M/S R.N. Jadi & Brothers And Ors vs Subhashchandra on 10 July, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2571, 2007 AIR SCW 4568, 2007 (5) AIR KAR R 158, (2007) 4 CTC 326 (SC), (2007) 4 JLJR 98, (2007) 4 JCR 7 (SC), (2007) 3 UC 1856, (2007) 56 ALLINDCAS 12 (SC), 2007 (56) ALLINDCAS 12, (2008) 3 BOM CR 386, 2007 (4) CTC 326, 2007 (9) SCALE 202, 2007 (6) SCC 420, (2007) 2 GUJ LH 771, (2007) 2 ORISSA LR 498, (2007) 2 RENCR 139, (2007) 3 RECCIVR 587, (2007) 2 WLC(SC)CVL 563, (2007) 3 ALL RENTCAS 1, (2007) 3 CURCC 201, (2007) 3 CAL HN 183, (2007) 6 MAD LJ 59, (2007) 5 SUPREME 458, (2007) 4 ICC 1, (2007) 9 SCALE 202, (2007) 68 ALL LR 451, (2007) 4 ALL WC 3430, (2007) 4 PAT LJR 106, (2007) 5 ANDH LT 25, (2007) 3 LANDLR 55, (2007) 3 CIVILCOURTC 761, (2007) 6 KANT LJ 161, (2007) 2 RENTLR 338

Author: Arijit Pasayat

Bench: Arijit Pasayat, D.K. Jain

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           CASE NO.:
Appeal (civil)  2925 of 2007

PETITIONER:
M/s R.N. Jadi & Brothers and Ors

RESPONDENT:
Subhashchandra

DATE OF JUDGMENT: 10/07/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
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J U D G M E N T CIVIL APPEAL NO. 2925 OF 2007 (Arising out of SLP (C) No. 14606 OF 2006) Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. The controversy lies within a very narrow compass. The appellants-defendants were issued summons by the trial Court. They did not file the written statement within 90 days from the date of service of summons and there was a delay of two days. The trial Court accepted the written

statement which was filed beyond 90 days despite the objection raised by the plaintiff-respondent. The order of the trial Court was challenged before the Karnataka High Court in a Writ Petition under Article 227 of the Constitution of India, 1950 (in short the 'Constitution') on the ground that the provision of Order VIII Rule 1 of the Code of Civil Procedure, 1908 (in short the 'CPC) was mandatory and the trial Judge could not have accepted the written statement filed beyond 90 days from the date of service. The writ petition was allowed by order dated 30.8.2004. A Writ Appeal was filed which was held to be not maintainable.

3. A review petition was filed taking the stand that in view of a decision of this Court in Kailash v. Nanhku and Ors. (2005 (4) SCC 480) where it was held that the provisions of Order VIII Rule 1 CPC are directory, the reasons justifying the delayed presentation of the written statement could be satisfactorily explained. The High Court dismissed the review petition on the ground that a case for review was not made out. All the three orders are under challenge in this appeal.

4. Learned counsel for the appellants submitted that the decision taken by the High Court is not sustainable in view of law declared by this Court.

5. Learned counsel for the respondent on the other hand supported the orders of the High Court.

6. The CPC enacted in 1908 consolidated and amended the laws relating to the procedure of the Courts of Civil Judicature. It has undergone several amendments by several Acts of Central and State Legislatures. Under Section 122 CPC the High Courts have power to amend by rules, the procedure laid down in the Orders. In exercise of these powers various amendments have been made in the Orders by various High Courts. Amendments have also been made keeping in view recommendations of Law Commission. Anxiety of Parliament as evident from the amendments is to secure an early and expeditious disposal of civil suits and proceedings without sacrificing the fairness of trial and the principles of natural justice in-built in any sustainable procedure. The Statement of Objects and Reasons for enacting Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976) (in short '1976 Amendment Act') highlights following basic considerations in enacting the amendments:-

> (i) with the accepted principles of natural justice that a litigant should get a fair trial in accordance;
>
> (ii) that every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;
>
> (iii) that the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases."

