# Balraj Taneja & Anr vs Sunil Madan & Anr on 8 September, 1999

## Equivalent citations: AIR 1999 SUPREME COURT 3381, 1999 AIR SCW 3345, (1999) 3 KER LT 81, 2000 (1) LRI 282, 2000 SCFBRC 96, (1999) 6 JT 473 (SC), 1999 (6) JT 473, 1999 (9) SRJ 473, 1999 (6) KANT LD 713, 1999 (5) SCALE 400, 1999 (8) SCC 396, (2000) 2 SCJ 13, (1999) 4 CURCC 164, (1999) 4 ICC 1, (2000) 1 LANDLR 116, (1999) REVDEC 600, (1999) 6 ANDHLD 21, (1999) 8 SUPREME 27, (1999) 4 RECCIVR 438, (1999) 5 SCALE 400, (2000) 40 ALL LR 494, (2000) 1 ALL RENTCAS 573, (2000) 1 ANDHWR 41, (2000) 1 BLJ 583, (1999) 81 DLT 779, (1999) 3 BOM CR 605

## Author: S.Saghir Ahmad

## Bench: S.Saghir Ahmad

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            PETITIONER:
BALRAJ TANEJA & ANR.

         Vs.

RESPONDENT:
SUNIL MADAN & ANR.

DATE OF JUDGMENT:       08/09/1999

BENCH:
D.P.Mohapatro, S.Saghir Ahmad



JUDGMENT:
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S.SAGHIR AHMAD, J.

Leave granted.

Respondent No.1, Sunil Madan, filed a suit in the Delhi High Court against the appellants and respondent No.2 for specific performance of an agreement for sale in respect of property No.W-118, First Floor, Greater Kailash-II, New Delhi. The suit was filed in May, 1996. Summons which were issued to the appellants and respondent No.2 were duly served upon them and in response thereto, they put in appearance before the Court on 20th September, 1996 and prayed for eight weeks' time to file written statement which was allowed and the suit was adjourned to 22nd of January, 1997. Written Statement was not filed even on that date and an application was filed for further time to file the written statement which was allowed as a last chance and the written statement was directed

to be filed by 7th of February, 1997. The suit was fixed for 10th of February, 1997.

Since the written statement was still not filed, the Court decreed the suit for specific performance in favour of respondent No.1 under Order 8 Rule 10 C.P.C. Respondent No.1 was directed to deposit a sum of Rs.3 lakhs, being the balance amount of sale consideration, within six weeks and on the amount being so deposited, he was given the liberty to apply to the court for appointment of a Commissioner for executing the sale deed in his favour. The review application filed by the appellants including respondent No.2 was dismissed by the High Court on 13th of May, 1997. An appeal, which was filed by the appellants, including respondent No.2, thereafter, before the Division Bench (R.F.A.(OS) NO.36/97) was dismissed on 29.4.1998. It is in these circumstances that the present appeal has been filed in this Court.

Mr. Rakesh Dwivedi, Sr. Advocate, appearing on behalf of the appellants has contended that having regard to the circumstances of the case, the High Court was not justified in passing the decree against the appellants, including respondent No.2, for specific performance merely on the ground that written statement was not filed by them on the date fixed for that purpose. It is also contended that the High Court had rejected the application for time to file written statement on the ground that there was a change of counsel appearing on behalf of the appellants and no reason was indicated by them for not filing the written statement by 7th of February, 1997 or even on 10th of February, 1997 when the suit was decreed under Order 8 Rule 10 C.P.C., which indicates that the attitude adopted by the High Court in decreeing the suit under Order 8 Rule 10 C.P.C. was wholly punitive in nature resulting in serious miscarriage of justice. Mr. Rakesh Dwivedi also contended that even if the Court had decreed the suit under Order 8 Rule 10 C.P.C., it ought to have written a "judgment" by stating clearly the facts of the case and the reasons for decreeing the suit. The suit, it is contended, could not have been decreed merely for not filing of the written statement unless facts set out in the plaint were found proved by the High Court.

