



CNR: KAHC010177992026

NC: 2026:KHC:39343
WP No. 8032 of 2026
C/W WP No. 9372 of 2026

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 8032 OF 2026 (GM-RES)

C/W

WRIT PETITION NO. 9372 OF 2026 (GM-RES)

IN WP NO. 8032 OF 2026:

BETWEEN:

SHRI BASAVARAJ S.
S/O. LATE M. SIDDARAMAIAH,
AGED 61 YEARS,
SENIOR ADVOCATE AND MEMBER,
KARNATAKA STATE BAR COUNCIL,
HAVING OFFICE AT NO.11, 2ND FLOOR,
JEEVAN BUILDINGS, KUMARA PARK EAST,
BANGALORE-560 001.

... PETITIONER

(BY SRI. S.P.SHANKAR, SENIOR ADVOCATE FOR
SRI. UDAY SHANKAR M., ADVOCATE)

AND:

STATE OF KARNATAKA,
BY ITS PRINCIPAL SECRETARY TO GOVERNMENT,
DEPARTMENT OF PARLIAMENTARY AFFAIRS
AND LEGISLATION, ROOM NO.137, 1ST FLOOR,
VIDHANA SOUDA, BENGALURU-560001.

... RESPONDENT

(BY SRI. KIRAN V. RON, AAG FOR
SRI. MAHAMMED JAFAR SHAH, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA, PRAYING TO ISSUANCE OF
APPROPRIATE WRIT ORDER OF DIRECTION FROM THIS COURT,
DECLARING SECTION 4 OF THE CODE OF CIVIL PROCEDURE





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(KARNATAKA AMENDMENT) ACT, 2024 IN SO FAR IT INTRODUCES THIRD PROVISOR TO ORDER V RULE 1 OF THE CODE OF CIVIL PROCEDURE 1908 (CENTRAL ACT 5 OF 1908), AS UNCONSTITUTIONAL AND UNENFORCEABLE AND ETC.,

IN WP NO. 9372 OF 2026:

BETWEEN:

JOHAR ABBAS SON OF ARIF HUSSAIN,
AGED 39 YEARS, RESIDING AT: NO.290,
19TH MAIN ROAD, 6TH BLOCK, KORAMANGLA,
BANGALORE-560 095.

... PETITIONER

(BY SRI. S.P.SHANKAR, SENIOR ADVOCATE FOR
SRI. UDAY SHANKAR M., ADVOCATE)

AND:

STATE OF KARNATAKA,
BY ITS PRINCIPAL SECRETARY TO
GOVERNMENT DEPARTMENT OF PARLIAMENTARY
AFFAIRS AND LEGISLATION, ROOM NO.137,
1ST FLOOR, VIDHANA SOUDA, BENGALURU-560001.

... RESPONDENT

(BY SRI. KIRAN V. RON, AAG FOR
SRI. MAHAMMED JAFAR SHAH, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUANCE OF APPROPRIATE WRIT ORDER OR DIRECTION FROM THIS COURT, DECLARING SECTION 4 OF THE CODE OF CIVIL PROCEDURE (KARNATAKA AMENDMENT) ACT, 2024 IN SO FAR IT INTRODUCES THIRD PROVISOR TO ORDER V RULE 1 OF THE CODE OF CIVIL PROCEDURE 1908 (CENTRAL ACT 5 OF 1908), AS UNCONSTITUTIONAL AND UNENFORCEABLE AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED THROUGH VC AT DHARWAD FOR ORDERS ON 10.07.2026, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



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CAV ORDER

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

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The present writ petitions raise an issue of considerable constitutional and institutional significance concerning the extent of the State Legislature's power to amend the Code of Civil Procedure, 1908 (for short 'the code') and the limits of such legislative power when the field sought to be occupied has already been authoritatively interpreted by the Hon'ble Supreme Court while exercising its constitutional role under Article 141 of the Constitution of India.

2. The challenge in the present proceedings is directed against **Section 4 of the Code of Civil Procedure (Karnataka Amendment) Act, 2024 (Act No.40 of 2025)** (for short 'Amendment Act'), insofar as it introduces the **third proviso to Rule 1 Order V and proviso to Rule 1 and Rule 10 of Order VIII of the Code of Civil Procedure**, prescribing an absolute outer limit of one hundred and twenty days for filing of the written statement and declaring that upon expiry of the



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said period, the defendant shall forfeit the right to file the written statement and the Court shall not permit the written statement to be taken on record and also challenge to newly inserted Section 158-A as introduced by the Amendment Act.

3. Though the challenge is formally directed against Section 4 of the Amendment Act, the issues arising for consideration transcend the validity of a mere procedural amendment. The controversy touches upon the relationship between legislative power and judicial interpretation, the constitutional guarantee of fair procedure, the scope of inherent powers preserved under Section 151 of the Code, the doctrine of separation of powers and the principle that procedural law is intended to facilitate justice rather than defeat it.

I. Legislative Background

4. The Code is a central legislation enacted to regulate the procedure to be followed by civil courts



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throughout the country. Being a law relatable to **Entry 13 of List III (Concurrent List)** of the Seventh Schedule to the Constitution, both Parliament and the State Legislatures possess legislative competence to enact amendments, subject to the constitutional limitations contained in Articles 246 and 254 of the Constitution. Parliament, with the avowed object of expediting civil trials and curtailing delays, enacted the Code of Civil Procedure (Amendment) Act, 1999 followed by the Code of Civil Procedure (Amendment) Act, 2002. One of the significant amendments introduced was to **Order VIII Rule 1**, prescribing that the defendant shall file the written statement within thirty days from the date of service of summons and that such period may be extended by the Court, but not beyond ninety days from the date of service of summons.

5. The legislative object underlying the amendment was undoubtedly to arrest the practice of repeated adjournments and to ensure expeditious disposal



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of civil suits. However, Parliament consciously refrained from prescribing any express consequence rendering the proceedings void or prohibiting the Court from exercising its judicial discretion in exceptional cases. Simultaneously, **Order VIII Rule 10** continued to remain on the statute book conferring discretion upon the Court either to pronounce judgment or to make such order in relation to the suit as it thought fit where a written statement was not filed. The constitutional validity and true interpretation of the amended provisions came to be examined by the Hon'ble Supreme Court in a series of judgments commencing with ***Kailash v. Nanhku***¹, followed by the Constitution Bench principles governing mandatory and directory provisions, culminating in the authoritative pronouncement in ***Salem Advocate Bar Association, Tamil Nadu vs. Union of India***², wherein the Hon'ble Apex Court harmoniously construed Order VIII Rules 1 and 10 and held that the prescribed period is **directory and**

¹ (2005) 4 SCC 480

² (2005) 6 SCC 344



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not mandatory, preserving the discretion of the civil court to permit filing of the written statement beyond the prescribed period in exceptionally hard cases.

6. Thereafter, the said principle has consistently been reaffirmed by the Hon'ble Supreme Court in ***R.N. Jadi & Brothers v. Subhashchandra*³, *Desh Raj v. Balkishan*⁴, *Shoraj Singh v. Charan Singh*⁵, *Bharat Kalra v. Raj Kishan Chabra*⁶** and several other decisions. Thus, for nearly two decades, the legal position governing ordinary civil suits has remained settled that though the prescribed period deserves strict adherence, the Court is not rendered powerless to extend time in exceptional circumstances where refusal would occasion grave injustice.

³ (2007) 6 SCC 420

⁴ (2020) 2 SCC 708

⁵ Civil Appeal No.6304 of 2021 Dtd: 08.10.2021

⁶ Civil Appeal No.3788 of 2022 Dtd: 09.05.2022



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II. The Karnataka Amendment Act, 2024

7. The Karnataka Legislature has now enacted the Code of Civil Procedure (Karnataka Amendment) Act, 2024, which came into force with effect from 05.06.2025. The Statement of Objects and Reasons discloses that the amendment has been enacted with the object of ensuring expeditious disposal of civil disputes and providing speedy justice. Section 4 of the Amendment Act introduces a third proviso to Order V Rule 1, Order VIII Rule 1 and proviso to Rule 10 of Order VIII providing that where the defendant fails to file the written statement within thirty days, the Court may permit the same to be filed on such later date, but not beyond one hundred and twenty days from the date of service of summons, and further mandates that upon expiry of the said period, the defendant shall forfeit the right to file the written statement and the Court shall not permit the written statement to be taken on record.



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8. The relevant provisions introduced by the Amendment Act, 2024, are extracted below.

Section 4(i) of the Amendment Act inserts the following third proviso to Order V Rule 1(1):

"Provided also 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."

Section 4(iv) of the Amendment Act inserts the following proviso to Order VIII Rule 10:

*" (d) in rule 10, the following proviso shall be inserted, namely:—
—Provided further that no Court shall make an order to extend the time provided under rule 1 of this order for filing of the Written Statement."*

9. The Amendment Act simultaneously introduces Section 158A, declaring that the Code, as amended by the



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Karnataka Act, shall prevail over any conflicting provisions contained in the rules framed by the jurisdictional High Court or any other amendment applicable to the Code. Section 3 of the Amendment Act inserts the following new Section 158A:

"158A. Amendments to the Code of Civil Procedure, 1908 in its application to civil disputes:

(1) The provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) shall, in their application to any suit in respect of a civil dispute, stand amended by this Act.

(2) The Civil Courts shall follow the provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908), as amended by this Act, in the trial of a suit.

(3) Where any provision of any rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (Central Act 5 of 1908) is in conflict with the provisions of this Code as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail."

III. Challenge in the Present Petition

10. The petitioners contend that though the Legislature possesses competence to amend procedural law, such legislative power cannot be exercised in a



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manner so as to nullify or efface the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution. According to the petitioners, the ratio laid down in ***Salem Advocate Bar Association*** (supra) is not confined to the numerical period of ninety days then prescribed under Order VIII Rule 1 but extends to the broader principle that procedural provisions regulating filing of written statements are directory in nature and cannot be construed so rigidly as to defeat substantive justice.

11. It is argued that by introducing an absolute embargo upon the exercise of judicial discretion after expiry of one hundred and twenty days, the State Legislature has sought to legislatively negate the very principle declared by the Hon'ble Supreme Court, namely, that civil courts retain inherent jurisdiction to permit filing of written statements in exceptional cases.

12. Learned Senior Counsels and Counsels appearing for the petitioners further contended that the



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amendment effectively extinguishes the inherent jurisdiction preserved under Section 151 of the Code, renders the discretion preserved under Order VIII Rule 10 wholly illusory and deprives defendants of a meaningful opportunity of contest, particularly in suits involving valuable immovable property rights.

