

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

W.P. No.44985 of 2021

Rai Muhammad Ashraf
Versus

Additional District Judge, Nankana Sahib & others

J U D G M E N T

Date of hearing: 30.09.2021.
Petitioners by: Mr. Muhammad Naeem Mehar,
Advocate.
Respondent No.3 by: Mian Muhammad Saeed, Advocate.
Research by: Mr. Muhammad Imran Sh. Addl. District
Judge / Senior Research Officer, LHCRC
Mr. Ahmad Zia Ch., Civil Judge /
Research Officer, LHCRC.

MUHAMMAD SAJID MEHMOOD SETHI, J.: Through instant petition, petitioner has assailed orders dated 11.02.2021 & 12.06.2021 , passed by learned Administrative Judge / Civil Judge and Additional District Judge, Nankana Sahib, respectively, whereby petitioner's right to file written statement was closed and revision petition in this regard was also dismissed.

2. Learned counsel for petitioner submits that petitioner's right to file written statement was closed by learned Trial Court without providing sufficient opportunity, which aspect of the matter has been overlooked by learned Revisional Court, hence, impugned orders are unsustainable in the eye of law.

3. Whereas learned counsel for respondent No.3 defends the impugned orders and submits that learned counsel for petitioner has failed to point out any illegality or legal infirmity in the same, which are liable to be upheld.

4. Arguments heard. Available record perused.

5. Perusal of record shows that petitioner was afforded five opportunities including last opportunity. However, he miserably

failed to do the needful. Section 26-A (1) of the Code of Civil Procedure 1908, makes it clear that the defendant shall be required to file written statement within a period of 30 days from the date of his first appearance in the court. According to section 26-A(3) CPC, the Court shall close the right to defend the suit if defendant fails to file the written statement within the time specified in sub-section (1) of Section 26-A *ibid*. For facility of reference, Section 26-A CPC is reproduced hereunder:-

“26-A. Written Statement:- (1) The defendant shall file written statement not later than thirty days from the date of his first appearance in the court.

(2) The defendant shall provide additional copies of written statement and the documents annexed therewith for each of the parties and for the court.

(3) If the defendant fails to file the written statement within the time frame provided under subsection (1), the Court shall close the right to defend the case.”

6. In the instant case, petitioner entered appearance before learned Trial Court through counsel and proceedings were adjourned for submission of written statement on 20.10.2020, 24.10.2020, 29.10.2020, 30.11.2020, 09.01.2021, 11.02.2021, but needful was not done despite lapse of more than three and half month, hence, his right to file written statement was closed. In similar circumstances, the Hon’ble Apex Court in the case of Riazul Haq and others v. Muhammad Asghar and others (2017 SCMR 1841) upheld the decision of learned Trial Court, whereby right to file written statement was closed after providing four opportunities spreading over a period of five months. It was observed that where law prescribed a time for doing a certain act, the same should ordinarily be adhered to unless cogent reasons and lawful justification was presented before the Court justifying an extension of such time.

7. Needless to say that the test to determine whether a provision is directory or mandatory is by ascertaining the legislative intent behind the same. The general rule expounded by this Court is that

the usage of the word ‘shall’ generally carries the connotation that a provision is mandatory in nature. However, other factors such as the object and purpose of the statute and inclusion of penal consequences in cases of non-compliance also serve as an instructive guide in deducing the nature of the provision. In the above provision, not only the word “shall” has been used, but penal consequences for failure of the defendant to file the written statement within the specified period have been prescribed. The legislative intent behind this provision appears to cut short the unnecessary delay that occurs at the time of submission of written statement, therefore, the provisions of section 26-A CPC, being mandatory in nature, are required to be complied with. Reliance is placed upon The Collector of Sales Tax, Gujranwala and others v. Messrs Super Asia Mohammad Din and Sons and others (2017 SCMR 1427), The State through Regional Director ANF v. Imam Bakhsh and others (2018 SCMR 2039), Province of Punjab thr. Secretary Excise & Taxation Department, Lahore, etc. v. Murree Brewery Company Ltd (MBCL) Sindh Wine Merchants Welfare Association (2021 SCMR 305) and Sheikh Shahid Jamal v. National Accountability Bureau and others (PLD 2021 Lahore 411).