Learned counsel appearing on behalf of respondent No.1 has contended that the appellants, including respondent No.2, had adopted dilatory tactics and their intention, from the very beginning, was to delay the disposal of the suit so as to harass respondent No.1 who had agreed to purchase the property in question and had also paid substantial amount by way of earnest money. It is also contended that the conduct of the appellants and respondent No.2 was not proper and they were negligent throughout, inasmuch as not only that they did not file the written statement, they filed an appeal before the Division Bench which also was beyond time. It is also contended that while applying for time for written statement as also for review of the judgment passed by the Court under Order 8 Rule 10 C.P.C., the appellants and respondent No.2 had not given any reason for not filing the written statement on the dates fixed by the High Court and, therefore, having regard to the conduct of the appellants as also the vital fact that the owner of the property, namely, respondent No.2, had not come up in Special Leave Petition, this Court should not exercise its discretion under Article 136 of the Constitution in favour of the appellants. Since the suit has been decreed by the High Court under Order 8 Rule 10 C.P.C., we will first examine the provisions contained in various Rules of Order 8 to find out whether the jurisdiction was properly exercised by the High Court in decreeing the suit under Order 8 Rule 10 C.P.C. Order 8 Rule 1 provides that the defendant shall file a Written Statement of his defence. It is further provided by Rule 3 of Order 8 that it shall not be

sufficient for a defendant in his Written Statement to deny generally the grounds alleged by the plaintiff, but defendant must deal specifically with each allegation of fact of which he does not admit the truth. The further requirement as set out in Rule 4 is that if the allegation made in the plaint is denied by the defendant, the denial must not be evasive. It is, inter alia, provided in Rule 5 of Order 8 that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the written statement, shall be taken to be admitted.

This Rule provides as under :

> "Order 8 Rule 5 - Specific denial (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :
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> Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.
>
> (2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.
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> (3) In exercising its discretion under the proviso to sub- rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.
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> (4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."

The scheme of this Rule is largely dependent upon the filing or non-filing of the pleading by the defendant. Sub-rule (1) of Rule 5 provides that any fact stated in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be treated as admitted. Under Rule 3 of Order 8, it is provided that the denial by the defendant in his written statement must be specific with reference to each allegation of fact made in the plaint. A general denial or an evasive denial is not treated as sufficient denial and, therefore, the denial, if it is not definite, positive and unambiguous, the allegations of facts made in the plaint shall be treated as admitted under this Rule.

The proviso appended to this Rule is important in the sense that though a fact stated in the plaint may be treated as admitted, the Court may, in its discretion, still require such "admitted fact" to be proved otherwise than by such admission. This is an exception to the general rule of evidence that a fact which is admitted need not be proved.

Sub-rule (2) provides that if the defendant has not filed his written statement, it would be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint. The rule further proceeds to say that notwithstanding that the facts stated in the plaint are treated as admitted, the Court, though it can lawfully pass the judgment, may before passing the judgment require such fact to be proved. The rule is thus in consonance with the Proviso which also requires the fact, even though treated as admitted, to be proved. Thus, the Proviso and Sub- rule (2) read together indicate that where

(i) an allegation of fact made in the plaint is not denied specifically, or

(ii) by necessary implication, or

(iii) stated to be "not admitted" in the pleading of the defendant, or

(iv) the defendant has not filed the written statement, such allegations of facts shall be treated as admitted. The Court in this situation can either proceed to pronounce judgment on such admitted facts or may require the plaintiff, in spite of such admission, to prove such facts.

Sub-rule (2) quoted above is thus an enabling provision which enables the Court to pronounce judgment on the basis of the facts contained in the plaint, if the defendant has not filed a Written Statement. What is important to note is that even though a Written Statement is not filed by the defendent, the court may still require a fact pleaded in the plaint to be proved.

We may now consider the provisions of Order 8 Rule 9 as also the provisions contained in the other Rule, namely Rule 10, under which the instant suit has been decreed by the High Court. These Rules are quoted below:

> "Rule 9. Subsequent pleadings -- No pleading subsequent to the written statement of a defendant other than by way of defence to a 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 for presenting the same.
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> Rule 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."

