

register the reconstituted firm, and the objections made by petitioner. The observations and findings in this order are only for the purposes of upholding the order of the Registrar, and are without prejudice to the rights of the parties to challenge the same, in case a suit is brought in the competent Court by any of the parties to the writ petition.

15. The writ petition is accordingly dismissed.

*Petition dismissed.*

[2003 (1) CRC 705]

**JANARDAN SAHAI, J.**

Civil Revision No. 167 of 2003, decided on March 31, 2003

**Waqf Mausooma Syed Husain and Mst. Wali Begum and  
another**

**Revisionists**

*Versus*

**Daleep Kumar Jain and others**

**Opposite Parties**

Code of Civil Procedure, 1908—(As amended by Act No. 46 of 1999, Act No. 22 of 2002 and Act No. 22 of 2001)—Order VIII, Rule 1—Suit filed on 5.12.2001—Notice served upon defendants in December 2001 and they appeared in Court on 14.1.2001—Time repeatedly granted to file written statement and last opportunity granted by trial Court on 29.4.2002—But written statement not filed—On 4.12.2002 written statement filed with delay condonation application—Court condoned delay and took written statement on record on payment of cost—Legality of—Time for filing written statement in present case was governed by provisions of Order VIII, Rule 1 C.P.C. as it stood before amendment introduced by Act No. 46 of 1999 and Act No. 24 of 2002—Amended provisions would not be applicable to pending suits.

[Paras 2, 7, 11 and 12]

Case Law.—AIR 1927 PC 242 : AIR 1975 SC 1843 : 1991 (2) CRC 1129 (SC) : 1976 SC 2161 : 1975 SC 1039 : AIR 1964 SC 260 : AIR 1974 SC 480 : 1987 (2) ACJ 561.

COUNSEL.—M.A. Qadeer for Revisionists; R.K. Jain and Aklan Jain for Opposite Parties.

### JUDGMENT

**Janardan Sahai, J.**—The facts of this case need not detain us for long.

2. The applicants in this revision are the plaintiffs in Original Suit No. 206 of 2001, which was filed on 5.12.2001. It is stated in Paragraph 3 of the affidavit filed in support of the stay application that the notice of the suit was served upon the defendant in December 2001 and they appeared in Court on 14.1.2001. It appears that time was repeatedly granted thereafter to the defendants to file a written statement and last opportunity was granted by the trial Court on 29.4.2002 but the written statement was not filed and it was only on 4.12.2002 that an Application 52-C was filed by the defendants stating that the written statement being filed be taken on record and the delay be condoned. The application was opposed by the plaintiffs. By the impugned order dated 30.1.2003 the trial Court condoned the delay and took the written statement on record on payment of costs. This order is under challenge in this revision.

3. The Code of Civil Procedure was amended by Act No. 46 of 1999, which was to come into force on such date as the Central Government would appoint



and different dates could be appointed for different provisions of the Act and for different states. Before the Act could be enforced amendments were again made by Act No. 22 of 2002 in Act No. 46 of 1999 as well as in the principal Act. The amendments made in Act No. 46 of 1999 together with the amendments made in the principal Act by Act No. 22 of 2001 were enforced with effect from 1st July, 2002.

4. The issue in this case is about the extent to which the provisions of the amended Code of Civil Procedure would be applicable in regard the time for filing the written statement in suits, which were pending when the amendments came into force. Under the amended Order 8, Rule 1 the written statement is to be filed within 30 days from the date of service of summons. However under the proviso thereto the Court may for reasons to be recorded in writing extend the time to a date not later than 90 days from the date of service of summons. If this provision is applied to the present case the time taken in filing the written statement being more than 90 days from the date of service of summons the Court had no power to condone the delay.

