

PRESENTATION AND FILING OF THE WRITTEN STATEMENT

THE NEW LAW.

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1. **The Code of Civil Procedure (Amendment) Act, 1999 and the Code of Civil Procedure (Amendment) Act, 2002 (hereinafter referred to as the Amendment Act, 1999 and the Amendment Act, 2002 respectively), made extensive amendments to the Code of Civil Procedure, 1908 (hereinafter referred to as the amended Code). The amendments were considered necessary to tackle the problem of delay in dispensing Civil Justice. In several areas of Civil Procedure time frames have been enacted. One such area is the completion of pleadings by the parties to the suit. To expose the importance of the time frame regarding completion of pleadings one may indicate here that before the amended Code came into force most courts usually gave a lot of latitude to the defendant regarding filing of the written statement. The phrase "ends of justice" acted like magic in producing dates after dates for filing of the written statement. The mere mention of the magic phrase "ends of justice" in the application for time was sufficient to make some Judges forget their own words in the order sheet replete with phrases like "last chance" most last chance", "extreme last chance". In the matter of filing of Written Statement, thus, the phrase "ends of justice" was stretched to an extent where it spelled the end of justice in some cases, hence, the amended provisions extant since 01.07.2002.**

2. **According to the law since 01.07.2002 “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”. This is the provision in Order VIII Rule 1 of the amended Code.**

In other words the present law is that a time frame of ninety days from the date of service of summons is the utmost that the defendant gets to file the Written Statement. In view of this drastic change in law one would expect that completion of pleadings has been speeded up and the object of the amended Code has been achieved. What are the ground realities in this regard ? The general feed back from the lawyers and the Judges alike in this regard is disheartening. A curious blend of casualness, legal inadequacy nay even ignorance of the law and a mindset geared to maintain status quo has worked to defeat the new provision and the 90 day time frame has become conspicuous largely by its breach. It bears mention here that even before the coming into force of the amended Code on 01.07.2002 the Gauhati High Court by notification dated 14.06.2002 added a new Rule being Rule 49 A in the Civil Rules and Orders which reads thus: *“The defendant shall present the written statement of his defence on the day of his appearance in court in response to the summons. The court may permit him further time upto a maximum of sixty days from the day of appearance with or without costs if sufficient cause is shown for his inability so to present the written*

statement. The application showing cause on each occasion for seeking time must be supported by an affidavit and shall be disposed of by the court after hearing the parties by a reasoned order". By virtue of the provisions of Section 32(1) and 16(1) of the Amendment Act, 1999 and Amendment Act, 2002 respectively the sixty day time frame in Rule 49 A had been repealed but not the last sentence of the Rule 49A regarding the application seeking time because this is not only not inconsistent with the provisions of the amended Code but is in perfect consonance with the new provisions. Before 01.07.2002 after putting an end to the spate of applications for time to file the written statement and fixing the suit for *exparte* hearing the courts entertained the Written Statement filed on the date of *exparte* hearing on recording sufficient cause for earlier defaults. The suit thus was put back to the stage of filing of the written statement. Despite the change in law noted earlier this practice may be still continuing. But this dark scenario is not without silver linings as it appears from a recent unreported judgment of the Gauhati High Court. From the said judgment in Civil Revision (P) No. 126 of 2003, Sri Baliram Prasad Gupta -Vs- Md. Isa delivered by Hon'ble Justice P.G. Agarwal on 13.05.2003 it appears that Civil Judge (Jr. Division) No.2 at Tinsukia did well to depart from the old law and implement the new law. Incidentally Sri J.K. Das a fresh recruit to the Judicial Service being of 2002 batch was the Civil Judge (Junior Division) No.2 at Tinsukia whose order eventually produced the aforesaid Unreported Judgment. In that case the defendant entered appearance in the suit on 14.06.2002 and prayed for time to file the written statement. Prayers for time to file the written statement continued until on 16.11.2002 the prayer was rejected and the suit was fixed for plaintiff's evidence. On