.lm10 This Rule, namely Rule 10, was also amended by the Code of Civil Procedure (Amendment) Act, 1976 (Act No. 104 of 1976). Prior to its amendment, it was held in a number of decisions that the rule can be invoked only in those situations where the Court has required the defendant to file the Written Statement in terms of Rule 9 of Order 8. A few other High Courts had taken the view

that this Rule would be applicable even to those cases where a Written Statement was required to be filed under Order 8 Rule 1 CPC. The conflict of decisions has been set at rest by providing specifically under this rule that where a party from whom a Written Statement is required either under Rule 1 or Rule 9 of Order 8 fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit. Rule 10 thus governs both the situations where a Written Statement is required under Rule 1 of Order 8 as also where it has been demanded under Rule

9. In both the situations, if the Written Statement has not been filed by the defendant, it will be open to the Court to pronounce judgment against him or make such order in relation to the suit as it thinks fit. It is to be noticed that if the Written Statement is not filed, the Court is required to pronounce judgment against the defendant. The words "against him" are to be found in Rule 10 of Order 9 which obviously means that the judgment will be pronouced against the defendant. This rule also gives a discretion either to pronounce judgment against the defendant or "make such order in relation to the suit as it thinks fit." These words are of immense significance, inasmuch as they give a discretion to the Court not to pronounce judgment against the defendant and instead pass such order as it may think fit in relation to the suit.

There are thus two separate and distinct provisions under which the Court can pronounce judgment on the failure of the defendant to file Written Statement. The failure may be either under Order 8 Rule 5(2) under which the Court may either pronounce judgment on the basis of the facts set out in the plaint or require the plaintiff to prove any such fact; or the failure may be under Order 8 Rule 10 CPC under which the Court is required to pronounce judgment against the defendant or to pass such order in relation to the suit as it thinks fit.

This Court, in Sangram Singh v. Election Tribunal, Kotah & Anr. AIR 1955 SC 425 = 1955 (1) SCR 1, observed on page 432 of the report as under :

> "(32) We have already seen that when a summons is issued to the defendant it must state whether the hearing is for the settlement of issues only or for the final disposal of the suit (O.5, R.5). In either event, O.8, R.1 comes into play and if the defendant does not present a written statement of his defence, the Court can insist that he shall; and if, on being required to do so, he fails to comply --
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> "the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit." (O.8, R.10).
>
> This invests the Court with the widest possible discretion and enables it to see that justice is done to `both' sides; and also to witnesses if they are present: a matter on which we shall dwell later.
>
> (33) We have seen that if the defendant does not appear at the first hearing, the Court can proceed `ex parte', which means that it can proceed without a written statement; and O.9, R.7 makes it clear that unless good cause is shown the defendant cannot be

relegated to the position that he would have occupied if he had appeared.

That means that he cannot put in a written statement unless he is allowed to do so, and if the case is one in which the Court considers a written statement should have been put in, the consequences entailed by O.8, R.10 must be suffered.

What those consequences should be in a given case is for the Court, in the exercise of its judicial discretion, to determine. No hard and fast rule can be laid down. In some cases, an order awarding costs to the plaintiff would meet the ends of justice: an adjournment can be granted or a written statement can be considered on the spot and issues framed. In other cases, the ends of justice may call for more drastic action."

This decision was followed by the J&K High Court in Chuni Lal Chowdhry vs. Bank of Baroda and Others, AIR 1982 J&K 93 in which it was laid down as under :

> "On the authority of these observations, Rule 10 can be taken to relate to Rule 1 of Order 8 and on the defendant's failure to file written statement of his defence, when so required, the court has the power, either to pronounce the judgment against him or make such order in relation to the suit as it thinks fit depending upon whether the suit was for the final disposal or for the settlement of the issues only. In the latter case, the court has ample discretion to grant more time for filing the written statement or to proceed to hearing of the suit without such written statement. The discretion cannot, however, be exercised arbitrarily. In determining which course to adopt, the court will always be guided by the facts and circumstances of each case. Where the court decides to proceed to hearing of the suit without the written statement, that would not debar the defendant from taking part in further proceedings of the case. His participation would, however, be hedged in by several limitations. He will not be able either to cross-examine the plaintiff's witnesses or to produce his own evidence with regard to any questions of fact which he could have pleaded in the written statement. He will, however, be competent to cross-examine the plaintiff's witnesses in order to demolish their version of the plaintiff's case.
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> To the same effect is the decision of the Patna High Court in Siai Sinha v. Shivadhari Sinha, AIR 1972 Pat.
>
> 81."

In Dharam Pal Gupta vs. District Judge, Etah 1982 All Rent Cases 562, the Allahabad High Court held as under :

> "Therefore, reading Order VIII, R.10, C.P.C. along with O.VIII, R.5, C.P.C., it seems that even though the filing of written statement has been made obligatory and the Court has now been empowered to pass a judgment on the basis of the plaint on the ground that no written statement has been filed by the defendant still, the discretion

> of the Court has been preserved and despite the non-filing of the written statement the Court may pass any other order as it may think fit (as laid down in O. VII R.10) or the Court may in its discretion require any particular fact mentioned in the plaint to be proved as laid down in Order VIII, R.5 sub-rule (2) C.P.C."

