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UNIT –I Concepts

Topic- Written Statement

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Subject : The Code of Civil Procedure

Written Statement given in Order VIII of the Code of Civil Procedure Order VIII Rule 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:

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.

Provisions relating to pleadings are given in Orders VI, VII and VIII. Order VI deals with general rules with regard to pleadings which are applicable on both the plaint as well as written statement. Order VII contains rules that apply to plaint only.

Rules relating to plaint are contained in both Order VI and Order VII. Rules embodied in Order VIII apply to written statements only. That may provisions of both, the Order VI and Order VIII apply to written statements.

As the pleading of the plaintiff is his plaint so the pleading of the defendant is his written statement. 'Written Statement' is the pleading filed by the defendant in a suit stating his ground of defence.

Order VIII, Rule 1 makes it obligatory on the defendant to submit his written statement within a period of thirty days from the date of the service of summons.

But if the defendant fails to submit his written statement within the said period of thirty days, the period may be extended by the court but it will not exceed ninety days counted from the date of the service of the summons. In other words, the defendant failing to file the written statement within thirty days, though the period can be extended but in no case it will exceed ninety days. The court has to record the reasons in writing for extending the time.

Written statement of one defendant does not bind the others.

It has been held by the Delhi High Court that non appearance of counsel is no reason for the party not to comply with the order of filing written statement especially when the order requiring filing of the written statement is known to and communicated to the party.

When the defendant failed to file written statement within thirty days under amended Rule I and no prayer was made for extending time under the proviso, held time cannot be extended under Order VIII, Rule 9 as filing of written statement is exclusively governed by Rule I of Order VIII. The right to file the written statement is lost. It cannot be extended even under the exercise of inherent jurisdiction under Section 151.

Whether the maximum period of ninety days contemplated under this rule can further be extended. The Supreme Court observed in *Kailash vs Manhku*, that

provisions of Order VIII, Rule 1 fixing time for filing of written statement are directory and not mandatory, since it is a part of procedural law.

Rule 1 of Order VIII spells out disability on the defendant it does not impose embargo on courts power. Extention may be granted not as a matter of routine and merely for asking but only by way of exception for reason to be assigned by the defendant as also by the court on being satisfied.

Extention of time beyond ninety days may be allowed:

- (i) For the circumstances which are exceptional;
- (ii) Occasioned beyond the control of the defendant and
- (iii) Grave injustice would be caused if the time was not extended;
- (iv) Costs may be imposed and affidavit or documents in support of grounds pleaded by the defendant for extention of time may be demanded, depending upon the facts and circumstances of a given case.