06.12.2002 plaintiff's evidence was recorded. The defendant was allowed to cross-examine the plaintiff. On 28.02.2003 the written statement was filed and a prayer was made to accept the written statement. The Trial Court rejected the prayer. Order dated 28.02.2003 and the subsequent order in the suit whereby the trial court allowed the defendant to adduce evidence and make arguments were challenged as illegal before the High Court in the said Civil Revision. Justice Agarwal in the Judgment after quoting the provision of Order VIII Rule 1 of the amended Code held as follows :

“As we know the amendment to the C.P.C has been brought about after great deliberations with a view to expedite disposal of Civil proceedings. The provision has been made very specific and clear regarding the filing of the written statement and admittedly the written statement was not filed within the prescribed period of 90 days from the date of receipt of the summons and in the present case even 90 days from the date of appearance before the Court. We are of the view that any dilution of the above provision will defeat the very purpose for which the provisions were amended and enacted.....

.....

..... We,
 therefore, hold that the Written
 Statement is required to be filed
 within the time frame provided
 under Order 8 Rule 1 C.P.C and in
 case of defendant's failure to do so,
 the court shall have no discussion
 (sic) in the matter.”

The usual “ends of justice” argument under section 151 of Code of Civil Procedure and / or under Article 227 of the Constitution of India was rejected by Justice Agarwal in no uncertain terms in these words :

“The impugned Order was passed in accordance with law and as per specific provisions contained in the C.P.C and we, therefore, hold that no interference in this case is called for. The revision, therefore, stands dismissed.”

3. The aforesaid Judgment in Civil Revision (P) No. 126 of 2003 has been challenged by filing a special leave petition (SLP) in the Supreme Court. At present it is not known whether the leave to appeal has been granted or not. What could be the possible point/points of challenge to the Order in the aforesaid Civil Revision ? The query led this writer to discover that like in the provision of Order XVIII Rule 4 and 5, Order XLI Rule 9 and a few others the drafting over enthusiasm or inadequacy of the draftsman has left its imprint on this matter of filing of the written statement as well. This may now be considered in some

detail. Apart from the provisions of Order VIII Rule 1 a complete exposition of the law in this regard will require consideration of the impact of provisions of Order V Rule 1 phrased similarly as the provisions of Order VIII Rule 1 enacting the 90 days time frame, the provisions of section 32(2) (j) and (1) containing the provisions of repeal and saving in the Amendment Act, 1999 and finally the provisions of section 15(b) (ii) and (iv) of the Amendment Act, 2002 further amending the provisions of section 32(2) of the Amendment Act, 1999. The impact of all these provisions will yield the following. Provisions of Order V Rule I enacting the 90 days time frame for filing a written statement shall not apply to “in respect of any proceedings pending” before 01.07.2002. Provisions of Order VIII Rule I similarly enacting the 90 days time frame for filing of a written statement shall not apply to a Written Statement filed and presented before 01.07.2002. From the facts noted earlier it is clear that the Tinsukia Suit out of which the Judgment dated 13.05.2003 of the Gauhati High Court arose was pending before 01.07.2002. Therefore if one applies Order V Rule I and the repeal and savings provisions noticed above 90 days time frame for filing of the written statement in the suit would not rule the matter. On the other hand applying Order VIII Rule I and the repeal and savings provision one would reach the result that 90 days time frame would be attracted. The draftsman could have spared the Courts this legal conundrum. Perhaps in the SLP if it has been admitted the Supreme Court would finally resolve the conundrum. For the present suffice it to say that the prescriptions in the Rules of entire Order V flows from Section 27 of the Code of Civil Procedure and it deals only with the manner of service of summons and not filing of the Written Statement. Repeal and saving clause that is section 15(b) (ii) of the Code of Civil

Procedure (Amendment) Act 2002 enumerates several Rules other than Rule I which deal with manner of service of summons. The proper and the only place for the 90 days time limit should have been Order VIII and not Order V. Order V Rule I cannot be applied to the Tinsukia Suit because it was pending before 01.07.2002. Order VIII Rule I will cover the matter because the Written Statement was filed after 01.07.2002.

