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"ASTRINGENT ADJOURNMENTS AVOID DELAY IN DISPOSAL OF CASES" – A CRITICAL ANALYSIS IN THE LIGHT OF ORDER VIII OF CODE OF CIVIL PROCEDURE, 1908

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***Abstract*-- The Law Commission of India, in its 163rd report, expressed its concerns about the delay in disposal of cases in the following words:**

> ***"Delay in disposal of cases threatens justice. The lapse of time blurs truth, weakens memory of witnesses and makes the presentation of evidence difficulty. This leads to loss of public confidence in the judicial process system which in itself is a threat to rule of law[1]".***

Further, There is a famous saying that the "Justice not only to be done, it must also be seen to be done." That means the justice should not only be rendered by the court of law but also the people should be made to feel that it has really been given. Today, there is a lot of litigations pending throughout India, and the Indian courts are over-burdened with the docket explosions. In this article, the authors are going to analyse the causes, concerns and the reforms to be made in the civil litigations and suggest the measures for reducing the civil litigation in alternative methods.

Keywords: Civil Procedure Code – Filing of Written Statement – Order VIII – Fixation of time – Disposal of Cases.

INTRODUCTION

Number Of Pending Cases:

An Overview: According to National Judicial Data Grid, The total number of pending cases in India as on date 21/11/2017 is 2,60,15,248. Out of which 79, 800, 49 are civil in nature, while criminal cases constitute a large 1, 80, 35,199 number. Among the 2,60,15,248 cases 22,92,382 i.e.,8.81 percent of the cases are pending for over a period of 10 years. 41,90,131 cases (16.11%) are pending between 5 to 10 years while 74,20,879 cases which amount to 28.53% are pending between 2 to 5 years. 46.56% i.e.,1,21,11,856 cases alone are pending less than a year.

Pending Cases Civil Nature: Out of 22,92,382 cases mentioned above, 6,07,347 cases are civil in nature which are pending for over a period of ten years. 12,06,303 cases are pending between 5 to 10 years while 24,31,929 cases are pending between 2 to 5 years. 37,34,470 cases are pending for less than two years' period. So, the total number of pending civil cases all over India is 79,80,049.

Disposal Of Cases -Vs- Filing Of Cases

While 2,26,050 civil cases disposed of in the given month, 2,09,209 cases are filed last month alone[2]. Further, out of the 6,07,347 which are pending over a period of ten years, 14,448 cases are disposed of in the last month itself[3].

REASONS FOR THE DELAY IN CLEARANCE OF CASES

The first and foremost reason for the delay in clearance of civil cases is seeking adjournment by the parties to the suit. The adjournment may be for the filing of the written statement or filing counter statement and for conducting cases/suits. Once the suit is filed under Order 7 Rule 1 and 2 of the Code of Civil Procedure, 1908 (herein after referred to as C.P.C, 1908), the written statement *(according to the amended provision)* should be filed within 30 days from the date of service of summons to the opponent/defendant[4]. In case, if the opponent

[1] See Point No:1.5.7 of the 163rd Law Commission Report, 1998.
[2] The term "last month" represents before 21/11/2017. Source: njdg.ecourts.gov.in/njdg_public/main.php.
[3] Ibid.
[4] Order 8 Rule 1

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failed to submit the written statement within the stipulated period, he shall be permitted to file the same, for the reasons to be recorded in writing, on any other day as may be fixed by the Court. But, at any cost, the time limit, for submitting the written statement, should not exceed 90 days from the date of service of summons[5]. In *Salem Advocate Bar Association, Tamilnadu Vs. Union of India*[6], the Hon'ble Apex Court of India observed that *"it has been common practice for the parties to take long adjournments for filing written statements."*

C.P.C PROVISIONS FOR FILING OF WRITTEN STATEMENT

Before the discussion of the provision regarding the filing of written statement, we wish to state that drastic changes made in the C.P.C, 1908 in the years 1999 and 2002 respectively. The constitutional validity of these changes/amendments tested before the Apex Court of India in *Salem Advocate Bar Association, Tamilnadu Vs. Union of India*[7]. But the challenges made have been rejected. Therefore, these amendments stood as valid.