This decision was followed in State of U.P. & Anr. vs. Dharam Singh Mahra AIR 1983 Allahabad 130.

In Smt. Sushila Jain vs. Rajasthan Financial Corporation Jaipur, AIR 1979 Raj 215 and also in Rosario Santana Vaz vs. Smt. Joaquina Natividate Fernandes AIR 1981 Goa 61, it was laid down that if the defendant was deliberately delaying the proceedings and had failed to assign good and sufficient cause for not filing the Written Statement, the Court could forfeit his right of defence.

There is yet another provision under which it is possible for the Court to pronounce judgment on admission. This is contained in Rule 6 of Order 12 which provides as under :

> "R.6 Judgment on admissions.
>
> (1) Where admissions of fact have been made either in the pleadings or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.
>
> (2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

This Rule was substituted in place of the old Rule by the Code of Civil Procedure (Amendment) Act, 1976. The objects and reasons for this amendment are given below:-

> "Under rule 6, where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the rule is to enable a party to obtain a speedy judgment at least to the extent of the relief to which, according to the admission of the defendant, the plaintiff is entitled. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also covered by the rule."

Under this Rule, the Court can, at an interlocutory stage of the proceedings, pass a judgment on the basis of admissions made by the defendant. But before the Court can act upon the admission, it has to be shown that the admission is unequivocal, clear and positive. This Rule empowers the Court to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit.

In Razia Begum vs. Sahebzadi Anwar Begum & Ors. AIR 1958 SC 886 = 1959 SCR 1111, it was held that Order 12 Rule 6 has to be read along with Proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the Court may still require the plaintiff to prove the facts pleaded by him in the plaint.

Thus, in spite of admission of a fact having been made by a party to the suit, the Court may still require the plaintiff to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under :

> "58. Facts admitted need not be proved - No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
>
> Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

The Proviso to this Section specifically gives a discretion to the Court to require the facts admitted to be proved otherwise than by such admission. The Proviso corresponds to the Proviso to Rule 5(1) Order 8 CPC.

In view of the above, it is clear that the Court, at no stage, can act blindly or mechanically. While enabling the Court to pronounce judgment in a situation where no Written Statement is filed by the defendant, the Court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the Court can either pronounce judgment against the defendant or pass such order as it may think fit.

Having regard to the provisions of Order 12 Rule 6; Order 5 Rule 8, specially Proviso thereto; as also Section 58 of the Evidence Act, this Court in Razia Begum's case (supra) observed as under : .lm15 "In this connection, our attention was called to the provisions of R.6 of O.12 of the Code of Civil Procedure, which lays down that, upon such admissions as have been made by the Prince in this case, the Court would give judgment for the plaintiff. These provisions have got to be read along with R.5 of O.8 of the Code with particular reference to the proviso which is in these terms:

> "Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission".

The proviso quoted above, is identical with the proviso to S. 58 of the Evidence Act, which lays down that facts admitted need not be proved. Reading all these provisions together, it is manifest that the Court is not bound to grant the declarations prayed for, even though the facts alleged in the plaint, may have been admitted."

The Court further observed:-

> "Hence, if the Court, in all the circumstances of a particular case, takes the view that it would insist upon the burden of the issue being fully discharged, and if the Court, in pursuance of the terms of S. 42 of the Specific Relief Act, decides, in a given case, to insist upon clear proof of even admitted facts, the Court could not be said to have exceeded its judicial powers."

As pointed out earlier, the Court has not to act blindly upon the admission of a fact made by the defendant in his Written Statement nor the Court should proceed to pass judgment blindly merely because a Written Statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the Court. 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 Court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the Court can conveniently pass a judgment against the 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.

Applying these tests to the instant case, it will be noticed that in a suit for specific performance it is mandatorily required by Section 16 of the Specific Relief Act to plead readiness and willingness of the plaintiff to perform his part of the contract. The Court, before acting under Order 8 Rule 10 has to scrutinise the facts set out in the plaint to find out whether all the requirements, specially those indicated in Section 16 of the Specific Relief Act, have been complied with or not. Readiness and willingness of the plaintiff to perform his part of the contract is a condition precedent to the passing of a decree for specific performance in favour of the plaintiff.