5. To appreciate the controversy reference may be made to the relevant provisions of the Act and the Rules before the aforesaid amendments were enforced Section 27 of the Code of Civil Procedure provided for a summons to be issued to the defendant to appear and answer the claim and for service of the summons in the prescribed manner. There was no time limit for service provided in the section itself. Order 5 Rule 1 provided that on the institution of the suit a summons be issued to the defendant to appear and answer the claim on a day to be therein specified. Under the proviso to this Rule the Court was empowered to direct the defendant to file the written statement of his defence on the date of appearance and to cause an entry to be made to that effect in the summons. The power conferred upon the Court by the proviso was discretionary and if an entry as referred to was not made in the summons, the summons were required to indicate the date for the defendant's appearance to answer the claim. The words 'answer the claim' have been interpreted by a Division Bench of this Court in 1983 Allahabad 130 *State of U.P. v. Dharam Singh Mehra* in the context of Order 27 Rule 5 CPC wherein in reference to suits against the Government the words "to appear and answer" have been interpreted to mean not necessarily the filing of the written statement but to instructions of the Government, the defendant, to be conveyed to the Court regarding the plaintiffs claim. Order 5 Rule 5 provided that the Court shall determine at the time of issuing summons whether it shall be for the settlement of issues only or for the final disposal of the suit and the summons were required to contain a direction accordingly but in a civil suit heard by a Court of Small Causes the summons were to be for the final disposal of the suit. Order 5 Rule 6 provided that the day for appearance of the defendants was to be fixed with reference to the current business of the Court. the place of residence of the defendant and the time necessary for the service of summons and the day was to be so fixed as to allow the defendant sufficient time to enable him "to appear and answer on such day". It is to be noted that the expression "to appear and answer" used in this provision is identical to the expression above referred to in Order 27 Rule 5. It is also to be noted that there was no provision specifying the maximum time limit for service of summons or the fixing of a day for the appearance. Order 8 Rule 1 provided that the defendant shall on or before the first hearing or within such time as the Court



may permit present a written statement of his defence. The effect of this provision was that the defendant as of right could file a written statement on or before the first hearing but thereafter it was not the right of the defendant to obtain time but it was the discretion of the Court to grant it. The scheme of the aforesaid provisions indicates that it was not incumbent upon the Court to specify in the summons the date for filing the written statement but merely to indicate the date for appearance and answer the claim. Of course, under the proviso to Rule 1 of Order 5 the Court had discretion to direct the defendant to file the written statement on the date of his appearance. The cumulative effect of this provision and of Order 5 Rule 5 and of Order 8 Rule 1 is that the defendant was required to file a written statement by the first day of hearing, which has been held to be the date on which the Court proposes to apply its mind to the controversy i.e. the date of framing of issues. From the scheme of the provisions referred to above, one thing is clear that the date of service of summons was not the basis for calculating the last date for filing the written statement. The date for filing the written statement was either the date of appearance if so provided in the summons or the date of framing of issues or for final disposal as the case may be.

6. The impact of the amended provisions may now be examined. Section 27 which originally provided that on a suit being instituted a summons may be issued to the defendant to appear and answer the claim to be served in the manner prescribed now contains a time limit and reads as follows :

"27. *Summons to defendants.*—Where a suit has been duly instituted., a summons may be issued to the defendant to appear and answer the claim and may be served in the manner prescribed on such day not beyond thirty days from the date of institution of the suit."

7. Order 5 Rule 1 now provides for the summons to be issued to the defendant not only to appear and answer the claim but to file the written statement of his defence as well and that too within 30 days from the date of service of summons on that defendant. Under the proviso the Court can extend the time for reasons to be recorded in writing but the date for filing the written statement shall not be later than 90 days from the date of service of summons. It is to be noted that while under the unamended provision the date of service of summons was not relevant for determining the date by which the written statement could as of right be filed by the defendant but under the amended provisions the date of service of summons is the starting point for calculating the time within which the defendant can file the written statement. While there is no change in the provisions of Order 5 Rule 5 CPC but Rule 6 of Order 5 has been amended and instead of the date of 'appearance and answer' which was required to be specified under that Rule the amended provision refers to 'the date under sub-rule (1) of Rule 1' i.e. the date not of mere appearance and answer to the claim but to file the written statement within 30 days from the date of service of summons. While the amended provisions of Section 27, Order 5 Rule 1, Order 5 Rule 6 and Order 8 Rule 1 carve out a workable integrated scheme as a whole it is difficult to integrate the procedure of the unamended provisions in part and to amended provisions by adhering to the unamended provisions in the matter of switching over to the amended provisions for the rest of the part in the matter of filing of the written statement. Under the unamended provisions where the Court had not exercised the power under the proviso to Rule 1 of Order 5 CPC by indicating in the summons that the written statement was to be filed on the