ORIGINAL PROVISION FOR FILING WRITTEN STATEMENT: i.e., POSITION BEFORE 1976 AMENDMENT:

Before 1976 amendment, the original provision for the submission of the written statement was as follows:

Order 8 Rule 1:

(1) "The defendant may, and if so required by the court, shall at or before the first hearing or within such time as the court may permit, present a written statement of his defence."

Under this provision, the opponent/ the defendant was not bound to file a written statement unless specially required by the court to do so; or that he had right to file a written statement at or before the first hearing[8] ; A defendant is not compelled to file a written statement unless directed by the court to do so. "First hearing," used in Rule 1 Order 8, would mean the date of settlement of issues[9]. According to the second part of this provision, the term "the court may permit" means and shows the discretionary power vested on the court at may be exercised or may not be exercised. Apart from the above discretionary powers of the court, Order VIII Rule 9 also gave further discretionary power to accept the written statement even after the settlement of issues[10].

From the above, it is crystal clear that under this provision, the duration for filing the written statement was under the powers of the Courts. Therefore, to reduce the powers of the Court, it was felt that suitable amendment had to be made in the C.P.C. Accordingly, in the year 1976, an amendment was made in C.P.C. Now, we can discuss the 1976 amendment.

Filing of written statement after 1976 amendment:

Order VIII Rule 1 Sub-rule (1) after the 1976 amendment was as follows:

Order VIII Rule 1

(1): "The defendant [….] shall, at or before the first hearing or within such time as the Court may permit, present a Written Statement t of his defence".

By this 1976 amendment, the words, "*May, and if so required by the court"* occurred in original C.P.C was omitted. Because of this omitted words, Court's power and lethargic attitude of the defendants had approximately minimized. But to the shock and surprise, by taking the help of Rule 9 and 10, again the time for filing written statement has been expanded *(See infra discussion).*

[5] See: The Proviso to Order 8 Rule 1 of CPC.
[6] (2003) 1 SCC 49.
[7] A.I.R 2003 SC 189: (2003) 1 SCC 49.
[8] Bindeshware Kamkar And Ors. Vs. Radhai Tiwari And Ors. AIR 1979 Pat 78. "First hearing," is the date fixed for framing of issues where summons issued is for framing of issues or the date of final hearing where the summons issued is for that purpose.
[9] Binda Prasad Vs. United Bank of India Ltd., And Ors. AIR 1961 Pat 152. See also: Abdul Hai Vs. Rahmatullah Mian And Anr. AIR 1974 Pat 244.
[10] "Order 8, Rule 9, invest the Court with the widest possible discretion and enables it to accept a written statement filed subsequently, even after the settlement of issues, upon such terms as the court thinks fit"- Binda Prasad Vs. United Bank of India Ltd and Ors. AIR 1961 Pat 152.

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The object of the amendments made in Rule 1 of Order VIII was to make the filing of the written statement compulsory; the amendments in Order VIII were being made to give effect to the recommendations of the Law Commission to ensure that the written statement and the documents were filed without delay[11].

The plain meaning of this provision, after its amendment, clearly indicate that the defendant must file his written submission within the time stipulated by the Court. In short, the filing of the written statement by the defendant has now been made obligatory. The omission of the words indicated earlier from the provision reinforces this conclusion[12]. According to the amended rule, the defendant can, as of right, file his written submission either at or before the first hearing or within such period as the court may allow. But, as we already told, even under this amended rule, the Court was competent to entertain the written statements, in terms of Rule 9 of Order 8, even after the time fixed under Sub-rule 1 of Order 8.

The verbatim of the relevant part of Order 8 Rule 9 are as follows[13]:

"….. 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."