We may now examine the facts of this case.

A copy of the plaint which is on record indicates that respondent No.1 had entered into an agreement on 6.8.1992 with respondent No.2 as also the present appellants for the sale of property bearing No.W-118, Greater Kailash, Part-II, New Delhi, on the first floor (rear portion consisting of one drawing room, two bed rooms, one kitchen, two bath rooms and one servant quarter with toilet along with impartible and indivisible proportionate rights in the land underneath) for a sum of Rs. 7 lakhs out of which a sum of Rs.4 lakhs was paid at the time of the signing of the agreement with the stipulation that a further sum of Rs.2.25 lakhs would be paid by respondent No.1 on receipt of permission from the Income Tax Department and Rs.75,000/- would be paid at the time of the registration of sale deed. It was further pleaded in the plaint that possession of the flat was delivered to respondent No.1 in pursuance of the agreement dated 6th of August, 1992 in which it was further

set out that all expenses for execution and registration of the sale deed would be borne exclusively by respondent No.1. The plaint further recites that till February 19, 1996, respondent No.1 was not informed by any of the defendants about permission, if any, taken from the Income Tax Department in spite of several requests made by him from time to time. It was also pleaded as follows:-

> "Even the permission under the Income Tax Act to enable the agreement to sell and execution of the sale deed in favour of the Plaintiff was to be obtained not only by Defendant No.1 but also by Defendant Nos. 2 and 3 as mentioned in Clause 12 of the agreement to sell."

In respect of the permission of the Income Tax Department, referred to above, para 12 of the plaint mentioned as follows:-

> "That vide letter/reply dated 1st of March 1996, the Defendant No.1 had replied to the notice of the Plaintiff dated 13th February 1996, wherein a vague and evasive denial was made by the Defendant No.1 to the contents of the notice dated 13th February 1996 of the Plaintiff. The Plaintiff was informed for the first time about the income tax certificate alongwith the said reply by Defendant No.1 which was obtained by the Defendant No.1. However, no certificate was obtained by the Defendant Nos. 2 and 3 as was requisite under the terms and conditions of agreement to sell dated 6th of August, 1992."

In para 16 of the plaint, it was further pleaded as under:-

> "That vide reply dated 16th March, 1996, the Plaintiff had brought it to the notice of the Defendants that the copy of certificate alleged to have been obtained in December 1995 was never given or sent to the Plaintiff by the Defendants. The Plaintiff had called upon the Defendants to send forward the original certificate obtained by them in December 1995 to enable the Plaintiff to proceed further in the matter. The Plaintiff had also called upon the Defendant Nos. 2 and 3 to obtain requisite certificate under the Income Tax Act as per terms of agreement to sell dated 6th August 1992."

The case of respondent No.1, as set out in the plaint itself, was that while defendants, namely, the present appellants as also respondent No.2 maintained that they had obtained the necessary permission from the Income Tax Department and had sent the same to him, respondent No.1, disputed that fact and maintained that this was not correct and no Certificate (Permission) of the Income Tax Department was ever sent to him by the appellants or respondent No.2. On the own pleadings of respondent No.1, as set out in his plaint, there was a dispute between the parties, namely, plaintiff and defendants, whether permission from the Income Tax Department had been obtained by the defendants (the present appellants and respondent No.2) and sent to plaintiff (present respondent No.1) or the said permission was, at no time, obtained by the defendants nor had the defendants sent it to the plaintiff (respondent No.1). This was a vital fact which had an important bearing upon the conduct of respondent No.1. That is to say, if it was established that the

