M/S R.N. JADI & BROTHERS AND ORS. A

v.

SUBHASHCHANDRA

JULY 10, 2007

[DR. ARIJIT PASAYAT, P.K. BALASUBRAMANYAN AND D.K. JAIN, JJ.] B

Code of Civil Procedure, 1908:

Order VIII Rule 1 and proviso thereto—Written statement filed beyond 90 days from the date of service of summons—Trial court accepting written statement—High Court holding that the written statement filed beyond 90 days from the date of service could not have been accepted—Held: Date fixed by trial court for filing written statement fell beyond 90 days and written statement was filed on the date fixed—In the facts and circumstances of the case, maxim of equity-actus curiae neminem gravabit and lex non cogit ad impossibilia, is applicable—Thus, order of High Court set aside—Written statement filed beyond 90 days to be duly taken note of by trial Court—Maxims. C D

Order VIII Rule 1 and proviso thereto—Nature and object of—Held: Provision casts obligation on defendant to file written statement within 30 days from the date of service of summons and within the extended time of 90 days—It neither deals with nor specifically takes away the power of court to take written statement on record though filed beyond time—Provision is procedural and not part of substantive law—It intends to curb the mischief of unscrupulous defendants adopting dilatory tactics in delaying the disposal of cases—Object is to expedite the hearing and not to scuttle it—Consequences flowing from non-extension of time are not specifically provided though they may be read by necessary implication. E F

Interpretation of statutes:

Procedural law/ processual law—Held: Object of prescribing procedure is to advance the cause of justice though language may be liberal or stringent—Provisions relating to participation of party in any adversarial system should be so construed that no party should be denied opportunity of participating in the process of justice dispensation—Unless compelled by G

 H

A *express and specific language of statute, provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extra-ordinary situations in ends of justice.*

Provision of law—Mandatory or directory—Held: Merely because a provision of law is couched in a negative language implying mandatory
B *character, it is not without exceptions—Courts keeping in view the entire context in which the provision came to be enacted, hold it to be directory.*

Trial Court issued summons to the appellants. Appellants did not file the written statement within 90 days from the date of service of summons. It was filed two days later. Trial court accepted the written statement. Respondent
C **challenged the order on the ground that the provisions of Order VIII Rule 1 of CPC, 1908 was mandatory and as such the trial court could not have accepted written statement filed beyond 90 days from the date of service. High Court allowed the writ petition. Aggrieved appellant filed appeal and the same was held not maintainable. Appellants then filed review petition relying on**
D ***Kailash v. Nanhku and Ors's case that the provisions of Order VIII Rule 1 being directory, the reasons justifying the delayed presentation of the written statement could be satisfactorily explained. Review Petition was dismissed. Hence the present appeal.**

Allowing the appeal, the Court

E

HELD: Per Pasayat, J (For himself and D.K. Jain, J):

1.1. Order VIII, Rule 1 of the Code of Civil Procedure, 1908 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
F **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,**
G **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**
H **some cases amount to justice buried. [Para 8] [248-D-G]**

2.1. 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 extra-ordinary situations in the ends of justice. Processual law so dominates in certain systems as to overpower substantive rights and substantial justice. [Paras 9 and 11] [248-G, H; 249-A, B]

Sushil Kumar Sen v. *State of Bihar,* [1975] 1 SCC 774, referred to.

2.2. 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. 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. [Para 12] [249-C, D, E]

Shreenath and Anr. v. *Rajesh and Ors.,* AIR (1998) SC 1827, referred to.

Blyth v. *Blyth,* [1966] 1 All E.R. 524 (HL), referred to.

3. Though the power of the Court under the proviso to Rule 1 of Order VIII is circumscribed by 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. [Para 14] [249-F, G]

Salem Advocate Bar Association, Tamil Nadu v. *Union of India,* JT (2002) 9 SC 175; *Salem Advocate Bar Association, Tamil Nadu* v. *Union of India,* JT (2005) 6 SC 486 and *Rani Kusum (Smt)* v. *Kanchan Devi(Smt) and*

A *Ors.*, [2005] 6 SCC 705, referred to.

4. In the facts and circumstances of the case, maxim of equity-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, B *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. [Para 17] [251-F, G]

C *Raj Kumar Dey* v. *Tarapada Dey*, [1987] 4 SCC 398; *Gursharan Singh* v. *New Delhi Municipal Committee*, [1996] 2 SCC 459; *Mohammod Gazi* v. *State of M.P. and Ors.*, [2000] 4 SCC 342 and *Shaikh Salim Haji Abdul Khayumsab* v. *Kumar and Ors.*, [2006] 1 SCC 46, relied on.

D 5. 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. Thus, the impugned orders of the High Court are set aside. The written statement already filed shall be duly taken note of by the trial Court. [Paras 18 and 19] [252-A, B]

E HELD: Per Balasubramanyan, J. (Concurring):