Powers of the Court under rule 10 of Order 8:

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][14]".

The words "*or to make such order in relation to the suit as it thinks fit*" are of very important since it gives discretionary powers to the Court "not to pronounce the judgment against the defendant and instead to pass any order as it may thinks fit in relation to the suit".

For the precise interpretation or understanding of the words *"or to make such order in relation to the suit as it thinks fit."* the lines have to be read with Rule 5 (2) of Order 8 of the C.P.C.

Sub-rule 2 of Rule 5 to Order 8 says that "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,…, but the court may, in its discretion, require any such fact to be proved".

According to the Indian Evidence Act, 1972 admitted facts need not be proved. Under this rule also, the Court is empowered to pronounce the judgment based on the facts furnished in the Plaint. No doubt in it. But, if the facts on the reading of plaint show that some disputed facts are involved in the suit now the question arose, whether the Court can pronounce judgment, by taking the recourse to Rule 5 (2) of Order 8, as such without giving any opportunity to the opponent?

Therefore, in such cases, to remove the doubts, the Court "may make any order in relation to such suits *{(Balraj Taneja case infra}* and not otherwise."

That being so, The Madhya Pradesh High Court, In *Mathew Elenjical And Anr. Vs. The Nagpur Roman Catholic*[15], while interpreting the words *"or Make such order in relation to the suit as it thinks fit"* occurring in Rule 10, observed that these words would mean that the Court can in its discretion even grant a further adjournment for filing the written statement. But, in *Balraj Taneja & Anr. Vs. Sunil Madan& Anr*[16], different interpretation has been given by the Supreme Court of India which the authors with due respect acknowledge

[11] Mathew Elenjical And Anr. Vs. The Nagpur Roman Catholic AIR 1978 MP 39.
[12] Mathew Elenjical And Anr. Vs. The Nagpur Roman Catholic AIR 1978 MP 39.
[13] We, the authors, have reproduced only the relevant portion of our study.
[14] The words occurred in bracket in Order 8 Rule 10 was substituted by 1976 Amendment. Before its substitution, the original provision was as follows:

> Rule 10. "Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or makes such order in relation to the suit as it thinks fit." *Taken from the A.I.R Manual, unrepealed Central Acts, (Civil and Criminal), 2nd Edi, Vol-II, A.I.R Publication, 1959*

[15] AIR 1978MP 39.
[16] MANU/SC/0551/1999

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the same and with due respect disagree with the view given by the Madhya Pradesh High Court. In *Balraj Taneja case (Supra)* the Supreme Court held as follows:

"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 pronounce 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".

According to the authors' view, Rule 10 of Order 8 is nothing but the verbatim of Sub-rule (2) and (4) of Rule 5 of Order 8. Unnecessarily, in order to make confusion Rule 10, is kept in the book of C.P.C. Since both rules are deals with the consensuses of non-filing of the written statement, Rule 10 may be omitted from the book of law.

For our analysis, the verbatim of Sub-rules (2) and (4) of Rule 5 of Order 8 are reproduced as follows:

Rule (2)[17]: "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".

Rule (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".

Therefore, according to our analysis, we suggest that to achieve the object of Order 8 and to avoid unnecessary ambiguity, Rule 10 of Order 8 has to be omitted from the book of C.P.C[18].

FILING OF WRITTEN STATEMENT AFTER 1999 AMENDMENT

After the 1999 amendment in CPC, The provision for the filing of written statement was as follows:

Order VIII Rule 1: Written Statement:

"The defendant shall at or before the first hearing or within such time as the Court may permit, which shall not be beyond thirty days from the date of service of summons on the defendant, present a written statement of his defence".