13. It was further submitted that the impugned amendment disproportionately affects litigants residing in rural areas. Civil litigation concerning agricultural lands, village sites, residential houses and Gram Panchayat properties invariably depends upon revenue records maintained by different authorities such as Village Accountants, Tahsildars, Survey Departments and Revenue Offices. Procurement of certified copies of RTCs, mutation entries, Tippani, survey sketches, grant orders, phodi records and other foundational documents frequently consumes considerable time owing to administrative and logistical constraints. An inflexible forfeiture provision, it is argued, would therefore visit



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genuine litigants with irreversible civil consequences without any fault attributable to them.

14. Learned counsel also questioned the constitutional validity of newly inserted Section 158A on the ground that it prima facie trenches upon the field occupied by Sections 122 to 127 of the Code, which preserve the rule-making power of the High Courts in matters of civil procedure.

15. Learned Senior counsel for the petitioner places reliance on the following judgments;

- (i) Shayara Bano v. Union of India (2017) 9 SCC 1
- (ii) Kailash v. Nanhku and Others (2005) 4 SCC 480
- (iii) Salem Bar association, TN v. Union of India (2005) 6 SCC 344
- (iv) Prakash Corporates v. Dee Vee Projects Ltd. (2022) 5 SCC 112



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IV. Stand of the State

16. Per contra, the learned Additional Advocate General Kiran Ron defended the validity of the Amendment Act by contending that the State Legislature possesses unquestionable legislative competence under Entry 13 of List III of the Seventh Schedule to amend procedural law applicable within the State.

17. It is contended that the object of the amendment is to ensure expeditious disposal of civil disputes, eliminate avoidable delays and strengthen procedural discipline in trial courts. According to the State, procedural timelines have repeatedly been upheld in different statutory enactments including the Commercial Courts Act, the Arbitration and Conciliation Act and the Consumer Protection legislation.

18. It is further contended that the Legislature has merely substituted one procedural timeline with another by extending the period from ninety to one hundred and



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twenty days and that such legislative exercise cannot be construed as an attempt to overrule judicial decisions.

19. Learned Additional Advocate General also submits that modern technological advancements, digitisation of land records, online availability of revenue documents and the increasing use of artificial intelligence in legal drafting substantially reduce the practical difficulties projected by the petitioners. According to him, the amendment advances the constitutional objective of speedy justice without extinguishing substantive rights. It is lastly contended that in the event this Court finds any ambiguity in the provision, the proper constitutional course would be to adopt the doctrine of reading down rather than striking down the legislation.

V. Scope of Judicial Review

20. Before advertng to the rival submissions, it requires to be noticed that every legislation enacted by a competent legislature carries with it a presumption of



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constitutionality. Courts ordinarily lean in favour of sustaining legislative enactments. At the same time, where a statute is alleged to transgress constitutional limitations or to nullify binding constitutional principles declared by the Hon'ble Supreme Court, judicial review becomes not merely permissible but obligatory.

21. The Court is therefore required to examine whether the impugned amendment merely alters the statutory procedure within the legislative domain or whether it travels beyond permissible legislative limits by extinguishing judicial discretion which has been recognised as an integral component of procedural fairness under the Code.

22. Heard learned Senior Counsel, S.P Shankar and learned Senior Counsel, Vikram Huilgol and counsels appearing for the petitioners and learned Additional Advocate General, Kiran Ron.



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VI. Points for Consideration

23. In the light of the pleadings, submissions and statutory framework, the following points arise for consideration:

(i) *Whether Section 4 of the Code of Civil Procedure (Karnataka Amendment) Act, 2024, insofar as it prescribes a rigid outer limit of one hundred and twenty days for filing the written statement and excludes judicial discretion, is an attempt by the State Legislature to override or nullify the law declared by the Hon'ble Supreme Court in **Salem Advocate Bar Association, Tamil Nadu v. Union of India**, and if so, whether such legislative action is constitutionally impermissible?*

(ii) *Whether the impugned amendment, by taking away judicial discretion to receive written statements beyond one hundred and twenty days, runs contrary to the law declared by the Hon'ble Supreme Court in*



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Salem Advocate Bar Association and the subsequent judgments following the said decision?

(iii) Whether the State Legislature, while exercising its legislative power to amend procedural law under the Concurrent List, can impose an absolute embargo upon the inherent powers of the Civil Court preserved under Section 151 of the Code and the judicial discretion recognised under Order VIII Rule 10?

(iv) Whether the Legislature, having introduced an absolute embargo under the third proviso to Order V Rule 1, without correspondingly amending Order VIII Rule 10, Section 151 and has created an apparent inconsistency within the Code itself, and whether such partial legislative amendment warrants reading down the impugned provision so as to preserve the harmonious operation of the Code?

(v) Whether the first proviso to order VIII rule 10, inserted by section 4(iv)(d) of the Karnataka



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*Amendment Act, 2024, can be construed as nullifying the substantive provision of rule 10 and the law declared by the Hon'ble Supreme Court in **Salem Advocate Bar Association**(supra).*

(vi) Whether the impugned provision results in denial of a fair and reasonable opportunity to defend civil proceedings, particularly those involving immovable properties situated in rural areas where procurement of foundational revenue records is often beyond the control of the litigants?

(vii) Whether Section 158A of the Amendment Act is consistent with the scheme of Sections 122 to 127 of the Code relating to the rule-making power of the High Courts?

(viii) Whether the impugned amendment, though enacted with the objective of ensuring expeditious disposal of civil suits, disproportionately impairs access



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to justice and is liable to be read down in the light of the law declared by the Hon'ble Supreme Court?

24. Since the principal challenge revolves around the interpretation placed by the Hon'ble Supreme Court upon Order VIII Rules 1 and 10 of the Code and the constitutional limitations upon legislative action, it becomes necessary to first examine the evolution of the law commencing from the Constitution Bench decisions on mandatory and directory provisions and culminating in the judgments rendered in ***Salem Advocate Bar Association***(*supra*) and the subsequent line of authorities.

VII. Evolution of the law – Mandatory v. Directory provision and Jurisprudential foundation of *Salem Advocate Bar Association* (*supra*)

25. Having noticed the statutory background and the rival submissions, this Court now proceeds to examine the judicial evolution of Order VIII Rule 1 of the Code. The



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controversy involved in the present writ petition cannot be decided merely by comparing the text of the Central Amendment with the Karnataka Amendment. The issue has to be examined in the backdrop of the law declared by the Hon'ble Supreme Court interpreting the very provision. The binding precedents do not merely interpret the words employed in Order VIII Rule 1, they expound the constitutional philosophy governing procedural law and the limits within which procedural prescriptions operate.

26. It is a settled principle that where the Hon'ble Supreme Court interprets a statutory provision, what becomes binding under Article 141 is not merely the conclusion reached in the case, but the ratio decidendi underlying the interpretation. Consequently, before examining whether the State Legislature has altered the statutory language, this Court is required to ascertain the precise principle declared by the Hon'ble Apex Court while construing Order VIII Rule 1.



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Procedural Law – An Instrument to Advance Justice

27. The jurisprudential foundation governing procedural statutes was laid much before the amendments introduced by Parliament in 1999 and 2002.

28. In ***Sangram Singh v. Election Tribunal, Kotah***⁷, the Constitution Bench of the Hon'ble Supreme Court emphasized that the Code of Civil Procedure is designed to facilitate justice and not to obstruct it. The Hon'ble Supreme Court observed that procedural provisions cannot be interpreted with such technical rigidity as to frustrate adjudication on merits. The Hon'ble Supreme Court cautioned that every procedural enactment must be informed by the principles of natural justice so that parties whose civil rights are affected receive an effective opportunity of participation.

29. The observations of Justice Vivian Bose, have become a guiding beacon for procedural jurisprudence. The Hon'ble Supreme Court explained that a Code of

⁷ AIR 1955 SC 425



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Procedure is intended to regulate the machinery of justice. It is not an end in itself. Excessive technicality in construing procedural provisions defeats the very object of the Code. These principles acquired greater significance after Parliament introduced rigid timelines into Order VIII Rule 1 through the Amendment Acts of 1999 and 2002.

VIII. Tests for Determining Whether a Provision is Mandatory or Directory

30. The next important milestone is the Constitution Bench of the Hon'ble Supreme Court decision in ***Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur***⁸. The Constitution Bench authoritatively laid down that the mere use of the word "shall" does not automatically render a statutory provision mandatory. The Hon'ble Supreme Court formulated the governing tests for determining whether a provision is mandatory or directory. The Hon'ble Supreme Court held that the following factors require consideration:

⁸ AIR 1965 SC 895



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- (a) the object sought to be achieved by the statute;
- (b) the purpose for which the provision is enacted;
- (c) the legislative intent;
- (d) the consequences flowing from construing the provision as mandatory or directory;
- (e) the inconvenience or injustice likely to result from either construction;
- (f) the relationship between the provision and the remaining provisions of the statute; and
- (g) the overall scheme of the enactment.

31. Thus, the Constitution Bench made it abundantly clear that interpretation cannot be founded merely upon grammatical expressions. Context, purpose, legislative intent and consequences are equally determinative. These principles subsequently became the very foundation upon which Order VIII Rule 1 came to be interpreted by the Hon'ble Supreme Court.



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Procedural Time Limits and Absence of Penal Consequences

32. Before Order VIII Rule 1 came up for consideration, the Hon'ble Supreme Court had occasion to examine a similar procedural timeline in ***Topline Shoes Ltd. v. Corporation Bank***⁹. The issue before the Hon'ble Supreme Court concerned Section 13(2) of the Consumer Protection Act, 1986 prescribing a time limit for filing a reply before the Consumer Forum. The Hon'ble Supreme Court held that although the statute prescribed a definite period, it did not provide any express penal consequence for non-compliance. The legislative intent was to expedite proceedings and not to deny adjudication on merits. The Hon'ble Supreme Court therefore held that the provision was directory.

33. The ratio emerging from ***Topline Shoes*** (supra) is that where the statute merely prescribes a procedural timeline without expressly extinguishing

⁹ (2002) 6 SCC 33



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substantive rights or completely disabling judicial discretion, Courts should ordinarily construe such provisions as directory unless compelling circumstances indicate otherwise.