Certificate (permission) from the Income Tax Department had already been obtained by the defendants and sent to him, the denial of the plaintiff would be reflective of his attitude that he was not ready and willing to perform his part of the contract. On the contrary, if it was found that defendants had not obtained the Certificate, the question whether specific performance could still be decreed would have immediately arisen particularly because of the relevant provisions of the Income Tax Act. Now, the agreement in question stipulated that the defendants would obtain permission from the Income Tax Department and send the same to the plaintiff whereupon the plaintiff would pay a sum of Rs.2.25 lakhs to the defendants and the balance amount of Rs.75,000/- would be paid at the time of the registration of the sale deed. Since, on the own showing of the plaintiff, as set out in the plaint, the defendants had been asserting that they had obtained the permission and sent the same to the plaintiff, which was not accepted by the plaintiff, there arose between the parties a disputed question of fact which had to be investigated and decided particularly as it was likely to reflect upon the conduct of the plaintiff whether he was willing to perform his part of the contract or not. It had, therefore, to be proved as a fact that permission of the Income Tax Department had not been obtained by the defendants nor had that Certificate (permission) been sent to the plaintiff. If the said Certificate had been obtained and sent to the plaintiff, the latter, namely, the plaintiff should have immediately paid the stipulated amount of Rs.2.25 lakhs to the defendants and required them to execute the sale deed in his favour. The plaintiff, according to facts set out in the plaint, waited till February 19, 1996 which is quite evident from the exchange of notices between the parties which indicated the existence of a serious dispute whether the Income Tax Certificate (permission) had been obtained by the defendants from the Income Tax Department and sent to the plaintiff as alleged by defendants in their notices or it was wrong as asserted by the plaintiff in his notices or the replies to defendants' notices.

This suit has been decreed by the Delhi High Court by the following judgment:-

> "SUIT NO. 1124/96 & I.A. No. 4303/96.
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> On the 20th of September, 1996, Mr. Lalit Kumar, learned counsel for defendant 1 to 3 sought time to file written statement and reply. Time was granted but the written statement and reply have not been filed. On the 22nd of January, 1997, Mr. Aseem Mohar for counsel for defendant appeared and sought time to file vakalatnama and written statement/reply and the matter had been adjourned to this date. Today Mr. Kamal Mehta putting in appearance on behalf of defandant No.2 and 3 and represents that Mr. Rajiv Nayar has been engaged by the second and third defendants this morning and he seeks time to file written statement/reply.
>
> The defendants are adopting this tactic only to protract the proceedings and have not filed the written statement and reply to the application inspite of sufficient opportunity having been given.
>
> Accordingly, the suit is decreed for specific performance in favour of the plaintiff and against the defendants with the directions to the plaintiff to deposit the balance amount of Rs.3,00,000/- (Rupees Three Lakhs) in this court within six weeks from

today. If the amount is deposited within six weeks, it will be open for the plaintiff to apply for the appointment of a Commissioner for the execution of the sale deed. The defendants are also directed to pay the cost of the suit.

February 10, 1997. Sd/- JUDGE."

A perusal of the above judgment will indicate that the suit had been decreed only because of the failure of the defendants in filing the written statement. This exhibits the annoyance of the Court which is natural as no Court would allow the proceedings to be delayed or procrastinated. But this should not disturb the judicial composure which unfortunately is apparent in the instant case as the judgment neither sets out the facts of the case nor does it record the process of reasoning by which the Court felt that the case of the plaintiff was true and stood proved.

As will be evident from the facts set out above, the plaint itself showed a serious disputed question of fact involved between the parties with regard to the obtaining of Certificate (permission) from the Income Tax Department and its communication by the defendants to the plaintiff (Respondent No. 1). Since this question of fact was reflective of the attitude of the plaintiff, whether he was ready and willing to perform his part of the contract, it had to be proved as a fact that the Certificate (permission) from the Income Tax Department had not been obtained by the defendants and, therefore, there was no occasion of sending it to him. If the pleadings of respondent No. 1 were limited in character that he had pleaded only this much that the defendants had not obtained the Certificate (permission) from the Income Tax Department and had not sent it to him, this fact would have stood admitted on account of non-filing of the Written Statement by the defendants. But Respondent No. 1, as plaintiff, himself pleaded that "defendants insisted that they had obtained the Certificate (permission) from the Income Tax Department and sent it to him". He denied its having been obtained or sent to him. Non-filing of the Written Statement would not resolve this controversy. The plaint allegations, even if treated as admitted, would keep the controversy alive. This fact, therefore, had to be proved by the plaintiff and the Court could not have legally proceeded to pass a judgment unless it was established clearly that the defendants had committed default in not obtaining the Certificate (permission) from the Income Tax Department and sending the same to the plaintiff.

The agreement between the parties was entered into in 1992 and for four years the plaintiff had kept quiet and not insisted for the execution of the sale deed in his favour. When he did raise that question, the defendants informed him that the certificate had already been obtained from the Income Tax Authorities and sent to him.