The Order 8 Rule 1 has to be read with Order 5 of the C.P.C. Sub-rule 1 of Rule 1 of Order 5 was as follows:

Order V Rule 1 (1): "When a suit has been duly instituted, a summon may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, on such day within thirty days from the day of institution of the suit as may be specified therein[19]":

"Provided that no such summons shall be issued when a defendant has appeared at the time of presentation of the plaint and admitted plaintiff's claim":

"Provided further that where the defendant fails to file the written statement on the said date, he shall be allowed to file the same on such other day which shall not be beyond thirty days from the date of service of summons on the defendant, as the Court may thinks fit".

The combined reading of the Order 8 and Order 5 says that the opponent/defendant has to present the written statement within thirty days from the date of institution of the suit. If he fails to submit the written submission within the said period of 30 days, then he shall be permitted to present the same within thirty days from the date of issuing of summons. According to the second part, the date will be reckoned not from the date of institution of the suit but, from the date of service of summoning on him. To sum and substance, the defendant has to submit the written statement within 30 days from the date of issuing of summon or from the date of institution of the suit.

[17]Sub- rule (2) of Rule 5 has been enacted to give effect to the view of the Bombay High Court and Sub-rules (3) and (4) thereafter have been introduced as consequential provisions – (Mathew Elenjical And Anr. Vs. The Nagpur4 Roman Catholic AIR 1978 MP 39).

[18] With due respect, the authors disagree with the reason given by the Law Commission of India, in its 163rd for the retention of Rule 10 of Order 8 of CPC. See Point No: 2.16 (v).

[19] See also Section 27 of the Code.

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FILING OF WRITTEN STATEMENT AFTER 2002 AMENDMENT

Reasons for the amendments:

Various Bar Associations in India, on the basis of hardship to the litigants, ridiculed the thirty days period prescribed under the 1999 Amendment for filing the written statement. The Law Commission of India also in its 163rd Report suggested that experiences show that in cases where the Government is the defendant, it is not as prompt as a private party in filing the written statement. Because of the very nature of the working of Government departments and the requirement of the coordination and internal correspondence between one department and the other, it generally requires a longer time for filing the written statement[20]. Therefore, it was felt that the C.P.C requires amendment and as such, the 2002 amendment brought into force and substituted the Order 8 Rule 1 as follows:

Order 8 Rule 1:

"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.

Since the 30 days and 90 days period as prescribed by Order 8 Rule 1 is made in consonance with Order 5 Rule 1[21], it is appropriate to discuss the Order 8 Rule 1 along with Order 5 of the C.P.C.

Order 5 Rule 1 (1) as amended in 2002 was as follows:

Order V Rule 1 (1): "When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, on such day within thirty days from the date of service of summons on that defendant".

"Provided that no such summons shall be issued when a defendant has appeared at the time of presentation of the plaint and admitted the plaintiff's claim":

"Provided further 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 the reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

Under this 2002 amendment, the rigorous of 30 days period increased to 90 days period. But, here the thing to be noted here is under the 2002 amendment, the period of limitation for the said 90 days starts not from the date of first hearing; but from the date of issuing of summons to the defendant. Further, the next check provided under this amendment is that the said period of additional 60 days cannot be claimed as a matter of right. According to the proviso clause, in case of failure of filling the written submission within the initial period of 30 days, the defendant shall, *"for the reason to be recorded in writing,"* be allowed to file the same within the further period of 60 days. The requirement of recording reasons in writing clearly implies that the additional period beyond 30 days cannot be granted as a matter of course or just for the asking[22]. The Court must while granting such an extension applies its mind to the reason which prevented the defendant from filing the written statement within the said period fixed under this C.P.C. This procedural safeguard is intended to ensure that the power to grant or to refuse permission to present the written submission beyond 30 days is not exercised in an arbitrary or whimsical. Therefore, for having a speedy trial, the legislative mandate of not giving more than 90

[20] See Para 2.13.1 of the 163rd Report of the Law Commission.