4. **The unreported Judgement in Civil Revision (P) No. 126 of 2003 is delivered on 13.05.2003. Seven/eight days earlier precisely on 05.05.2003 the same point of law relating to time frame for filing of the Written Statement arose before the Delhi High Court in its original side. The Judgment in suit No. 371/1998. Dr. Sukhdev Singh Gambhir -Vs- Amar Pal Singh, A.I.R 2003 Delhi 280 unlike the Judgement in the aforesaid Civil Revision of the Gauhati High Court proceeded entirely on the basis of Order V Rule I and section 148 C.P.C. A small list of dates would be appropriate. The Suit was of 1998. The defendants were given eight weeks time to file the written statement. The Written Statement was eventually filed on 04.04.2003 after nearly four and half years of service on appearance of the defendants. The question posed at the beginning of the Judgement is whether the written statement filed on 04.04.2003 be permitted to be taken on record by condoning the delay in filing or not ? From the Judgement it does not appear that there was any petition under section 5 of the Limitation Act. The learned counsel for the plaintiff submitted that the time limit under Order V Rule 1 has long expired. The defendant's Counsel submitted, and rightly so, that Order V Rule 1 does not apply. Only other ground urged was that negotiation for settlement was going on and the written statement was delayed because of fear that filing of the same may thwart the negotiations. None**

mentioned Order VIII Rule I. Section 89 of the amended code was mentioned. There is no discussion of the provisions of either Order V Rule I or of those of Order VIII Rule I. The Judgment proceeded to rely on A.I.R 2002 S.C 2487, a case under the Consumer Protection Act, 1986 wherein the Supreme Court dealing with the provisions of section 13(2) (a) of the said Act held that the time frame there was only directory and not mandatory. The consumer Protection Act, 1986 and the Code of Civil Procedure (Amendment) Act, 2002 are statutes not in Pari Materia. Therefore, the interpretation of a time frame enacted in the former statute cannot rule the interpretation of the time frame in the latter statute. The language of the provisions enacting the time frame in the two statutes differ widely. The latter statute unlike the former provides for consequences of failure to obey the time frame. The consequences are in Order VIII Rule 10. Moreover, the Judgment does not consider all the relevant law such as the Order VIII Rule I and the repeal and savings provisions in the Amendment Act, 1999 and 2002. Eventually, the High Court extended the time to file the Written Statement in purported exercise of its inherent power under Section 151 of the Code of Civil Procedure. It is well settled that inherent power cannot be exercised where there is a specific provision of law covering the matter. Thus, the Judgment appears to be a Judgment per incuriam.

5. The time frame for filing of the Written Statement also fell for consideration by the Karnataka High Court in Sri Prasanna Parvathamba Vs Sri M.S. Radha Krishna Dixit, A.I.R 2003 Karnataka 345 decided on 17.04.2003. In that case O.S. No. 79/2001 was posted for filing of the Written Statement on 22.10.2002. On failure to file the written statement by the

defendant the suit was posted for plaintiff's evidence. On 07.01.2003 the defendant filed the Written Statement along with a petition under section 151 C.P.C and pressed for its acceptance. The Trial Court rejected the prayer. On Revision the High Court found reasons for failure to file the Written Statement in time compelling and also found that the provision of Order VIII Rule 9 enables the Court to accept the Written Statement. Apparently, the defendant did not press the provisions of Order VIII Rule 9 in the trial Court but based the prayer on section 151 C.P.C. only. On the words used in Order VIII Rule 9 it is difficult to spell out a provision-enabling acceptance of a delayed written statement. The provision speaks only of the subsequent pleading and not of the initial written statement of the defendant.