IX. Amendment of Order VIII Rule 1

34. Parliament thereafter introduced significant amendments to the Code of Civil Procedure through the Amendment Acts of 1999 and 2002. Order VIII Rule 1, after amendment, provided that the defendant shall file the written statement within thirty days from service of summons and that the Court may extend the time, but not beyond ninety days. The amendment undoubtedly reflected the legislative concern over delay in civil trials. The Statement of Objects and Reasons demonstrated Parliament's intention to eliminate repeated adjournments and to ensure procedural discipline. Significantly, however, Parliament did not provide any express consequence declaring that a written statement filed beyond ninety



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days shall become non est or that the Court shall lose jurisdiction to receive it. Simultaneously, Order VIII Rule 10 remained unaltered.

The provision reads as under:

"Where any party from whom a written statement is required fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit."

(Emphasis supplied)

Thus, while Rule 1 introduced a procedural time schedule, Rule 10 continued to confer a wide discretion upon the Court.

35. The first authoritative pronouncement interpreting the amended Rule came in ***Kailash v. Nanhku*** (supra). The Hon'ble Supreme Court considered whether expiry of ninety days automatically deprived the Court of jurisdiction to receive a written statement. After examining the purpose of the amendment, it was held that the object of prescribing the time schedule was to expedite



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trials and not to scuttle them. The Hon'ble Supreme Court observed that procedural law ordinarily regulates the manner in which rights are enforced. Unless the Legislature clearly intends forfeiture, procedural prescriptions ought not to destroy substantive rights. The Hon'ble Supreme Court emphasized that although the proviso employs negative language, it does not expressly prohibit the Court from extending time beyond ninety days.

36. More importantly, the Hon'ble Supreme Court held that no penal consequence had been provided for failure to file the written statement within the prescribed period. The Hon'ble Supreme Court therefore concluded that the provision merely creates a disability against the defendant but does not extinguish the Court's jurisdiction. The Hon'ble Supreme Court held that the prescribed period should ordinarily be followed, departure from the rule should be by way of exception, extension cannot be granted routinely, exceptional circumstances must exist,



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reasons must be recorded, and costs may be imposed. Thus, ***Kailash*** (*supra*) preserved procedural discipline without sacrificing judicial discretion.

37. The controversy attained finality in ***Salem Advocate Bar Association, Tamil Nadu v. Union of India*** (*supra*). The principal questions before the Hon'ble Supreme Court were:

- (a) whether the ninety-day period is mandatory;
- (b) whether Courts lose jurisdiction after ninety days;
- (c) whether judicial discretion survives in exceptional cases.

38. While answering these questions, the Hon'ble Supreme Court did not confine itself merely to the text of Order VIII Rule 1. It examined the broader principles governing interpretation of procedural statutes by referring to ***Sangram Singh, Raza Buland Sugar*** (*supra*) and ***Topline Shoes*** (*supra*).



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39. The Hon'ble Supreme Court reiterated that the use of the word "shall" is not conclusive. Legislative intent has to be gathered from the context, purpose and consequences. The Hon'ble Supreme Court emphatically reiterated that rules of procedure exist to advance justice and not to defeat it.

40. The Hon'ble Supreme Court approved the celebrated observations of Justice Krishna Iyer in ***State of Punjab v. Shamlal Murari***¹⁰:

"Procedural law is not to be a tyrant but a servant; not an obstruction but an aid to justice; procedural prescriptions are the handmaid and not the mistress of justice."

The above observations have since become one of the foundational principles governing interpretation of procedural statutes.

¹⁰ (1979) 1 SCC 719



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X. Harmonious Construction of Order VIII Rules 1 and 10

41. The most significant contribution of ***Salem Advocate Bar Association*** (*supra*) lies in the harmonious interpretation adopted by the Hon'ble Supreme Court. Instead of reading Rule 1 in isolation, the Court interpreted Rule 1 together with Rule 10. The Court noticed that although Rule 1 prescribes ninety days, Rule 10 expressly empowers the Court to "make such order in relation to the suit as it thinks fit." If Rule 1 were construed as completely mandatory, Rule 10 would become largely redundant. Applying the doctrine of harmonious construction, the Hon'ble Supreme Court held that Rule 10 preserves judicial discretion even after expiry of ninety days. Consequently, the Hon'ble Supreme Court held that the defendant does not acquire an automatic right to extension. Equally, the Court does not lose jurisdiction merely because ninety days have expired.



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Judicial discretion survives. Its exercise, however, must remain exceptional.

Ratio Decidendi of Salem Advocate Bar Association

42. The true ratio of ***Salem Advocate Bar Association*** (*supra*) may therefore be summarized thus:

- (a) the ninety-day period is directory;
- (b) procedural timelines are intended to expedite justice and not defeat adjudication;
- (c) use of the word "shall" is not determinative;
- (d) absence of express penal consequences is significant;
- (e) Order VIII Rules 1 and 10 must be harmoniously construed;
- (f) Rule 10 preserves judicial discretion;
- (g) inherent judicial powers are not extinguished;
- (h) extension beyond ninety days is permissible only in exceptionally hard cases;
- (i) reasons must be recorded;



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(j) discretion cannot be exercised routinely.

43. The importance of ***Salem Advocate Bar Association*** (supra) lies not merely in declaring ninety days as directory. Its enduring significance lies in the constitutional recognition that procedural prescriptions cannot altogether extinguish judicial discretion where denial of such discretion would result in failure of justice. It is this principle, rather than the numerical period of ninety days, which constitutes the binding declaration of law under Article 141 of the Constitution.

44. The subsequent decisions of the Hon'ble Supreme Court have consistently reaffirmed and applied this principle. Those authorities require detailed examination before this Court considers whether the impugned Amendment Act can be sustained by adopting the doctrine of reading down.

45. The discussion shall now proceed to the subsequent line of authorities beginning with ***R.N. Jadi & Brothers v. Subhashchandra***(supra) and culminating in



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Desh Raj(*supra*), ***Shoraj Singh*** (*supra*) and ***Bharat Kalra*** (*supra*), which reaffirm and strengthen the ratio laid down in ***Kailash***(*supra*) and ***Salem Advocate Bar Association***(*supra*).

Binding Effect of the Law Declared in Salem Advocate Bar Association

46. Having examined the historical evolution culminating in the decision of the Hon'ble Supreme Court in ***Salem Advocate Bar Association, Tamil Nadu v. Union of India*** (*supra*), it now becomes necessary to examine whether the principle laid down therein has continued to hold the field or has undergone any subsequent modification. The answer is found in an unbroken line of authorities rendered by the Hon'ble Supreme Court over the last two decades. Far from diluting the principle enunciated in ***Kailash***(*supra*) and ***Salem Advocate Bar Association***(*supra*), the Hon'ble Supreme Court has consistently reaffirmed that the time



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schedule prescribed under Order VIII Rule 1, in ordinary civil suits, is directory and that judicial discretion survives beyond the stipulated period, albeit to be exercised sparingly and only in exceptional circumstances.

47. The consistency with which this principle has been reiterated assumes considerable constitutional significance. Once a statutory provision has repeatedly received authoritative interpretation by the Hon'ble Supreme Court, that interpretation becomes an integral part of the provision itself. Any subsequent legislative amendment must therefore be examined in the light of the law so declared.

48. The first important decision after ***Salem Advocate Bar Association***(supra) is ***R.N. Jadi & Brothers v. Subhashchandra*** (supra). In the said case, the Hon'ble Supreme Court was again confronted with the question whether a written statement filed beyond the prescribed period deserved rejection solely on account of delay. While affirming the principles laid down in



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Kailash(*supra*) and ***Salem Advocate Bar Association***(*supra*), the Hon'ble Supreme Court reiterated that procedural prescriptions cannot be interpreted in a manner that results in denial of justice. The Hon'ble Supreme Court invoked the celebrated maxim, "*Actus Curiae Neminem Gravabit*", meaning thereby that an act of the Court shall prejudice no person.

49. More importantly, the Hon'ble Supreme Court once again emphasised that procedural law is merely the handmaid of justice and that rigid adherence to procedural technicalities cannot defeat substantial rights. The Hon'ble Supreme Court observed that procedural provisions are intended to facilitate adjudication upon merits and not to create artificial barriers against adjudication. Reaffirming ***Kailash***(*supra*), the Hon'ble Supreme Court held that though the Legislature intended speedy disposal of civil disputes, it never intended that genuine litigants should be denied an opportunity of defence in deserving cases.



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The Consistent Judicial Philosophy

50. The decisions rendered after ***R.N. Jadi*** (supra) demonstrate remarkable consistency. Every Bench of the Hon'ble Supreme Court has adopted the same interpretative approach, namely procedural timelines deserve strict compliance; Courts must discourage dilatory tactics; judicial discretion nevertheless survives; discretion must be exercised only upon exceptional circumstances; and, justice on merits remains the governing consideration. Thus, what emerges is not a series of isolated judgments but a coherent and consistent jurisprudence governing Order VIII Rule 1.

51. A significant reiteration of the principle is found in ***Desh Raj v. Balkishan (Dead) through LRs*** (supra). The Hon'ble Supreme Court considered the earlier judgments beginning from ***Kailash***(supra), ***Salem Advocate Bar Association***(supra) and ***R.N. Jadi***(supra). The Hon'ble Supreme Court specifically noticed its earlier



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decision in ***Atcom Technologies Ltd. v. Y.A. Chunawala & Co.***¹¹, wherein it had recognised that the inherent discretion of Courts to condone delay in filing written statements continued to survive under the ordinary provisions of the Code. The Hon'ble Supreme Court observed that such judicial discretion is neither unguided nor arbitrary. Its contours have gradually been defined by judicial precedents. The Hon'ble Supreme Court illustratively observed that circumstances beyond the control of a litigant, despite due diligence, may justify extension of time. Thus, ***Desh Raj***(*supra*) recognised that judicial discretion forms an integral part of procedural fairness under the Code.

52. The principle was once again reaffirmed in ***Shoraj Singh v. Charan Singh*** (*supra*). In the said case, the Allahabad High Court had refused to receive the written statement solely on the ground that it was filed beyond the prescribed period. Reversing the decision of

¹¹ (2018) 6 SCC 639



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the High Court, the Hon'ble Supreme Court held that the High Court had completely misdirected itself in ignoring the binding ratio laid down in ***Kailash*** (supra) and ***Salem Advocate Bar Association*** (supra). The Hon'ble Supreme Court categorically reiterated that the prescribed period under Order VIII Rule 1 is directory and not mandatory. The judgment reinforces an important constitutional principle, namely, that subordinate Courts are bound by the law declared by the Hon'ble Supreme Court under Article 141.