1.1. It is notorious that suits were being dragged on by defendants by not filing their written statements within a reasonable time. There are cases where written statements were not filed even within two or three years of the filing of the suits. The control expected to be exercised by courts, by the scheme F of Code of Civil Procedure, was not being exercised leading to slackness in the matter of filing of pleadings in defence. It was in that context that the relevant provisions of the Code were amended, the laudable object being to avoid delay in the disposal of suits. The amended Order VIII Rule 1 fixes a time limit for the filing of written statements. The Parliament introduced a G time limit for filing written statements and restricted the power of the court to grant extension of time for filing written statements as 90 days from the date of service of summons. The power for extension of time granted to the court under section 148 of the Code was curtailed by introducing an outer time limit of 30 days from the date originally fixed or granted. Thus, the legislative intent to limit or curtail the power of the court to extend the time H for filing a written statement is obvious. from a conjoint reading of these

provisions. [Para 2] [252-D, E, F, G] A

1.2. It is provided in Order V Rule 1 that the summons issued to the defendant should itself provide that he has to appear and file his written statement within one month of receipt of it and limiting the power of the court to extend the time for written statement to 90 days. Rule 14 to order VII provides that where the plaintiff sues upon a document or relies upon a B document in his possession or power, in support of his claim, he shall enter such document in a list and shall produce it in court when the plaint is presented by him and shall at the same time deliver the document and copy thereof to be filed with the plaint. Sub-rule(3) was introduced to provide that if the document is not included in the list, or is not produced with the plaint, C it was not to be produced without the leave of the court and without the leave of the court it shall not be received in evidence on his behalf at the hearing of the suit. [Para 3] [253-A, B, C]

1.3. Normally no injustice would be caused to the defendant in insisting upon his filing the written statement at least within 90 days of having received D the summons in the suit. It would be proper to avoid an interpretation that may tend to thwart the legislative intent in such circumstances.

[Para 4] [253-C, D]

1.4. Procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs. E But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. There could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a F jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. [Para 5] [253-D, E, F]

**Kailash* v. *Nankhu and Ors.*, [2005] 4 SCC 480, referred to.

1.5. A dispensation that makes Order VIII Rule 1 directory, leaving it G to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. Therefore, it is necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for H

granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order VIII Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. [Para 6] [253-H; 254-A, B, C]

Allen v. *Sir Alfred McAlpine and Sons,* **[1968] 1 All E.R. 543, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2925 of 2007.

From the Final Judgment & Order dated 30.09.2004, 29.06.2005 and 14.07.2006 of the High Court Karnataka at Bangalore in W.P. No. 25475(GM-CPC), Writ Appeal No. 4464 of 2004 (GM-CPC) and Review Petition No. 479 of 2005.

Shankar Divate for the Appellants.

Mallikarjun S. Mylar and Anil Shrivastav for the Respondent.

The Judgment of the Court was delivered by

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. A

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

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]. C

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]. D E

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. F

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. G H

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, 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 Ors.*, [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.

A *Tarapada Dey*, [1987] 4 SCC 398, *Gursharan Singh* v. *New Delhi Municipal Committee*, [1996] 2 SCC 459, *Mohammod Gazi* v. *State of M.P. and Ors.*, [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 B 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 C as to costs.

P.K. BALASUBRAMANYAN, J. 1. I respectfully agree. The High Court was in error in setting aside the order of the trial court accepting the written statement filed by the defendants, in the circumstances of the case. I am D prompted to make a few observations in the context of the discussion by my learned brother on the scope of the related provisions of the Code of Civil Procedure.

2. It is notorious that suits were being dragged on by defendants in suits by not filing their written statements within a reasonable time. We are E not unaware of cases where written statement were not filed even within two or three years of the filing of the suits. The control expected to be exercised by courts, by the scheme of the Code, was not being exercised leading to slackness in the matter of filing of pleadings in defece. It was in that context that the relevant provisions of the Code of Civil Procedure were amended, the laudable object being to avoid delay in the disposal of suits. The Amended F Order VIII Rule 1 fixes a time limit for the filing of written statements. But, Parliament did not stop with amending Order VIII Rule 1 alone i.e. introducing a time limit for filing written statements and restricting the power of the court to grant extension of time for filing written statements as 90 days from the date of service of summons. The power for extension of time granted to the G court under section 148, of the Code was curtailed by introducing an outer time limit of 30 days from the date originally fixed or granted. Thus, the legislative intent to limit or curtail the power of the court to extend the time for filing a written statement is obvious from a conjoint reading of these provisions.

H 3. In addition to the time limit prescribed in Order VIII Rule 1 of the

Code, it is provided in Order V Rule 1 that the summons issued to the defendant should itself provide that he has to appear and file his written statement within one month of reciept of it and limiting the power of the court to extend the time for written statement to 90 days. The summons is to be accompanied by a copy of the plaint. It simultaneously introduced Rule 14 to Order VII providing that where the plaintiff sues upon a document or relies upon a document in his possession or power, in support of his claim, he shall enter such documents in a list *and shall produce it in court when the plaint is presented by him* and shall at the same time deliver the document and copy thereof to be filed with the plaint. Sub-rule (3) was introduced to provide that if the document is not included in the list, or is not produced with the plaint, it was not to be produced without the leave of the court and without the leave of the court it shall not be received in evidence on his behalf at the hearing of the suit.

4. In such a position, normally no injustice would be caused to the defendant in insisting upon his filing the written statement at least within 90 days of having received the summons in the suit. I think that it would be proper to avoid an interpretation that may tend to thwart the legislative intent in such circumstances.

5. It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in *Kailash* v. *Nankhu and Ors.*, [2005] 4 SCC 480, which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. It was in that context that in *Kailash* v. *Nankhu and Ors.*, (Supra) it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, has to be satisfied that there was sufficient justification for departing from the time limit fixed by thee Code and the power inhering in the court in terms of Section 148 of the Code. *Kailash* is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

6. A dispensation that makes Order VIII Rule 1 directory, leaving it to

A the courts to extend the time indiscriminately would tied to defeat thee object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfication of the justification B for granting such extension the court being consicous of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order VIII Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. C Such an approach by courts alone can carry forward the legislativ intent of avoiding dalays or at least in curtailing thee delays in the disposal of suits filed in Courts. The lament of Lord Denning in *ALLEN* v. *SIR ALFRED McALPINE & SONS,* (1968) 1 ALL E.R.. 543, that law,s delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times.? D

N.J. Appeal allowed.