7. By the 1999 Amendment Act the text of Order VIII, Rule 1 was sought to be substituted in a manner that the power of court to extend the time for filing the written statement was so circumscribed as would not permit the time being extended beyond 30 days from the date of service

of summons on the defendant. Due to resistance from the members of the Bar against enforcing such and similar other provisions sought to be introduced by way of amendment, the Amendment Act could not be promptly notified for enforcement. The text of the provision in the present form has been introduced by the Amendment Act with effect from 1.7.2002. The purpose of such like amendments is stated in the Statement of Objects and Reasons as "to reduce delay in the disposal of civil cases".

The text of Order VIII, Rule 1, as it stands now, reads as under: -

> "1. Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:
>
> Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

8. Order VIII, Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justiciae where the tragic sequel otherwise would be wholly inequitable. - Justice is the goal of

jurisprudence-processual, as much as substantive. [See Sushil Kumar Sen v. State of Bihar (1975 (1) SCC 774].

12. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. [See Blyth v. Blyth (1966 (1) All E.R. 524 (HL)]. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. [See Shreenath and Anr. v. Rajesh and Ors. (AIR 1998 SC 1827)].

13. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

14. It is also to be noted that though the power of the Court under the proviso appended to Rule 1 of Order VIII is circumscribed by the words - "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

15. Challenge to the Constitutional validity of the Amendment Act and 1999 Amendment Act was rejected by this Court in Salem Advocate Bar Association, Tamil Nadu v. Union of India (JT 2002 (9) SC 175). However to work out modalities in respect of certain provisions a Committee was constituted. After receipt of Committee's report the matter was considered by a three-Judge Bench in Salem Advocate Bar Association, Tamil Nadu v. Union of India (JT 2005 (6) SC

486). As regards Order VIII Rule 1 Committee's report is as follows:

> "The question is whether the Court has any power or jurisdiction to extend the period beyond 90 days. The maximum period of 90 days to file written statement has been provided but the consequences on failure to file written statement within the said period have not been provided for in Order VIII Rule 1. The point for consideration is whether the provision providing for maximum period of ninety days is mandatory and, therefore, the Court is altogether powerless to extend the time even in an exceptionally hard case.
>
> It has been common practice for the parties to take long adjournments for filing written statements. The legislature with a view to curb this practice and to avoid unnecessary delay and adjournments, has provided for the maximum period within which the written statement is required to be filed. The mandatory or directory nature of Order VIII Rule 1 shall have to be determined by having regard to the object

sought to be achieved by the amendment. It is, thus, necessary to find out the intention of the legislature. The consequences which may follow and whether the same were intended by the legislature have also to be kept in view.

In Raza Buland Sugar Co. Ltd., Rampur v. The Municipal Board, Rampur [AIR 1965 SC 895], a Constitution Bench of this Court held that the question whether a particular provision is mandatory or directory cannot be resolved by laying down any general rule and it would depend upon the facts of each case and for that purpose the object of the statute in making out the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

In Sangram Singh v. Election Tribunal Kotah & Anr. [AIR 1955 SC 425], considering the provisions of the Code dealing with the trial of the suits, it was opined that:

"Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a Penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle. "

16. The position was examined in details in Kailash's case (supra) and Rani Kusum (Smt.) v. Kanchan Devi (Smt.) and Others (2005(6) SCC 705).

17. In the facts and circumstances of the case, the maxim of equity, namely, actus curiae neminem gravabit an act of court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia the law does not compel a man to do what he cannot

possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey v. Tarapada Dey (1987 (4) SCC

398), Gursharan Singh v. New Delhi Municipal Committee (1996 (2) SCC 459), Ohammod Gazi v. State of M.P. and others (2000(4) SCC 342) and Shaikh Salim Haji Abdul Khayumsab v. Kumar and Ors. (2006 (1) SCC 46).

18. The matter can be looked at from another angle. Undisputedly, the trial Court had granted time upto 8.6.2004 which undisputedly fell beyond 90 days. There is no dispute that the written statement was filed on 8.6.2004.

19. In view of what has been stated above, we set aside the impugned orders of the High Court. The written statement already filed shall be duly taken note of by the trial Court. The appeal is allowed but without any order as to costs.