53. The next decision requiring consideration is ***Bharat Kalra v. Raj Kishan Chabra*** (supra). The Hon'ble Supreme Court was once again confronted with the question whether delay in filing the written statement should result in denial of defence. Relying upon ***Kailash***(supra), the Hon'ble Supreme Court held that refusal to receive the written statement merely because of delay would be wholly unreasonable where the delay could adequately be compensated by costs. The Hon'ble



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Supreme Court observed that while procedural discipline must undoubtedly be maintained, such discipline cannot become punitive so as to deprive a party of defending valuable civil rights. The Hon'ble Supreme Court therefore reiterated that the ends of justice are better served by compensating delay through costs rather than foreclosing adjudication altogether.

XI. Commercial Courts Act – A Distinct Legislative Scheme

54. Considerable reliance was placed by the learned Additional Advocate General upon the provisions of the Commercial Courts Act, 2015, which prescribe an absolute outer limit of one hundred and twenty days for filing written statements. This submission deserves careful consideration. The Commercial Courts Act constitutes a special legislation enacted by Parliament governing commercial disputes of specified value. Unlike the ordinary Code of Civil Procedure, Parliament consciously amended Order VIII Rule 1 in its application to commercial disputes



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by expressly providing that upon expiry of one hundred and twenty days, the defendant shall forfeit the right to file the written statement. The mandatory consequence is therefore expressly incorporated within the statute itself. The Hon'ble Supreme Court has consistently treated commercial litigation as forming a separate class owing to the specialised nature of commercial transactions and the legislative policy of ensuring strict adherence to timelines. The legislative scheme governing commercial disputes therefore cannot automatically be imported into ordinary civil litigation involving title to agricultural lands, residential houses, partition suits, easementary rights, inheritance disputes and other civil causes governed by the general Code.

Distinction Between Commercial Litigation and Ordinary Civil Litigation

55. Ordinary civil litigation occupies a wholly different field. A substantial percentage of civil litigation before Trial Courts in this State concerns disputes relating



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to agricultural lands, ancestral properties, partition, declaration of title, village houses, Gram Panchayat sites, tenancy rights and boundary disputes. Unlike commercial litigation where documentary evidence ordinarily remains within the control of corporate litigants, property disputes frequently require procurement of numerous public documents maintained by different governmental authorities. The Court cannot ignore the ground realities prevailing in rural Karnataka. Revenue records are often maintained at different administrative levels.

56. Certified copies of mutation extracts, RTCs, Tippani, survey sketches, phodi records, grant registers, village maps and historical records are not always readily available. Procurement of such records frequently depends upon administrative processes over which litigants have little control. Delay in securing these foundational documents is therefore not necessarily attributable to negligence or dilatory tactics.



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XII. Procedural Fairness and Access to Justice

57. Access to justice constitutes one of the fundamental facets of Article 14. A fair opportunity to defend is equally an indispensable component of civil adjudication. Civil Courts adjudicate disputes affecting proprietary rights, inheritance, possession, status and livelihood. The consequences flowing from a decree often have irreversible civil consequences extending across generations. It is precisely for this reason that the Hon'ble Supreme Court has repeatedly held that procedural provisions must facilitate adjudication upon merits. A defendant who is denied an opportunity to file a written statement may ultimately suffer a decree affecting valuable property rights without his defence ever being examined. Such consequences explain why the Hon'ble Supreme Court has consistently insisted upon preservation of limited judicial discretion.



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58. It is at this juncture that the present controversy assumes constitutional significance. The petitioners contend that the Amendment Act does not merely substitute the figure "90 days" by "120 days". Rather, it seeks to legislatively eliminate the judicial discretion which the Hon'ble Supreme Court held to survive under Order VIII Rule 10. The distinction is substantial. The ratio of ***Salem Advocate Bar Association***(*supra*) is not confined to the numerical period prescribed under Rule 1. The decision proceeds upon a broader constitutional premise that procedural prescriptions governing filing of written statements cannot altogether extinguish judicial discretion.

59. If the legislative amendment merely enlarges the time from ninety days to one hundred and twenty days while preserving judicial discretion in deserving cases, no constitutional issue may arise. The controversy arises because the impugned amendment introduces a forfeiture clause coupled with an express prohibition against the



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Court receiving the written statement thereafter. The question therefore is not whether the Legislature can prescribe one hundred and twenty days. The real question is whether it can altogether extinguish judicial discretion which has repeatedly been recognised by the Hon'ble Supreme Court as an integral part of procedural justice under the Code.

60. The answer to this question necessarily requires examination of the constitutional limits upon legislative power, the doctrine of separation of powers, Article 141, Article 14, the doctrine of manifest arbitrariness and the distinction between legislative overruling and legislative removal of the basis of a judgment. These constitutional principles shall now be examined.

61. Having examined the evolution of the law declared by the Hon'ble Supreme Court, the next question that falls for consideration is whether the Karnataka Legislature, while exercising its legislative competence under the Concurrent List, could enact the impugned



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amendment in the manner in which it has done. The controversy now travels beyond the realm of statutory interpretation and enters the constitutional domain.

62. The challenge mounted by the petitioners is not founded upon lack of legislative competence. Indeed, learned Senior Counsels and counsels appearing for petitioners in batch of petitions fairly submitted that the State Legislature possesses competence under Entry 13 of List III (Concurrent List) of the Seventh Schedule to amend the Code of Civil Procedure in its application to the State. The grievance is that while exercising such legislative power, the Legislature has transgressed constitutional limitations by virtually nullifying the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution and by extinguishing judicial discretion which forms an integral component of fair procedure. The distinction between legislative competence and constitutional validity assumes significance. A Legislature may possess competence to legislate on a particular



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subject, yet the legislation may still be liable to constitutional scrutiny if it violates a constitutional limitation, infringes a fundamental right, or seeks to impermissibly trench upon the judicial domain.

XIII. Legislative Competence under the Concurrent List

63. The Code of Civil Procedure is relatable to Entry 13 of List III, which deals with "Civil Procedure, including all matters included in the Code of Civil Procedure. Parliament and the State Legislatures, therefore, possess concurrent legislative competence in the field of civil procedure. Article 254 contemplates that where a State law relating to a Concurrent List subject receives Presidential assent, it may prevail within the State notwithstanding inconsistency with an earlier Central enactment, subject to Parliament's overriding power to subsequently legislate. Thus, the competence of the Karnataka Legislature to amend procedural provisions of the Code cannot seriously be doubted. However,



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legislative competence is only the first step. Every legislative enactment, though enacted by a competent Legislature, must satisfy constitutional requirements under Part III and the basic constitutional framework.

a. Separation of Powers

64. The Constitution envisages a delicate balance between the Legislature, the Executive and the Judiciary. Though India does not follow a rigid separation of powers, the Constitution nevertheless demarcates the constitutional functions assigned to each organ. Article 50 specifically directs the State to take steps to separate the judiciary from the executive in public services. Judicial independence is one of the essential features of the Constitution. Equally essential is judicial authority to interpret statutes enacted by the Legislature. Once the Hon'ble Supreme Court interprets a statutory provision, the interpretation becomes the law declared under Article



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141. The Legislature cannot simply declare that the judicial interpretation shall cease to operate.

b. Legislative Overruling and Removal of the Basis

65. It is by now settled that the Legislature cannot directly overrule a judicial decision. At the same time, the Legislature is competent to remove the statutory basis upon which the judgment proceeds by suitably amending the law. The distinction between these two concepts is fundamental. Legislature may alter the law retrospectively or prospectively. It may change statutory conditions. It may substitute the legal foundation upon which a judgment rested. However, it cannot merely declare that a judicial pronouncement shall no longer bind.

66. The Hon'ble Supreme Court has repeatedly recognised this distinction. The Legislature cannot exercise judicial power. Nor can it declare that the interpretation placed by Courts upon an existing provision shall stand obliterated without altering the legal foundation.



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67. It therefore becomes necessary to examine what precisely constituted the ratio of ***Salem Advocate Bar Association***(*supra*). As noticed earlier, the Hon'ble Supreme Court did not merely interpret the numerical period of ninety days. The Hon'ble Supreme Court harmoniously construed Order VIII Rules 1 and 10. The Hon'ble Supreme Court held that procedural law advances justice; Rule 10 preserves judicial discretion; inherent judicial power survives; extension beyond ninety days is permissible in exceptional cases.

68. Thus, the basis of the judgment was not the figure "90". The basis lay in preservation of judicial discretion. The impugned Amendment Act undoubtedly substitutes ninety days by one hundred and twenty days. If the amendment had merely enlarged the period from ninety days to one hundred and twenty days, little constitutional difficulty may have arisen. The difficulty arises because the amendment further provides that upon expiry of one hundred and twenty days, the defendant



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shall forfeit the right to file the written statement; and the Court shall not allow the written statement to be taken on record. The consequence of the amendment is not merely procedural. It completely disables judicial discretion. The discretion preserved under Order VIII Rule 10, recognised by the Hon'ble Supreme Court, is thereby rendered ineffective.

c. Effect of Partial Legislative Amendment and the Necessity of Harmonious Construction

69. One significant aspect of the impugned amendment, which has not received adequate attention during the course of arguments, is that the Karnataka Legislature has chosen to amend only one limb of the statutory scheme governing filing of written statements while leaving the remaining provisions of the Code completely untouched. The third proviso inserted to Order V Rule 1 prescribes an outer limit of one hundred and twenty days and further declares that upon expiry of the said period, the defendant shall forfeit the right to file the



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written statement and the Court shall not permit the written statement to be taken on record. Significantly, while introducing the proviso to Rule 10 of Order VIII, the Legislature has consciously left the substantive provision of Rule 10 untouched. The Legislature has neither amended nor omitted these enabling words which constitute the very source of judicial discretion recognised by the Hon'ble Supreme Court. However, the Legislature has not correspondingly amended Section 151, of the Code, which continue to occupy the field and continue to confer discretion upon the Civil Court and preserve the procedural autonomy of the High Court.

70. This legislative omission assumes considerable constitutional significance. The Code of Civil Procedure is a self-contained procedural enactment. Its provisions cannot be read in isolation. Every provision has to be construed as part of an integrated statutory scheme. It is a cardinal principle of statutory interpretation that one provision of a statute cannot be interpreted in a manner that renders



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another provision redundant, otiose or incapable of operation. The Court is under a duty to adopt an interpretation that preserves internal consistency and gives effect to every provision enacted by the Legislature.