[21] See Order 5 Rule 1 (1) and the Second proviso to Order 5. Order 5 Rule 1 (1): Summons: "When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant".
The second proviso says: "provided further, 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 the reason to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

[22] A.Sathyapal And Ors. Vs. Smt. Yasmin Bany Ansari And Anr.ILR 2004 KAR 1399

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days in filing written statement is required to adhere to strictly[23]. If this does not adhere, the legislative mandate of disposing of the cases more speedily would be defeated[24].

In *A. Sathyapal And Ors. Vs. Smt. Yasmin Banu Ansari And Anr*[25], The Karnataka High Court, on 27th February 2004, held that "the provisions of Order VIII Rule 1 and Rule 9 operates in two different spheres. While one regulates the exercise of the right by the defendant to file a written statement, the other caters to situations where the defendant may not have filed any written statement and may not even be interested in filing one, but in which the court considers such a written statement or additional written statement to be necessary. Rule 9 of Order VIII, therefore, does not hold the key to a correct interpretation of Rule 1 to Order VIII".

Further, the Court emphatically held that "the Court trying a civil suit does not have any power to extend the time for filing the written statement beyond what is stipulated in Order VIII Rule 1 of the C.P.C". As such in this case, the Karnataka Division Bench over-ruled all the previous contradictory verdicts rendered by the Single Judges[26]. However, the Delhi High Court has differed in its view and opined that the Court, in the exercise of its inherent powers, can extend the time to file the written statement[27]. According to the authors' view, The Delhi High Court's verdict requires reconsideration as it is settled principle that "the inherent powers of the C.P.C must be exercised subject to the rule that if the C.P.C makes a specific provision for a particular contingency, resort to inherent powers to deal with the same is impermissible"[28].

SUPREME COURT'S VIEW ON 1999 AND 2002 AMENDMENT

In *Salem Advocate Bar Association, Tamilnadu Vs. Union of India*[29], the question "*whether the provision providing for the maximum period of ninety days is mandatory and, therefore, the Court is altogether powerless to extend the time even in an exceptionally hard case" arose for consideration.*

While answering to the question, the Supreme Court on 2nd August, 2005 by quoting Order VIII Rule 10 held that "the provision of Order VIII Rule 1 providing for an upper limit of 90 days to file written statement is directory". By using the doctrine of harmonious construction, the Supreme Court ruled that "under Rule 10 of Order VIII, the court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order VIII Rule 1."[30]. Further, the Apex Court made it clear *that "the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days"*. Further, the Court made it clear that the "discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1".

From the above, it is crystal clear that even the Supreme Court of India is not inclined to extend the time limit prescribed under this C.P.C for filing the written statement. On the other hand, it allows the extension of the time limit only in an exceptionally hard case. {See Dr. JJ Merchand Case *(Supra)* for the supporting view (This case was rendered by 3 Judges Bench)}.

Again, In Kailash vs Nanhku & Ors[31], the Supreme Court held that "the time prescribed by Order 8 Rule 1 has to be honoured and ordinarily the time schedule contained in the provision is to be followed as a rule and departure from there would be by way of exception". "The extension of time sought for by the defendant from the Court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of

[23] Dr.JJ Merchand Vs. Shrinaath Chaturvedi AIR 2002 SC 2931.
[24] Dr.JJ Merchand Vs. Shrinaath Chaturvedi AIR 2002 SC 2931.
[25] ILR 2004 KAR 1399.
23. See S.G. Narayana Swamy Vs. Ramakrishnappa, ILR 2003 KAR 2205; Smt. Savith Gupta Vs. Smt Nagarathna And Ors., 2003(4) KAR.L.J. 14 A.V. Purushotam Vs. N.K.Nagaraj, AIR 2003 Kant 417; Civil Revision petition No:1494/2003 disposed of on 10.07.2003.
[27] Dr. Sukhdev Singh Gambhir Vs. Shri Amrit Pal Singh And Ors. AIR 2003 Delhi 280.
[28] Nain Singh Vs. Koonwarjee And Ors. AIR 1970 SC 997.
[29] (2003) 1 SCC 49.