date of appearance the defendant could file the written statement as of right on the date of first hearing and he could not be said to be a defaulter. Under the amended provisions, however, the date of service of summons is the crucial date and not the date of first hearing and if the defendant does not file the written statement within 30 days of the service it would be treated that he had failed to file the same and the Court could then extend the time only to a date not being beyond 90 days from the date of service. Under the unamended provisions there was no embargo on the power of the Court to fix a date for appearance at its discretion. Thus if the provisions of the amended Order 8 Rule 1 are applied to a pending suit where the summons were issued and a date of appearance was provided according to the unamended provisions the concept of calculating the time from the date of service of summons would result in injustice as in many cases the date for appearance or of first hearing or the adjourned date of first hearing would be more than 30 days after the date of service. In many cases the adjourned date of first hearing would be more than 90 days after the date of service. In such a case the application of the Rule of 30 days for filing the written statement from the date of service would be incapable of being applied. Even otherwise there being no indication in the summons sent under the unamended provision that the written statement would have to be filed within 30 days of service it would be unjust to treat the non-filing of the written statement within this period as a default by applying the amended provisions. The proviso to Order 8 Rule 1 empowering the Court to extend the date is applicable only to those cases where the defendant had 'failed' to file the written statement within 30 days of service provided under the main provision. The proviso would therefore be applicable only to cases where the main amended provision applies as the exercise of the power under it is contingent to the failure to file the written statement within 30 days from the date of service. Now if the main provision is incapable of being applied the proviso too can not be invoked. It therefore appears that in the matter of time of filing a written statement either the scheme as provided under the unamended provisions would apply as a whole or the scheme provided under the amended provision as a whole and it may become impossible to apply the procedure under the old Code upto the stage of service of summons and to apply the amended provision as regards the time limit for filing the written statement.

8. Sri M.A. Qadeer, learned Counsel for the applicant submitted that the amendments made are in respect of procedure and hence would operate retrospectively to pending suits. Sections 15 and 16 of the amending Act 22 of 2002 and Section 32 of Act No. 46 of 1999 he submits specify the provisions in respect of which the amendment shall not apply and as Order 8 Rule 1 is not included in the list given in these sections the amended provisions of Order 8 Rule 1 would apply. It is true that reference to certain provisions to which the amended provisions would not apply has been given in the amending Acts 22 of 2002 for instance Section 15 (b) (ii) of Act 22 of 2002 amends Section 32 of Clause (j) of Act 46 of 1999 and provides that Rules 1, 2, 6, 7, 9, 9-A, 19-A, 21, 24 and 25 of Order V as amended would not apply to pending suits. Similarly Section 15 (b) (iv) of Act 22 of 2002 provides that Order VIII Rules, 1, 1-A, 8-A, 9 and 10 as amended shall not apply to written statement filed before commencement of Section 18 of Act 44 of 1999 or Section 9 of Civil Procedure Code Amendment Act 2002. But from this fact itself no conclusive inference can be drawn and the scheme of the Amending Act, which has been analysed above is to be considered



to draw out the legislative intent. No doubt an amendment in the law of procedure would ordinarily be retrospective but that is only a presumption and where a construction giving retrospectively to a provision is textually inadmissible it would have to be taken that the provision is prospective in operation. Reference may be made to the decisions in *Delhi Clothes and General Mill Company Ltd. v. P.I.T. Commissioner*, AIR 1927 PC 242; *Jose Decosta v. Basora*, AIR 1975 SC 1843.

9. It is also to be noted that Order 5 Rule 1 as introduced by the amendment also contains a provision like Order 8 Rule 1 requiring the written statement to be filed within 30 days from the date of service of summons and confers power upon the Court for reasons to be recorded to extend time for filing the written statement to a day not later than 90 days from the date of service of summons. This provision has been made inapplicable to pending suits by virtue of the provisions of Section 15-b of Act 22 of 2002. The scheme of the amended provisions which has been discussed above indicates that in the matter of time for filing the written statement the amended provisions of Order 8 Rule 1 would not be applicable to pending suits and although the provisions is procedural retrospectivity is textually inadmissible. Learned Counsel for the applicant submitted that the amended Order 8 Rule 1 should be so interpreted as to mean that the time of 30 days provided therein would start running in pending suits from the date of commencement of the Amending Act. Such an interpretation would amount to modifying the words of the provision itself and there are no compelling reasons in this case to resort to an interpretation by committing violence upon the language employed.