71. Order VIII Rule 10 has consciously been retained in its original form, by merely adding a proviso. It continues to authorise the Court, where a written statement is not filed within the time permitted, either to pronounce judgment or ***"to make such order in relation to the suit as it thinks fit."*** These words are of the widest amplitude and unmistakably preserve judicial discretion. Likewise, Section 151, which saves the inherent powers of every Civil Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court, remains untouched.

72. If the newly inserted third proviso to Order V is construed literally as completely denuding the Civil Court of every discretion after expiry of one hundred and twenty days, the consequence would be that Order VIII Rule 10



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becomes substantially ineffective, Section 151 stands impliedly curtailed in one important area of procedural law, and the harmonious scheme of the Code recognised by the Hon'ble Supreme Court in ***Salem Advocate Bar Association*** (*supra*) stands disrupted. Such an interpretation cannot readily be accepted.

73. It is a settled principle that repeal by implication is not favoured in law. Equally well settled is the principle that implied curtailment of judicial powers is not to be readily inferred unless the legislative intention is expressed in the clearest possible language. Courts ordinarily presume that the Legislature was conscious of the existing statutory framework while introducing an amendment. Had the legislative intention been to completely extinguish judicial discretion preserved under Order VIII Rule 10 and Section 151, nothing prevented the Legislature from expressly amending those provisions as well. The conspicuous absence of any such corresponding amendment is a significant indicator that the Legislature



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did not intend to rewrite the entire procedural architecture of the Code.

74. The Court cannot lose sight of another important circumstance. The Hon'ble Supreme Court in ***Salem Advocate Bar Association*** (supra) did not interpret Order VIII Rule 1 in isolation. The Court harmoniously construed Rule 1 together with Rule 10 and held that the discretion preserved under Rule 10 enabled the Court, in exceptionally hard cases, to receive the written statement even after expiry of the prescribed period. That ratio has held the field for nearly two decades. If the Legislature intended to displace that interpretation, it was incumbent upon it to amend not the very provision namely Rule 10 of Order VIII upon which the Hon'ble Supreme Court founded its reasoning. The Legislature having consciously refrained from doing so, it would be inappropriate for this Court to infer an implied legislative intent to extinguish judicial discretion.



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75. The same reasoning applies with greater force to Section 151 of the Code. The inherent powers of a Civil Court are not conferred by implication, they are expressly recognised by the statute itself. Though such powers cannot override an express statutory prohibition, they cannot be held to have been impliedly abrogated by a partial amendment unless the legislative intent is manifest beyond doubt. The impugned amendment contains no express provision excluding the operation of Section 151. Nor does it declare that the inherent jurisdiction of the Court shall cease to exist in relation to applications for receiving written statements. In the absence of such express language, this Court would be slow to attribute to the Legislature an intention to denude Civil Courts of their inherent jurisdiction.

76. The partial nature of the amendment thus creates an apparent inconsistency within the Code itself. On the one hand, the newly inserted proviso appears to mandate forfeiture of the right to file the written



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statement. On the other hand, Rule 10 of Order VIII continues to preserve judicial discretion, Section 151 continues to preserve inherent powers. The only constitutionally permissible method of reconciling these provisions is by adopting the doctrine of harmonious construction.

77. It is a settled principle that where two provisions of the same statute appear to be in conflict, the Court should endeavour to reconcile them rather than permit one provision to destroy the other. Reading down is but an extension of this principle. The doctrine enables the Court to preserve the validity of a legislative enactment by assigning to it a construction that is consistent with the Constitution and with the remaining provisions of the statute.

78. This Court is therefore of the considered opinion that the Legislature, by mere adding of proviso, while consciously leaving untouched Order VIII Rule 10, Section 151, has itself furnished a compelling reason for adopting



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the doctrine of reading down. Such an interpretation alone preserves the internal coherence of the Code, gives meaningful operation to every provision enacted by Parliament, respects the law declared by the Hon'ble Supreme Court in ***Salem Advocate Bar Association***(supra), and simultaneously advances the legislative object of securing expeditious disposal of civil disputes. Any other interpretation would result in one provision of the Code impliedly repealing or rendering nugatory several other provisions, a consequence which settled principles of statutory interpretation do not countenance.

XIV. Section 89 of the Code

79. Another significant anomaly that appears to have escaped the attention of the Legislature while amending Order V by introducing the third proviso and proviso to Rule 10 of Order VIII, concerns the interplay between the amended provision and Section 89 of the



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Code of Civil Procedure. Section 89 casts a statutory obligation on the Court to explore the possibility of an amicable settlement, particularly in disputes involving family members where preservation of relationships is of paramount importance. In such suits, parties often seek time to negotiate and resolve their differences outside the adversarial process. Consequently, delay in filing the written statement may not be attributable to negligence or dilatory tactics, but to bona fide attempts at settlement encouraged by the Court itself. If the amended provision is construed as imposing an inflexible outer limit for filing the written statement, irrespective of the pendency of settlement efforts, it would defeat the very object underlying Section 89. More importantly, it would denude the Court of its inherent power to extend the time for filing the written statement in appropriate and exceptional circumstances, even where such extension would facilitate an amicable resolution of the dispute. The amendment, therefore, fails to account for this distinct class of civil



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disputes where the legislative policy itself mandates judicial intervention to foster reconciliation rather than expedite adversarial adjudication. Such an omission renders the rigid prescription susceptible to criticism, as it overlooks situations in which procedural flexibility is indispensable to advance the larger objective of securing enduring and peaceful settlement of family disputes.

80. Order VIII Rule 10 assumes considerable significance. Even today it continues to provide that where the written statement is not filed, the Court may either pronounce judgment or make such order in relation to the suit as it thinks fit. These words confer a wide judicial discretion. They are not accidental. The Legislature consciously retained them even while amending Rule 1 of Order VIII of CPC. It was precisely this discretion which the Hon'ble Supreme Court harmonised with Rule 1 of Order VIII in ***Salem Advocate Bar Association***(supra). Therefore, unless Rule 10 itself stands amended, complete exclusion of judicial discretion would produce an apparent



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conflict within the Code of Civil Procedure itself. A construction which harmonises Rules 1 and 10 deserves preference over one rendering Rule 10 substantially otiose.

XV. Section 151 of the Code

81. Though inherent powers cannot override express statutory provisions, they continue to exist to prevent abuse of process and to secure the ends of justice wherever the Code remains silent. The Hon'ble Supreme Court in ***Kailash***(supra) and ***Salem Advocate Bar Association***(supra) recognised that procedural provisions should not be interpreted in a manner which altogether excludes judicial power to prevent failure of justice.

82. Section 151 of the Code is a saving provision which preserves the inherent powers of every Civil Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. It neither creates an independent source of substantive



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jurisdiction nor authorises the Court to act in derogation of an express statutory provision. The inherent jurisdiction is supplementary in nature and operates where the Code is silent or where its procedural machinery requires judicial intervention to secure justice.

83. The Amendment Act introducing the third proviso to Order V Rule 1 prescribes an outer limit of one hundred and twenty days for filing the written statement and stipulates forfeiture of the right thereafter. The amendment undoubtedly regulates the exercise of judicial discretion in matters relating to filing of written statements and substantially narrows the field within which such discretion may be exercised. Nevertheless, the Legislature has not amended or excluded the operation of Section 151. In the absence of an express provision abrogating the inherent powers of the Civil Court, it would be impermissible to infer their complete extinction by implication.



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84. The settled position of law is that while Section 151 cannot be invoked to defeat or routinely circumvent an express statutory mandate, neither can it be rendered wholly otiose by a partial legislative amendment. Its operation survives in those exceptional situations where strict adherence to the procedural prescription would itself result in manifest injustice or abuse of the process of the Court, provided such exercise does not rewrite or nullify the legislative scheme.

85. Accordingly, this Court is of the considered opinion that the Amendment Act cannot be construed as extinguishing the inherent jurisdiction preserved under Section 151 of the Code. What stands curtailed is the routine exercise of discretion to extend the time for filing the written statement beyond one hundred and twenty days, what survives is the Court's narrow and exceptional jurisdiction to secure the ends of justice in circumstances of an extraordinary nature. Such an interpretation alone harmonises the amended proviso with Section 151,



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preserves the coherence of the Code as an integrated procedural enactment and accords with the principles laid down by the Hon'ble Supreme Court in ***Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal***¹², ***Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhayalal Bhargava***¹³, ***Kailash v. Nanhku*** (supra) and ***Salem Advocate Bar Association, Tamil Nadu v. Union of India***(supra). Consequently, an interpretation that completely extinguishes every vestige of judicial discretion requires careful constitutional scrutiny.

XVI. Article 14 – Manifest Arbitrariness

86. Tested on the touchstone of Article 14 of the Constitution, this Court is of the considered opinion that the legislative objective of prescribing an outer limit of one hundred and twenty days for filing the written statement is, in itself, neither arbitrary nor constitutionally infirm. Expeditious disposal of civil disputes is a legitimate

¹² 1962 AIR 527

¹³ AIR 1966 SC 1899



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legislative objective and an indispensable component of an effective justice delivery system. The constitutional infirmity, however, lies not in the prescription of the time limit, but in the incorporation of the expressions that, upon the expiry of one hundred and twenty days, "*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*", if those expressions are construed as creating an absolute and inflexible embargo, wholly excluding judicial discretion.

87. Such a construction fails to satisfy the constitutional requirements of fairness, reasonableness and non-arbitrariness that permeate Article 14. It indiscriminately places a litigant who has deliberately adopted dilatory tactics on the same footing as one who, despite acting bona fide and with due diligence, is prevented by circumstances wholly beyond his control from filing the written statement within the prescribed period. By treating inherently unequal situations alike, the



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provision, if literally construed, produces a consequence that is manifestly disproportionate to the object sought to be achieved. The forfeiture of the valuable right to defend a civil action, irrespective of the nature of the dispute, the conduct of the litigant or the existence of compelling circumstances, bears no rational nexus to the legislative objective of securing procedural discipline and, in appropriate cases, may itself become a source of procedural injustice.

88. The constitutional guarantee under Article 14 is not confined to prohibiting hostile discrimination, it also mandates that legislative measures must satisfy the tests of fairness, reasonableness and rationality. As repeatedly emphasised by the Hon'ble Supreme Court in ***E.P. Royappa v. State of Tamil Nadu***¹⁴, ***Maneka Gandhi v. Union of India***¹⁵, ***Kailash v. Nanhku***(supra), ***Salem Advocate Bar Association, Tamil Nadu v. Union of India***(supra), ***Atcom Technologies Ltd. v. Y.A.***

¹⁴ AIR 1974 SC 555

¹⁵ AIR 1978 SC 597



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Chunawala & Co. (supra) and ***Shayara Bano v. Union of India***¹⁶, procedural law is intended to facilitate justice and cannot be so construed as to defeat adjudication on merits by mechanically visiting every default with an irreversible consequence.