[31] (2005 (4) SCC 480.

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routine and merely for the asking, more so, when the period of 90 days has expired" – The Supreme Court asserted.

All over again, in *M/S R.N.Jadi and Brothers & Ors Vs. Subhash Chandra*[32], their lordship P.K. Balasubramanyan. J in his separate verdict, while agreeing with his erudite Judges, reiterated the principle 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 granting such extension[33], 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".

2016 AMENDMENT

In *Salem Advocate Bar Association, Tamilnadu Vs. Union of India*[34], the Supreme Court while construing the word "shall" observed under:

"The use of the word 'shall' in Order VIII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory".

Further, the Court observed that **"**though the maximum period of 90 days to file written statement has been provided, the consequences of failure to file written statement within the said period have not been provided for, in Order VIII Rule 1"[35]. Since there is no consequences have been provided, the Apex Court concluded that the word "shall" used in Order 8 Rule 1 is only obligatory and not mandatory. At present, the Code has been amended by the *"Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015*[36]". Whereby, the consequences of non-filing of the written statement have been provided and the time period for filing of the same has also been increased from 30 days to 120 days.

The verbatim of the relevant amended provision are reproduced as follows:

In the Order V, in Rule 1, in sub-rule (1), for the second proviso, the following proviso has been substituted, namely:—

"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.";

In Order VIII, in Rule 1, for the proviso, the following proviso has been substituted, namely:—

"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 written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.";

In Rule 10, after the first proviso, the following proviso has been inserted, namely:—

"Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing the written statement".

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[32] AIR 2007 SC 2571.

[33] See also: M/S Aditya Hotels (P) Ltd Vs. Bombay Swadeshi Stores Ltd. AIR 2007 SC1574. In this Aditya case, "neither the trial Court nor the High Court has indicated any reason to justify the acceptance of the written statement after the expiry of the time fixed". Therefore, the Supreme Court set aside the orders of the trial Court and that of the High Court. See also Kailash Vs. Nanhku & Ors**,** (2005 (4) SCC 480.

[34].MANU/SC/0450/2005.

[35] See also Kailash Vs. Nanhku & Ors**,** (2005 (4) SCC 480.

[36] The Act of Parliament received the assent of the President on the 31st December 2015 and it shall be deemed to have come into force with retrospective effect from the 23rd day of October 2015 – See Section 1 (3) of the Act.

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Under this 2016 Amendment, as we already discussed, the said 120 days cannot be claimed as a matter of right. Even under this amendment, the defendant has to file the written statement within 30 days. Failing which, he shall be allowed to file the same, within the additional period of 90 days, "*for the reasons to be recorded in writing* and *on payment of such cost as the Courts deems fit"*. Under this amendment, after the expiration of the original period of 30 days from the date of service of summons, to avail the extended period of additional 90 for filing the written statement, awarding of cost on the defendant is made mandatory. After the expiration of the said 120 days, the defendant right file the written statement shall be extinguished, and it has been clearly stated that after the lapse of the said 120 days, no court shall allow the written statement to be taken on record. Further, in Rule 10 of Order 8, it has been further reiterated that "no Court shall make an order extending the time provided under Rule 1 of Order 8 for the filing of the written statement". Since it has been specifically provided that no Court shall make an order extending the time limit for filing the written statement, there is no question of invoking section 148 or section 151 of the Code, 1908. Therefore, all the doors of the Court are closed for filing the written statement after the said periods of 120 days.

Whether, 2016 Amendment in C.P.C is applicable to ordinary suits or is it applicable only to the suits of commercial disputes?

The title of Section 16 of the Amendment Act, 2016 says Amendment to the Code of Civil Procedure, 1908 in its application to commercial disputes. Sub-section 1 says "*the provision of the Code of Civil Procedure, 1908 shall, in their application to any suit in respect of commercial dispute of a Specified Value, stand amended in the manner as specified in the schedule."* Further, Sub-section 2 says that "*the Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 as amended by this Act*, in the trial of a suit in respect of a commercial dispute of a Specified Value."