Unfortunately, the High Court did not consider this fact and proceeded almost blindly to pass a decree in favour of the plaintiff merely because Written Statement had not been filed in the case. Learned Single Judge, who passed the decree, did not consider any fact other than the conduct of the defendants in seeking adjournments of the case for purposes of filing Written Statement. So also, the Division Bench did not consider any fact other than the fact that the defendants had been trying to prolong the proceedings by seeking adjournments, and that too, by changing their counsel. The Division Bench also took into consideration the fact that the appeal filed by the defendants

against the decree passed by the Single Judge was beyond time which again indicated their negligence. No other fact was taken into consideration and the decree passed by the Single Judge was affirmed.

There is yet another infirmity in the case which relates to the "judgment" passed by the Single Judge and upheld by the Division Bench.

> "Judgment" as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20, Rule 4 (2) which says that a judgment :
>
> "shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision."

It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner. The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.

In an old case, namely, Nanhe vs. Saiyad Tasadduq Husain (1912) 15 Oudh Cases 78, it was held that passing of a mere decree was material irregularity within the meaning of Section 115 of the Code and that even if the judgment was passed on the basis of the admission made by the defendant, other requirements which go to constitute "judgment" should be complied with.

In Thippaiah and others vs. Kuri Obaiah, ILR 1980 (2) Karnataka 1028, it was laid down that the Court must state the grounds for its conclusion in the judgment and the judgment should be in confirmity with the provisions of Section 2(9) of the Code of Civil Procedure. In Dineshwar Prasad Bakshi vs. Parmeshwar Prasad Sinha, AIR 1989 Patna 139, it was held that the judgment pronounced under Order 8 Rule 10 must satisfy the requirements of "judgment" as defined in Section 2(9) of the Code.

Learned counsel for respondent No. 1 contended that the provisions of Order 20, Rule 1 (2) would apply only to contested cases as it is only in those cases that "the points for determination" as mentioned in this Rule will have to be indicated, and not in a case in which the written statement has not been filed by the defendants and the facts set out in the plaint are deemed to have been admitted. We do not agree. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex-parte and is ultimately decided as an ex-parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the Court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

An attempt was made to contend that the definiton of judgment as set out in Section 2(9) of the Code would not be applicable to the judgment passed by the Delhi High Court in its original jurisdiction wherein the proceedings are regulated by the provisions of the Delhi High Court Act,

1966. It is contended that the word "judgment" used in the Delhi High Court Act, 1966 would not take its colour from the definition of "judgment" contained in Section 2(9) of the Code of Civil Procedure. We do not intend to enter into this controversy, fortunately as it is not contended that the Code of Civil Procedure does not apply, but we cannot refrain from expressing that even if it were so, the Delhi High Court is not absolved of its obligation to write a judgment as understood in common parlance. Even if the definition were not contained in Section 2(9) or the contents thereof were not indicated in Order 20 Rule 1 (2) CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say "Suit decreed"

> or "Suit dismissed". The whole process of reasoning has to be set out for deciding the case one way or the other. This infirmity in the present judgment is glaring and for that reason also the judgment cannot be sustained.
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> Learned counsel for respondent No. 1 then tried to invoke our discretionary jurisdiction under Article 136 of the Constitution and contended that on account of the conduct of the appellants as also respondent No. 2, we should not grant leave in this case, particularly as the sale-deed has already been executed in his favour by the Commissioner appointed by the High Court. It is true that the jurisdiction under Article 136 of the Constitution is a discretionary jurisdiction and notwithstanding that a judgment may not be wholly correct or in accordance with law, this Court is not bound to interfere in exercise of its discretionary jurisdiction. But in the instant case, as we have already seen above, it is not merely a matter of the defendants' conduct in not filing the Written Statement but the question of law as to what the Court should do in a case where Written Statement is not filed, is involved, and this question has to be decided so as to provide for all the lower courts as to how the court should proceed in a situation of this nature. We, therefore, allow the appeal, set aside the judgment dated 10.2.1997 passed by the Single Judge as also the judgment dated 29.4.1998 passed by the Division Bench of the Delhi High Court and remand the case back to the Delhi High Court for a fresh decision. We allow the appellants and Respondent No. 2 to file their Written Statement by 15th of October, 1999, with a clear stipulation that if the Written Statement is not filed by that date, the decree passed by the High Court shall stand.