89. This Court is, therefore, of the considered opinion that while the legislative prescription of a one hundred and twenty-day outer limit withstands constitutional scrutiny, the absolute forfeiture contemplated by the impugned expressions cannot, if literally construed, satisfy the constitutional mandate of Article 14. The vice of arbitrariness lies in the absolute exclusion of judicial discretion and not in the prescription of the timeline itself. Consequently, to preserve both the legislative object and the constitutional guarantee of fairness and equal protection of the laws, the impugned expressions are liable to be read down so as to preserve a narrowly circumscribed judicial discretion in exceptionally

¹⁶ AIR 2017 SC 4609



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rare and deserving cases where refusal to receive the written statement would result in manifest failure of justice.

90. It is trite that Article 14 strikes at arbitrariness in State action, and that a law which affects civil rights must meet the test of fairness, justness and reasonableness. The principles enunciated in ***E.P. Royappa v. State of Tamil Nadu*** (supra) and ***Maneka Gandhi v. Union of India***(supra), thus furnish the constitutional touchstone for examining whether the impugned amendment, in its operation, unjustly forecloses a litigant's right to defend.

XVII. Section 158A – Prima Facie Concerns

91. It is necessary to deal with the challenge to newly inserted Section 158-A, as introduced by the Amendment Act.

92. Learned Senior Counsels have questioned the validity of newly inserted Section 158A. Sections 122 to



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127 of the Code preserve the rule-making power of the High Courts. These provisions constitute an integral part of the procedural framework under the Code. Section 158A declares that where any rule framed by the High Court conflicts with the State Amendment, the State Amendment shall prevail.

93. This Court is of the considered opinion that Section 158-A cannot be construed in isolation or as conferring overriding supremacy upon the State amendment over every rule framed by the jurisdictional High Court. Such an interpretation would be inconsistent with the scheme of the Code of Civil Procedure itself. Sections 122 to 127 of the Code expressly recognise and preserve the statutory power of the High Court to frame rules regulating civil procedure. Those provisions continue to remain part of the principal enactment and constitute an integral component of the legislative framework governing civil courts. Therefore, Section 158-A(3), which provides that the provisions of the Code as amended by



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the Amendment Act shall prevail over any rule framed by the jurisdictional High Court in case of conflict, cannot be understood as abrogating or rendering otiose the powers vested in the High Court under Sections 122 to 127 of the Code. Nor can it be construed as curtailing the constitutional powers of superintendence vested in the High Court under Article 227 of the Constitution or its jurisdiction under Article 225.

94. The only constitutionally permissible interpretation is that Section 158-A is intended to regulate the application of the State amendments to the Code and not to denude the High Court of its statutory or constitutional powers. Accordingly, Section 158-A is also required to be read down and harmoniously construed with Sections 122 to 127 of the Code, the constitutional powers of the High Court and the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution.

95. Any conflict between the Amendment Act and the Rules framed by this Court under Sections 122 to 127



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the Code shall be resolved by adopting a harmonious construction, and the provisions of Section 158-A shall not be interpreted so as to impliedly repeal or render nugatory the High Court Rules unless such repeal is expressly authorised by Parliament or is constitutionally permissible.

96. It is accordingly declared that Section 158-A shall not be construed as overriding or eclipsing the rule-making powers of the High Court under Sections 122 to 127 of the Code of Civil Procedure, nor shall it be interpreted as authorising departure from or nullification of the binding law declared by the Hon'ble Supreme Court. To the aforesaid extent, Section 158-A stands read down. Prima facie, such a provision requires careful examination in light of the statutory scheme governing High Court rule-making powers. However, in the present proceedings the principal challenge centres around Order V Rule 1 and proviso to Rule 10 of Order VIII of the Code of Civil Procedure.



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97. Since this Court proposes to adopt a constitutionally harmonious interpretation of the impugned amendment, it becomes unnecessary at this stage to pronounce finally upon the validity of Section 158A except to observe that the said provision must necessarily operate subject to the constitutional scheme of the Code and the binding law declared by the Hon'ble Supreme Court.

XVIII. Constitutional Interpretation – Preference for Reading Down

98. Constitutional adjudication has consistently recognised that a Court should lean in favour of sustaining the validity of a legislative enactment rather than invalidating it. Where a statutory provision is reasonably capable of two constructions, one which renders it unconstitutional and another which preserves its validity, the latter must ordinarily be preferred. The doctrine of reading down is a well-established principle of constitutional interpretation evolved to preserve legislative



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intent while ensuring conformity with constitutional limitations. It is neither a device to rewrite legislation nor a means to legislate under the guise of interpretation; rather, it is an interpretative tool employed to save a statutory provision from the vice of unconstitutionality where such a construction is reasonably possible.

99. The contours of this doctrine have been delineated by the Hon'ble Supreme Court in a catena of decisions. In ***Kedar Nath Singh v. State of Bihar***¹⁷, while considering the constitutional validity of Section 124A of the Indian Penal Code, the Constitution Bench upheld the provision by confining its operation to acts involving incitement to violence or public disorder, thereby reading down its otherwise wide language. Likewise, in ***Shreya Singhal v. Union of India***¹⁸, the Hon'ble Supreme Court reiterated that where a statutory provision is incapable of being saved by any permissible interpretative process, the Court would have no option but

¹⁷ AIR 1962 SC 955

¹⁸ (2015) 5 SCC 1



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to declare it unconstitutional. Conversely, where the language of the statute reasonably admits of a construction consistent with constitutional guarantees, the doctrine of reading down must be invoked to preserve its validity. Similarly, in ***Navtej Singh Johar v. Union of India***¹⁹, (2018) 10 SCC 1, while reading down Section 377 of the Indian Penal Code, the Constitution Bench reaffirmed that constitutional courts are duty-bound to adopt an interpretation which harmonises legislative enactments with the guarantees of fundamental rights, wherever such reconciliation is reasonably possible.

100. The principle emerging from the aforesaid decisions is that constitutional courts do not readily invalidate legislation merely because one possible construction may render it unconstitutional. Judicial restraint demands that the Court first examine whether the legislative provision is capable of a constitutionally compliant interpretation. It is only where such

¹⁹ (2018) 10 SCC 1



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reconciliation is impossible that the drastic consequence of striking down a statutory provision becomes inevitable.

101. In the present case, the learned Additional Advocate General has also submitted that if this Court finds any constitutional infirmity in the operation of the impugned amendment, the provision may appropriately be read down instead of being declared unconstitutional. This submission, in the considered opinion of this Court, merits acceptance. The legislative objective underlying the Amendment Act is undeniably to secure expeditious disposal of civil disputes by introducing greater procedural discipline. That objective is constitutionally legitimate and ought to receive due judicial deference. Equally, the constitutional guarantees of fairness, reasonableness and access to justice cannot be rendered illusory by an interpretation that excludes every vestige of judicial discretion.

102. The question before this Court, therefore, is not whether the Amendment Act deserves to be invalidated.



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The real issue is whether the impugned proviso is reasonably capable of a construction that preserves the legislative mandate of expeditious disposal while simultaneously harmonising it with Order VIII Rule 10, Section 151 of the Code of Civil Procedure, the statutory framework contained in Sections 122 to 127 of the Code, and the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution. If such a construction is reasonably possible and this Court is of the considered view that it is the constitutional duty of the Court is to adopt that interpretation by invoking the doctrine of reading down, thereby preserving both the validity of the legislation and the constitutional commitment to fair procedure.

103. The Doctrine Of Reading Down, thus, furnishes the constitutional bridge between legislative supremacy and judicial review. It enables the Court to preserve the legislative policy of expeditious disposal without sacrificing the constitutional guarantees of fairness, reasonableness



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and equal protection embodied in Article 14. Since the impugned amendment is reasonably capable of a construction that harmonises its provisions with Order VIII Rule 10, Section 151, Sections 122 to 127 of the Code and the binding law declared by the Hon'ble Supreme Court under Article 141 of the Constitution, this Court finds no necessity to invalidate the amendment. The constitutional infirmity stands adequately addressed by reading down the impugned expressions in the manner indicated herein, thereby preserving both the legislative intent and the constitutional commitment to substantive justice.

XIX. Findings on the Points for Consideration and the Doctrine of Reading Down

104. Having bestowed anxious consideration to the rival submissions, the statutory scheme, the Statement of Objects and Reasons accompanying the Amendment Act, the judgments of the Hon'ble Supreme Court commencing from **Sangram Singh** (*supra*) and culminating in **Bharat Kalra**(*supra*), this Court is of the



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considered opinion that the controversy can be resolved without declaring the impugned provision unconstitutional. The constitutional challenge, in the opinion of this Court, can appropriately be answered by adopting the well-established doctrine of reading down, thereby preserving both the legislative intent and the constitutional principles governing procedural fairness.

105. It is a settled canon of constitutional adjudication that every legislation enacted by a competent Legislature carries with it a presumption of constitutionality. Courts do not strike down legislation merely because another view is possible. The constitutional court is under an obligation to sustain a statute wherever such construction is reasonably possible. It is only when no constitutionally permissible interpretation is available that the Court resorts to the extreme step of invalidation.

106. Applying the aforesaid principles, this Court is satisfied that the object sought to be achieved by the



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Karnataka Legislature, namely, expeditious disposal of civil disputes, is unquestionably legitimate. Delay in civil trials has remained a matter of serious concern for decades. The Legislature was, therefore, fully justified in introducing procedural reforms intended to secure discipline in the conduct of civil proceedings.

107. However, the constitutional difficulty arises not because the Legislature prescribed an outer limit of one hundred and twenty days, but because the impugned provision, if literally construed, appears to completely denude the Civil Court of every vestige of judicial discretion, even in cases where grave injustice would otherwise result. It is this aspect which necessitates constitutional interpretation.

Finding on Point No.(i):

(i) Whether Section 4 of the Amendment Act is an attempt to override the law declared in *Salem Advocate Bar Association?*



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108. The first point requires careful examination of the ratio laid down in ***Salem Advocate Bar Association***. The submission of the petitioners proceeds on the premise that the State Legislature has attempted to legislatively overrule the judgment of the Hon'ble Supreme Court. This Court is unable to subscribe to the proposition in its absolute form. It is well settled that the Legislature possesses competence to amend the statutory provision which formed the subject matter of judicial interpretation. Merely because a statute is amended after a judgment does not necessarily amount to legislative overruling.