From the words *in their application to any suit in respect of commercial dispute of a Specified Value* as mentioned in Section 16 (1), it is categorically clear that this amendment is applicable only to the suits of commercial disputes and the Commercial Division and the Commercial Courts has to follow the provisions of the Code as amended by this Act – (See Section 16 (2).

Here, our question is when the amendment is applicable to Commercial Suits, why this amendment should not be extended to the ordinary suits of civil nature? On what basis the legislature has differentiated the ordinary dispute and commercial dispute?

When the consequence of non filing of written submission is available to commercial disputes, why is it not available to ordinary suits of civil nature? Whether the right to speedy trial is applicable only to suits of commercial disputes or it extends to ordinary suits of civil nature also? If answer to the question is in affirmative, why the Code shall not be amended suitably.

What is meant by "FOR THE REASONS TO BE RECORDED IN WRITING"?

The reasons for seeking the adjournment for filing written statement should be for a valid reason and for the sufficient cause and the circumstances which warrant the adjournments should be beyond the control of the parties. Frequent adjournments for paltry reasons defer justice. "*No party can insist upon an adjournment of the case because the date fixed for hearing is not convenient to his counsel*[37]*".* Adjournment on mere asking is bad[38]. According to Order 17 Rule 1, "no adjournment shall be granted more than three times to a party during the hearing of the suit". In the matter of adjournment, there is no question of last chance[39]. Whatever we discuss under this head, the adjournment should be within the parameters laid down under Order 8 of the Code.

SUGGESTIONS AND CONCLUSION

The object of adjournment should be for the meeting of the ends of justice and should not be made for defeating it. Just because the counsel requested the court, "*At the request" of* the counsel*,* the Court should not, *sine*

[37] R. Viswanathan Vs. Syed Abdul Wajid, available at Indian kanoon, Equivalent Citation: AIR 1963 SC 1.

[38] A.N.Saha's, The Code of Civil Procedure, by Madhusudan Saharay; Vol.1; 6th Edi, 2004, Premier Publishing Co, P.1391. The Supreme Court modified this View. The preoccupation of the Counsel in some other Court is justified in granting the adjournment.

[39] Ibid.

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causa, grant the adjournment for filing the written statement or hearing of cases/suits. Though this paper strictly deals with the filing of written statement, to ensure the disposal of cases quickly, we suggest the following measures.

(i) The High Court of Judicature, by exercising its power conferred by this Code under Section 122 or by exercising the supervisory jurisdiction conferred by Article 227 of the Indian Constitution has to strictly, in order to achieve the object of speedy trial, and to avoid the dumping of cases in the lowest rung of judiciary has to amend The Civil Rules of Practice accordingly.

(ii) Section 148 of the Code has to be re-looked in the light of the 2016 amendment. i.e, a proviso clause may be added in Section 148 namely, "Provided that no Court shall extend the time limit provided under Order 8 Rule 1 of this Code, for filing of the written statement."

(iii) The 2016 amendment as mentioned above has to be made applicable to suits of civil nature irrespective of commercial disputes.

Further, we the authors suggesting to fix the following time limit for the disposal of cases, to curb the practice of dragging on the proceedings. In this way, we fix the following time limit for the disposal of cases:

(i) For trial cases, a minimum time limit may be fixed at one year and the maximum limit shall not exceed one year and six months.

(ii) For the disposal of the first appeal, six months may be fixed, and the maximum limit shall not exceed nine months.

(iii) For the second appeal, three months may be fixed and the maximum limit shall not exceed six months.

(iv) In case of special leave petition also, three months time may be fixed; maximum time limit may be fixed as six months.

The fixation of the above time limit, we hope, will not only guarantee the litigants to dispose of their cases in time but also ensure to enjoy their fruits within their lifetime instead of their generations.