statement is necessary in order to effectually determine the controversy before it that it may require the defendant to file a written statement or an additional written statement. Neither the availability nor the exercise of that power has any relevance to the question of Order VII Rule 1 of the CPC being mandatory or otherwise. The provisions of Order VIII

Rules 1 and 9 operate in two different spheres. While one regulates the exercise of the right by the defendant to file a written statement, the other caters to situations where the defendant may not have filed any written statement and may not even be interested in filing one, but in which the Court considers such a written statement or additional written statement to be necessary. Rule 9 Order VIII therefore does not hold the key to a correct interpretation of Rule 1 to Order VIII. 21. Coming then to the exercise of power under Section 151 of the CPC, we need only refer to the decision of the Supreme Court in 'NAINSINGH v. KOONWARJEE AND ORS., where their Lordships held that if the Code makes a specific provision for a particular contingency, resort to inherent powers to deal with the same is impermissible. The Court observed: "Under the inherent power of Courts recognized by Section 151 of the CPC, a Court has no power to do that which is prohibited by the Code. Inherent jurisdiction of the Court must be exercised subject to the rule that if the Code does contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked." That leaves us with the provisions of Section 148 of the CPC which may be extracted for facility of reference. "148. Enlargement of time - Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period [not exceeding thirty days in total], even though the period originally fixed or granted may have expired." A bare reading of the above would show that the power to enlarge time is exercisable only in cases where the Court has fixed or granted any period for doing any act which is prescribed or allowed by the CPC. The period so fixed or granted can subject to an outer limit of 30 days be extended by the Court in its discretion. The question however is whether the power to enlarge time in terms of the above provisions can also be extended in derogation of any other limitation which the Code has placed on the performance of any act prescribed or allowed under it. Our answer is in the negative. The defendant's right to file a written statement within 30 days from the date of service of summons is unquestionable in the light of Order VIII Rule 1 of CPC. Beyond the said period, the defendant has to seek enlargement of time in terms of the proviso under Rule 1 or Order VIII which proviso itself restricts the power of extension to a total of 90 days reckoned from the date of service of summons. That being so, once the power to grant extension for filing of the written statement is exhausted in terms of proviso to Order VIII Rule 1 of CPC and the defendant fails to file a written statement during the extended period, the right to do so is lost. This would in other words imply that the Court cannot allow filing of a written statement beyond the period stipulated under Order VIII Rule 1 of CPC and the proviso thereto. Resort to Section 148 of the CPC would therefore be wholly out of place in such a situation for three precise reasons. Firstly because the provisions of Order VIII Rule 1 and the proviso are a Code in themselves with an outer time limit prescribed for filing the written statement by the statute itself which cannot be extended by resort to Section 148 of the CPC. It is only in cases where the time is granted or fixed by the Court that an extension under Section 148 is permissible. Secondly because the power

to extend time beyond 30 days prescribed by Rule 1 of Order VIII is wider than that available under Section 148. While the power under Section 148 is limited to extension of 30 days only, the power available under the proviso is exercisable for a period of 60 days beyond the initial period of 30 days prescribed under Rule 1. Thirdly because the failure of the defendant to file a written statement within the stipulated period or the extended period admissible under the proviso, the right to file a written statement an act otherwise permitted by the Code is lost not because the Court will decline to grant an extension but the Code itself does not envisage any extension beyond 90 days. We have therefore no difficulty in holding that the provisions of Section 148 cannot be invoked to grant time beyond the stipulated period of 90 days available under the provisions of Order VIII of the CPC. 22. We may while parting refer to a decision of the Supreme Court in DR. J.J. MERCHANT AND ORS. v. SHRINATH CHATURVEDI, . The Supreme Court was in that case dealing with the provision of Section 13 of the Consumer Protection Act which stipulates the procedure to be followed on receipt of a complaint by the Forum. Section 13(2)(a) of the Act provides that copy of the complaint shall be referred to the opposite party by the Forum directing him to give his version within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum. Interpreting the said provision, their Lordships held that the same was intended to achieve speedy trial of the cases. Their Lordships also referred to the amendments brought in Order VIII Rule 1 of the CPC and held that the amended rule contained the legislative mandate of the written statement to be filed within 30 days, but, the Court could subject to an outer limit of 60 days extend the said period. The Court held that the legislative mandate of filing the written statement of defence was to be strictly adhered to. The following passages from the said decision are in this regard apposite: “13. The National Commission or the State Commission is empowered to follow the said procedure. From the aforesaid Section it is apparent that on receipt of the complaint, the opposite party is required to be given notice directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum or the Commission. For having speedy trial, this legislative mandate or not giving more than 45 days in submitting the written statement or the version of the case is required to be adhered. If this is not adhered, the legislative mandate of disposing of the cases within three or five months would be defeated. 14. For this purpose, even the Parliament has amended Order VIII Rule 1 of Code of Civil Procedure, which reads thus -”Rule 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. 15. Under this Rule also, there is a legislative mandate that written statement of defence is to be filed within 30 days. However, if there is a failure to file such written statement within stipulated time, the Court can at the most extend

further period of 60 days and no more. Under the Act, the legislative intent is not to give 90 days of time but only maximum 45 days for filing the version by the opposite party. Therefore, the aforesaid mandate is required to be strictly adhered to." 23. We accordingly hold that a Court trying a civil suit does not have any power to extend time for filing the Written statement beyond what is stipulated in Order VIII Rule 1 of the Code of Civil Procedure. The decisions rendered by learned Single Judges of this Court taking a different view shall to that extent stand over ruled. These revision petitions shall now be placed before the learned Single Judges for hearing and final disposal in accordance with law.