109. At the same time, the Legislature cannot, under the guise of amendment, simply declare that the law declared by the Supreme Court shall no longer operate. The distinction between altering the law and nullifying the judgment has repeatedly been recognised by the Supreme Court. The Karnataka Amendment undoubtedly alters the statutory prescription by substituting the earlier regime with a period of one hundred and twenty days. To that



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extent, the Legislature has exercised its legislative competence.

110. However, if the amendment is construed as completely excluding judicial discretion in every conceivable case, such interpretation would directly collide with the ratio of ***Salem Advocate Bar Association***(supra), which recognises judicial discretion as an integral component of Order VIII Rules 1 and 10 read harmoniously. This Court is therefore of the view that the constitutional validity of the amendment depends upon its interpretation. If interpreted as excluding every judicial discretion, serious constitutional questions would arise. If interpreted as preserving judicial discretion in exceptionally rare situations, the amendment can co-exist with the law declared by the Hon'ble Supreme Court.

111. Point No.(i) is answered '***partly in the affirmative***' and '***partly in the negative***'. It is answered in the affirmative to the extent that Section 4 of Amendment Act, departs from the statutory framework



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considered by the Hon'ble Supreme Court in ***Salem Advocate Bar Association, Tamil Nadu v. Union of India***(supra) by prescribing an outer limit of one hundred and twenty days for filing the written statement and by substantially curtailing the discretion of the Civil Court. To that extent, the amendment seeks to alter the legal regime which formed the foundation of the decision in ***Salem Advocate Bar Association***(supra).

112. However, the point is answered in the negative insofar as it is suggested that the State Legislature has thereby overridden or nullified the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution. The Legislature is undoubtedly competent to amend the statutory provision and alter its legal basis, but it cannot abrogate or efface the binding principles of law declared by the Hon'ble Supreme Court. Consequently, Section 4 cannot be construed as a legislative overruling of ***Salem Advocate Bar Association***(supra). It is constitutionally sustainable only if read harmoniously with



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the law declared therein by preserving a narrowly confined judicial discretion in exceptionally rare and deserving cases through the doctrine of reading down.

Finding on Point No.(ii):

(ii) Whether the amendment takes away judicial discretion recognised by the Hon'ble Supreme Court?

113. The answer to this point substantially flows from the earlier discussion. The ratio of ***Salem Advocate Bar Association***(supra) does not rest merely upon the figure of ninety days. The ratio rests upon preservation of judicial discretion. The Hon'ble Supreme Court harmoniously construed Order VIII Rule 1 with Rule 10. It recognised that Rule 10 empowers the Court to make such order as it thinks fit. Rule 10 in its original form continues to remain part of the Code, with an inclusion of a proviso.

114. The Amendment Act has not amended Rule 10 of Order VIII. Rule 10 continues to authorise the Court that where a written statement is not presented within the



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time permitted or fixed by the Court, it may "*pronounce judgment against him or make such order in relation to the suit as it thinks fit.*". Equally, Section 151 which continues to preserve inherent powers of the Civil Court to secure the ends of justice. Therefore, the Court cannot interpret Rule 1 in complete isolation. Such interpretation would destroy the harmonious scheme recognised by the Hon'ble Supreme Court. This Court accordingly holds that the discretion recognised in ***Salem Advocate Bar Association***(supra) continues to survive notwithstanding the Amendment Act, though its exercise shall be even more circumscribed having regard to the legislative emphasis upon expeditious disposal. Accordingly, Point No.(ii) is answered in the '***affirmative.***'

Finding on Point No.(iii):

(iii) Whether the Legislature can impose an absolute embargo upon the inherent powers of the Civil Court?



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115. Inherent powers preserved under Section 151 are not conferred by the Legislature. They are recognised by the Code. They exist to prevent abuse of process and to secure the ends of justice. The Hon'ble Supreme Court has repeatedly held that procedural provisions cannot altogether extinguish the Court's power to prevent failure of justice. This Court is therefore of the opinion that the expression "the Court shall not allow the written statement to be taken on record" cannot receive a literal construction completely excluding judicial power.

116. Such construction would produce manifest conflict with Rule 10, Section 151 and the binding ratio of the Hon'ble Supreme Court. The expression must therefore be construed as directory except where the defendant has been guilty of deliberate, intentional or contumacious delay. Accordingly, Point No.(iii) is answered in the '**negative**'.



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Finding on Point No.(iv):

(iv) Whether the Legislature has created an apparent inconsistency within the Code itself.

117. One significant feature of the impugned amendment is that the Legislature has included only the third proviso to Order V Rule 1 , third proviso to Rule 1 and proviso to Rule 10 of Order VIII while consciously leaving untouched Order VIII Rule 10, Section 151 and the statutory framework contained in Sections 122 to 127 of the Code. This selective amendment assumes considerable significance in construing the true legislative intent.

118. The Code of Civil Procedure is a self-contained procedural enactment and its provisions must be read as an integrated whole. It is a settled principle of statutory interpretation that one provision cannot be construed in a manner that renders another provision redundant or otiose. Order VIII Rule 10 continues to preserve judicial discretion by empowering the Court to "*make such order*



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in relation to the suit as it thinks fit." Likewise, Section 151 continues to preserve the inherent jurisdiction of the Civil Court, while Sections 122 to 127 preserve the statutory rule-making powers of the High Court.

119. The Hon'ble Supreme Court in ***Salem Advocate Bar Association***(*supra*) interpreted Order VIII Rule 1 harmoniously with Order VIII Rule 10 and held that, notwithstanding the prescribed time limit, the Court retains a limited discretion to receive the written statement in exceptional cases. Significantly, the Legislature has not amended Order VIII Rule 10, nor has it expressly excluded the operation of Section 151. Had it intended to completely extinguish judicial discretion, nothing prevented it from correspondingly amending those provisions.

120. The Court is equally guided by the well-settled principles that repeal by implication is not readily inferred and that statutes must be interpreted so as to preserve their internal consistency. A literal construction of the



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impugned proviso would substantially denude the operation of Order VIII Rule 10 and Section 151, thereby creating an apparent inconsistency within the Code itself.

121. This Court is, therefore, of the considered opinion that the partial nature of the amendment itself furnishes a compelling reason for adopting the doctrine of harmonious construction. The third proviso to Order V Rule 1 cannot be read in isolation but must be construed together with Order VIII Rule 10, Section 151 and Sections 122 to 127 of the Code. Such an interpretation alone preserves the coherence of the statutory scheme, gives effect to every provision of the Code and maintains consistency with the law declared by the Hon'ble Supreme Court in ***Salem Advocate Bar Association***(*supra*). Consequently, the impugned proviso deserves to be read down rather than read as imposing an absolute and inflexible embargo. Accordingly, Point No.(iv) is answered in the '***affirmative***'.



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Finding on Point No.(v):

(v) Interpretation of the First Proviso to Order VIII

Rule 10.

122. The controversy arising under this point centres around the legal effect of the first proviso to Order VIII Rule 10, inserted by Section 4(iv)(d) of the Amendment Act. The question is whether the Legislature, by merely inserting the said proviso without correspondingly amending the substantive part of Rule 10, has created an inconsistency within the statutory framework of the Code and whether the proviso is capable of being construed harmoniously with the principal provision.

123. The first proviso inserted by the Amendment Act provides that "*no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the Written Statement.*" Significantly, while introducing the said proviso, the Legislature has consciously left the substantive provision of Rule 10 untouched. Rule 10



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continues to authorise the Court that where a written statement is not presented within the time permitted or fixed by the Court, it may "*pronounce judgment against him or make such order in relation to the suit as it thinks fit.*" The Legislature has neither amended nor omitted these enabling words which constitute the very source of judicial discretion recognised by the Hon'ble Supreme Court.

124. The settled principles governing the interpretation of a proviso leave little room for doubt. A proviso is ordinarily enacted to qualify, except or explain the operation of the principal provision. It is not intended to become an independent substantive enactment, much less one that destroys the very provision to which it is appended. A proviso operates in the same field as the principal enactment and must receive a construction that advances, and not defeats, the object of the substantive provision. Unless the legislative intent is expressed in unmistakable terms, a proviso cannot be interpreted so as



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to nullify, eclipse or render redundant the principal enactment.

125. This principle has been consistently affirmed by the Hon'ble Supreme Court. In ***Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer, AIR 1966 SC 12***, the Constitution Bench observed that the normal function of a proviso is to except or qualify something which, but for the proviso, would fall within the general language of the enactment. In ***A.N. Sehgal v. Raje Ram Sheoran, 1992 Supp (1) SCC 304***, the Hon'ble Supreme Court authoritatively held that a proviso cannot be torn apart from the main enactment nor can it be employed to nullify by implication what the substantive provision clearly enacts unless such consequence necessarily flows from its language. The same principle has been reiterated in ***Satnam Singh v. Punjab & Haryana High Court 1997) 3 SCC 353, Balchanara Anantrao Rakvi v. Ramchandra Tukaram AIR 2001 SC 3994, J.K. Industries Ltd. And others vs. Chief***



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Inspector of Factories and Boilers and others (1996)

6 SCC 665, and more recently in ***X v. Office of the Speaker of the House of People Writ Petition (Civil)***

NO. 1233 of 2025, wherein the Hon'ble Supreme Court reiterated that a proviso cannot be interpreted in a manner that nullifies the provision to which it is appended unless such legislative intention is manifest beyond doubt.

126. Tested on these well-settled principles, the first proviso inserted to Rule 10 cannot be construed as extinguishing the substantive jurisdiction expressly preserved in Rule 10 itself. If the proviso is read literally as an absolute prohibition against extension of time in every conceivable case, the latter part of Rule 10 empowering the Court to "*make such order in relation to the suit as it thinks fit*" would become wholly otiose. Such an interpretation would render the substantive provision meaningless while elevating the proviso into the principal enactment. This is precisely what the law relating to interpretation of provisos prohibits. A construction which



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permits the proviso to consume the principal provision cannot be accepted.