6. In *Nachipeddi Ramaswamy Vs. Buchi Reddy*, A.I.R 2003 Andhra Pradesh 409 decided on 17.04.2003 the same question of law arose although the context is slightly different. There in O.S. No. 27 of 2002 Summons were served on the sole defendant on 10.05.2002. The defendant appeared before the Court through Counsel on 13.06.2002 and the court granted time to file the written statement from time to time. Ultimately on 09.10.2002 the written statement was filed and the court accepted the same. The plaintiff filed a petition under Order VIII Rule 10 read with section 151 C.P.C to reject the Written Statement and pronounce the judgment. The trial court rejected the petition of the plaintiff whereupon the plaintiff approached the High Court in revision. The High Court upheld the order of the trial court. The High Court seems to have found power to extend time beyond 90 days in the fact that Order VIII Rule 10 was repealed by the Amendment Act, 1999 and then reenacted by Amendment Act, 2002. Such a reasoning is difficult to understand because even before 01.07.2002 the words "or make such order in relation to

the suit as it thinks fit” in Order VIII Rule 10 were understood as reserving a power in the court to pass orders other than the order pronouncing judgment. Indeed in the suit dealt with by the Gauhati High Court (Supra) the trial court did not pronounce judgment but fixed the case for plaintiff’s evidence, then allowed the defendant to cross examine the plaintiff and lastly allowed the defendant to adduce evidence. All these orders were impliedly approved by the Gauhati High Court. All these orders are not in the teeth of the 90 days time frame under Order VIII Rule I whereas to carve out a power to extend the time frame from it will fly in the face of the said provision. The High Court also found the power to extend time in the provision of section 148 C.P.C. The 90 days time frame in that case expired on 08.08.2002. Under the provision of section 148 as extant since 01.07.2002 “the Court may, in its discretion, from time to time enlarge such period not exceeding thirty days in total.....”. Therefore, even if the said section is held applicable under its provision last day for filing the Written Statement could have been extended upto only 07.09.2002 and no further. The Written Statement in the case was filed on 09.10.2002 only. Moreover the law is well settled that provisions of section 148 C.P.C are applicable to time fixed by the Court and cannot be applied to time fixed by law such as the provisions of Order VIII Rule I. Lastly, the “ends of justice” under section 151 C.P.C have also been called in aid to lend support to the existence of a power to extend the time frame. Inherent power cannot be exercised to defeat a specific provision of law. The short answer to the prayer of the plaintiff in the suit in hand could have been (i) that unlike the power to reject a plaint there is no power to reject a Written Statement (ii) that the error committed by the court in accepting the Written Statement beyond the 90 days time frame would not be an error amenable to correction under

section 151 or under section 152 of the code and lastly, (iii) that the provisions of Order VIII Rule 10 do not create a right in the plaintiff to ask for a judgment.

7. Thus, of the four Judgments dated 17.04.2003 of the Karnataka High Court, and the Andhra Pradesh High Court, dated 05.05.2003 of the Delhi High Court and dated 13.05.2003 of the Gauhati High Court only the last one upholds the intent and purpose of the amended Code based on the recommendation of the Malimath Committee in this regard.

The notes on cases section of the All India Reporter has listed another Judgment dealing with the time frame discussed here. The full report of the Judgment dated 21.01.2002 of the Karnataka High Court is available in ILR (2003) 1 Kant. 2205 (excerpted from A.I.R). Notes are in A.I.R 2003 NOC 378 (KANT). No detailed comments can be offered except to say that this Judgment also fails to sub-serve the intent and purpose of the amended code.

8. The Legislature after due deliberation in various forum spanning a period of over seven years enacted the amended Code in order to speed up delivery of Civil Justice. The Executive brought this new law into force with effect from 01.07.2002. From the discordance emanating from the four decisions of the four High Courts presented in this essay the Judiciary appears to have unwittingly helped restoration of the status quo ante in this regard. This writing may be appropriately ended with the expectation that the Supreme Court someday would resolve the discordance by restoring the intent and purpose of the Amended Code. For all one knows the case from the Gauhati High Court may be the one to fulfill this expectation.

Postscript

By order dated 01.09.2003 the Supreme Court dismissed the SLP mentioned in para 3 above in the following words :-

“We find no merit in this SLP. It is accordingly dismissed. However, it is open to the petitioner to urge the grounds in the appeal against decree, if filed, which ground is sought to be urged before this Court in this SLP”.