10. Learned Counsel for the applicant relied upon certain decisions which may now be considered. In AIR 1991 SC 2156: \*1991 (2) CRC 1129 (SC), *Vinod Gurudas Rai Kumar v. National Insurance Company Ltd.*, the Apex Court took the view that question of condoning the delay in filing a claim petition under the Motor Vehicles Act would be governed by the new Act No. 59 of 1988 and not by the "Old Motor Vehicles Act, 1939" even though the accident took place when the old Act was enforced. In that case the period of limitation for filing the claim petition both under the old Act as well as under the new Act was six months but under the new Act the power of the Court to condone the delay was limited to a delay of six months. It was held that there was a vital difference between an application claiming compensation and prayer to condone the delay in filing such application. In that case the occasion to take the benefit of the provision for condonation of delay arose only after repeal of the Old Act. That was not a case of a pending suit but the claim petition was filed after the new Motor Vehicles Act. In 1976 SC 2161 *Mohd. Ashfaq v. State Transport Appellate Tribunal* it was held that Section 29 (2) of the Limitation Act, which makes Section 5 of the Limitation Act applicable to certain proceedings would have no application to the time for filing application for renewal of permit as a specified time limit had been fixed in Section 58 sub-section (2) and a discretion was conferred under sub-section (3) upon the Regional Transport Authority to entertain an application for renewal if it is beyond time but if the delay was not more than 15 days. Similar view was taken by the Gujarat High Court in 1992 Accident and Compensation Case 717 *Mare Ram Das Bechanand Bhai v. Harshad Bhai Mala Bhai*. The *Commissioner of Sales Tax, U.P. v. M/s. Parsan Tools*, 1975 SC 1039 also relates to the application of Section 5 and 14 (2) of the Limitation Act to proceedings under



the Sales Tax Act. That was a case where revision was filed beyond time prescribed by Section 10 of the U.P. Sales Tax Act. The decision has no application to the facts of the present case as Section 14 (2) or Section 5 of the Limitation Act are not being pressed. AIR 1964 SC 260 *Kaushalya Rani v. Bhopal Singh* and AIR 1974 SC 480 *Hukum Dev Narain Yadav v. Lalit Narain Mishra* were also cases where Section 29 (2) of the Limitation Act was being sought to be invoked and these decisions too have no application. In *Gujarat State Road Transport Corporation v. Raman Bhai Prabhat Bhai*, 1987 Vol. 2 Accident Claim Journal 561 it was held that the provision of Section 110-A and Section 110-B of the Motor Vehicles Act relating to persons for whose benefits an application can be made and the manner of distribution of compensation supersede the provision of the Fatal Accident Act. None of the cases cited by the learned Counsel for the applicant applies to the situation in the present case.

11. The result of the aforesaid discussion is that the time for filing the written statement in the present case was governed by the provisions of Order 8 Rule 1 CPC as it stood before the amendment introduced by Act No. 46 of 1999 and Act No. 24 of 2002. As such the impugned order condoning the delay in filing the written statement can not be excepted to.

12. In the result, there is no merit in this revision. Dismissed.

*Revision dismissed.*

[2003 (1) CRC 710]

### CHIEF CONTROLLING REVENUE AUTHORITY

V. K. MITTAL, C. C. R. A.

Stamp Revision No. 80 of 2001-02, decided on March 24, 2003

Lal Mohammad Khan and others

Appellant

*Versus*

State

Respondent

(A) Stamp Act, 1899—Section 56—Evasion of stamp duty in sale of property—Notice of Collector—Assessed stamp duty deeming it as abadi on basis of circle rate.

[Para 4]

(B) U.P. Zamindari Abolition and Land Reforms Act, 1951—Section 143—Inspection memo is not file and that land in question has got not been declared as abadi.

[Para 3]

### JUDGMENT

V.K. Mittal, C.C.R.A.—This revision has been preferred under Section 56 (1) of the Indian Stamp Act, 1899 against the order dated 16.4.2001 passed by the Collector, Sravasti.

2. Heard the learned Counsel for the parties and perused the relevant papers on file.

3. The main grounds of revision are that the proceedings have been initiated on a complaint against the sale deed dated 26.6.2000 and action has been taken *suo motu*; no show-cause notice has been given; the spot inspection was done in the absence of the parties. The inspection memo is not on the file and that the land in question has got not been declared as abadi under Section 143 of U.P.Z.A. and L.R. Act.

4. From the perusal of file it is evident that Sri Chandramani Kant Singh brought to the notice of the Collector the fact that there is evasion of stamp duty