8. Similar provisions are available in some other laws. Section 22 of the Punjab Rented Premises Act, 2009, deals with leave to contest and its clause (2) provides that a respondent shall file an application for leave to contest within ten days of his first appearance in the Rent Tribunal. The Hon’ble superior Courts have held that a Rent Tribunal has no jurisdiction to condone the time for filing petition for leave to contest as it would defeat the spirit of legislation. Reference can be made to Tayyab Hussain v. Rent Controller, Gujrat and others (PLD 2012 41), Inaam-Ul-Haq v. Muhammad Ali Shaheen and another (2013 CLC 904 Lahore) and Zafar Iqbal and another v. Additional District Judge Rawalpindi and 2 others (2018 MLD 1850).

Similarly, Section 159 of the Limitation Act, 1908 provides period of ten days, when summons was served, for filing petition for leave to appear and defend the suit filed under Order XXXVII of the Code of Civil Procedure, 1908. After expiry of said statutory period, a defendant is required to file application for condonation of delay explaining the delay of each and every day. Reference can be made to Pakistan Post Office through Post Master General and 2 others v. Principal Divisional Public School and College, Sahiwal (2009 YLR 2217) and Muhammad Aslam v. Muhammad Tahir (2015 MLD 1443).

Likewise, Section 10(2) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, requires a defendant to file application for leave to defend the suit within thirty days of the date of first service. Such application, having been filed after expiry of prescribed period, has been held time barred, in absence of sufficient cause, by the Hon'ble superior Courts in the cases reported as Mst. Hajra bibi v. Zarai Taraqiati Bank Limited (ADBP) through Manager (2006 CLD 261), Messrs Habib Bank Ltd v. Mahmood Alam Sherani and another (2014 CLD 1499) and MCB Bank Limited through Manager v. Azhar Hussain and another (2021 CLD 679).

9. Needless to say that under Article 37(d) of the Constitution of the Islamic Republic of Pakistan, 1973, the State is bound to ensure inexpensive and expeditious justice. The provisions requiring a party to do certain act within a prescribed limitation are introduced in order to curb long standing litigation, save precious public time and inconvenience to the parties. The conduct of a party is a relevant fact in the administration of justice. A party cannot be allowed to play hide and seek with the Court and to prolong the matter unnecessarily as well as to engage the machinery of the State department unnecessarily as per his whims and caprice besides wasting precious time of the Court. The Rules of Procedure are enacted to regulate the safe administration of

justice in accordance with law and to check unnecessary delay in resolving the dispute between the parties. The golden maxim that “law aids the vigilant and not the indolent” provides that helpful hand could not be extended to a litigant having gone into deep slumber on having become forgetful of his /her rights. Those who sleep over their rights, stand estopped from getting their enforcement though their right continues. Reference can be made to Rehmat Din and others v. Mirza Nasir Abbas and others (2007 SCMR 1560), Muhammad Javed v. Managing Director Sui Northern Gas and others (2013 CLC 1276), Mian Abdul Karim v. Province of Punjab through District Officer (Revenue) Lodhran and 5 others (PLD 2014 Lahore 158), Gaman and others v. Mureed Hussain and others (2020 MLD 1211) and Rana Muhammad Ilyas v. Lahore Electric Supply Company and others (2021 PLC 75).

10. Learned counsel for petitioner has failed to point out any illegality or legal infirmity in the impugned orders, thus, no interference is warranted.

11. Resultantly, instant petition, being devoid of any merit, is hereby **dismissed** with no order as to costs.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

Sultan