127. The inconsistency becomes even more apparent when Rule 10 is viewed in the light of the authoritative pronouncement of the Hon'ble Supreme Court in ***Salem Advocate Bar Association, Tamil Nadu v. Union of India***(supra). In that landmark decision, the Hon'ble Supreme Court harmoniously construed Order VIII Rules 1 and 10 and unequivocally held that the discretion preserved under Rule 10 enables the Court, in exceptional circumstances, to receive the written statement beyond the prescribed period where the ends of justice so require. The said principle has thereafter been consistently reiterated in ***Kailash v. Nanhku*** (supra), ***R.N. Jadi & Brothers*** (supra), ***Desh Raj*** (supra), ***Atcom Technologies Ltd.*** (supra) and ***Bharat Kalra*** (supra). The discretion recognised in these judgments is not judge-made, it emanates directly from the language employed in Rule 10.



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128. If the newly inserted proviso is construed as completely prohibiting the exercise of such discretion, it would, in effect, nullify the very ratio laid down by the Hon'ble Supreme Court in ***Salem Advocate Bar Association*** (supra) and the long line of decisions that have consistently followed it. Such a construction cannot be accepted. The Legislature undoubtedly possesses competence to amend the law. Equally well settled, however, is the principle that unless the substantive statutory foundation itself is altered, an amendment cannot be interpreted in a manner that renders nugatory the binding declaration of law under Article 141 of the Constitution. In the present case, the Legislature has inserted only a proviso without amending the substantive part of Rule 10. Therefore, the proviso cannot be accorded an interpretation which effectively obliterates the statutory discretion that continues to be expressly preserved in the principal provision and has repeatedly received authoritative exposition from the Hon'ble Supreme Court.



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129. This Court is, therefore, of the considered opinion that the first proviso to Order VIII Rule 10, if construed as imposing an absolute embargo upon the Civil Court from exercising any discretion whatsoever after the expiry of one hundred and twenty days, would not only create an irreconcilable inconsistency within Rule 10 itself but would also run contrary to the law declared by the Hon'ble Supreme Court in ***Salem Advocate Bar Association*** (supra) and the subsequent decisions reiterating the said principle. Such a construction would permit the proviso to destroy the substantive provision, a consequence which is impermissible in law.

130. The inconsistency is, however, capable of being resolved by applying the doctrine of harmonious construction. The first proviso cannot be understood as extinguishing the jurisdiction preserved under Rule 10. It must instead be construed as reinforcing the legislative mandate that extension of time beyond one hundred and twenty days shall not be granted in the ordinary course or



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as a matter of routine. The substantive discretion under Rule 10 survives, albeit within a narrowly confined sphere, and may be exercised only in exceptionally rare and compelling circumstances, strictly in accordance with the principles, safeguards and illustrative guidelines formulated in this judgment. Such an interpretation alone preserves the legislative object of expeditious disposal, gives meaningful effect to both the substantive provision and the proviso, maintains fidelity to the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution and avoids the constitutional infirmity that would otherwise arise.

131. This Court also considers it appropriate to advert to the evolution of the law governing the filing of written statements under the Code. The Central Amendment Act, 2002 introduced a stringent time frame under Order VIII Rule 1 by prescribing an outer limit of ninety days and employing language suggestive of forfeiture of the defendant's right to file the written



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statement. The constitutional validity and interpretative scope of the said amendment came to be authoritatively examined by the Hon'ble Supreme Court in ***Salem Advocate Bar Association, Tamil Nadu*** (supra), wherein the Court, while recognising the legislative intent of expediting civil trials, harmoniously construed Order VIII Rules 1 and 10 and held that though the prescription of time under Rule 1 is mandatory in its application, the consequence of non-compliance is not absolute, as Rule 10 preserves a limited judicial discretion to receive the written statement in exceptional and deserving cases. The said exposition has thereafter attained finality and has been consistently reiterated in ***Kailash v. Nanhku*** (supra), ***R.N. Jadi & Brothers*** (supra), ***Desh Raj*** (supra), ***Atcom Technologies Ltd.*** (supra) and ***Bharat Kalra*** (supra). The Amendment Act, while introducing the third proviso to Order V Rule 1 and simultaneously inserting the first proviso to Order VIII Rule 10, appears to embody, in substance, an attempt to reintroduce an



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absolute consequence akin to that which stood judicially interpreted and harmonised by the Hon'ble Supreme Court under the Central Amendment. However, significantly, the Legislature has not amended the substantive part of Rule 10 itself, which continues to empower the Court to "*make such order in relation to the suit as it thinks fit.*" In these circumstances, this Court is of the considered view that, in order to preserve the legislative objective of procedural discipline without unsettling the binding law declared under Article 141 of the Constitution, and equally to safeguard the larger interests of litigants and the institution of justice, the only constitutionally permissible course is to read down the conflicting expressions contained in the third proviso to Order V Rule 1 and the first proviso to Order VIII Rule 10, so that they operate in harmony with the substantive scheme of the Code and the authoritative pronouncements of the Hon'ble Supreme Court.



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132. The proviso is therefore liable to be read harmoniously with the substantive provision of Rule 10 and, to that limited extent, stands read down so as to preserve the Court's jurisdiction to intervene only in exceptionally rare and compelling cases where refusal to receive the written statement would result in manifest injustice or grave miscarriage of justice.

133. Accordingly, Point No. (v) is answered in the '**negative**' by holding that the first proviso inserted to Order VIII Rule 10 by Section 4(iv)(d) of the Amendment Act cannot be construed as nullifying the substantive discretion preserved under Rule 10 or the law declared by the Hon'ble Supreme Court in ***Salem Advocate Bar Association*** (supra) and the subsequent decisions.

Finding on Point No.(vi):

(vi) Whether the amendment adversely affects litigants involved in rural property disputes?



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134. This Court finds considerable substance in the submission advanced on behalf of the petitioners. Judicial notice can legitimately be taken of the nature of civil litigation pending before Courts in Karnataka.

135. The impugned amendment undoubtedly seeks to achieve the laudable object of expeditious disposal of civil suits by prescribing an outer limit of one hundred and twenty days for filing the written statement. Speedy disposal of litigation is an important facet of the administration of justice and no fault can be found with the legislative objective. However, constitutional validity of a procedural enactment is tested not merely by the object sought to be achieved, but equally by the means adopted to achieve that object.

136. The significant departure brought about by the impugned amendment lies not in extending the period from ninety days to one hundred and twenty days, but in the latter part of the proviso, which provides that upon expiry of one hundred and twenty days, *"the defendant*



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shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record." These expressions, if literally construed, leave no room whatsoever for judicial discretion, irrespective of the facts and circumstances of an individual case.

137. The inevitable consequence of such an interpretation is that the Civil Court is rendered powerless even where the delay is occasioned by circumstances entirely beyond the control of the defendant. The Court would be compelled to shut out the defence notwithstanding the existence of exceptional circumstances warranting judicial indulgence. Such a consequence strikes at the very heart of procedural fairness.

138. The Code of Civil Procedure has always recognised that procedural law cannot anticipate every factual situation that may arise before a Court. It is for this reason that Section 151 preserves the inherent powers of every Civil Court to make such orders as may be



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necessary for the ends of justice or to prevent abuse of the process of the Court. Though inherent powers cannot override an express statutory prohibition, they constitute an indispensable reservoir of judicial authority enabling Courts to meet situations where rigid adherence to procedure would itself occasion injustice.

139. If the impugned proviso is interpreted as completely excluding the jurisdiction of the Court after expiry of one hundred and twenty days, the inherent powers preserved under Section 151 become substantially denuded in relation to one of the most vital stages of a civil proceeding. The Trial Court would have no option except to reject every request for receiving a written statement, however genuine the explanation may be. Such an interpretation would convert what has historically been a judicial function into a purely mechanical exercise.

140. The consequences flowing from such forfeiture are neither procedural nor insignificant. They directly affect valuable civil rights. A written statement is not



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merely a formal pleading. It is the foundational document through which the defendant traverses the plaintiff's allegations, raises legal and factual defences, pleads limitation, *estoppel*, *res judicata*, adverse possession, prior partition, family arrangements, statutory bars, want of cause of action and every other defence recognised by law. Depriving a defendant of the opportunity to file a written statement may ultimately result in a decree being passed without the Court ever examining the defence on merits.

141. The prejudice assumes far greater dimensions in ordinary civil litigation concerning immovable properties. A substantial number of civil suits instituted before Trial Courts in this State relate to agricultural lands, partition, declaration of title, possession, easementary rights, village houses and vacant sites situated within the jurisdiction of Gram Panchayats. In such cases, the defence invariably depends upon numerous public documents maintained by different revenue authorities,



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including RTC extracts, mutation entries, Tippani records, survey sketches, phodi proceedings, grant registers and village maps. Procurement of these records often requires approaching several public offices and is dependent upon administrative processes beyond the immediate control of the litigant.

142. Judicial notice can legitimately be taken of the practical realities prevailing in rural Karnataka. Despite considerable digitisation of land records, a large volume of historical revenue records continues to remain in physical custody of revenue authorities. Survey records, old grant files, Tippani extracts and village maps are not always readily accessible. Litigants are frequently required to make repeated visits to Taluk Offices, Survey Departments and Village Accountant offices to obtain certified copies. Administrative delays in securing such documents are neither uncommon nor attributable to the negligence of litigants.



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143. The impugned amendment, if interpreted literally, makes no distinction between a litigant who deliberately protracts adopting dilatory methods and another who, despite exercising due diligence, is unable to secure indispensable public records within one hundred and twenty days. Both stand visited with the same drastic consequence of forfeiture. Such an indiscriminate consequence is manifestly disproportionate to the object sought to be achieved.

144. The amendment also produces anomalous situations. There may be cases where proceedings remain stayed by a superior Court, where applications under Section 10 of the Code are pending, where substitution of legal representatives intervenes, where records are summoned from another Court, or where a defendant is prevented from filing the written statement by circumstances such as prolonged illness, natural calamity or reasons beyond his control. A literal application of the proviso would compel the Trial Court to ignore all such



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circumstances and mechanically reject the written statement. Such an interpretation would reduce the judicial process to a ritual divorced from the demands of justice.

145. Equally significant are the practical consequences flowing from a literal construction of the impugned proviso. Such an interpretation would operate indiscriminately against every defendant irrespective of the cause for delay. It would visit with identical consequences a litigant who deliberately delays the proceedings and another who, despite exercising utmost diligence, is prevented from filing the written statement by circumstances wholly beyond his control. Cases of prolonged illness, hospitalisation, legal disability, death of a party, delayed substitution of legal representatives, natural calamities, military service, judicial custody, inability to secure indispensable public records or other compelling circumstances would all stand visited with the same irreversible consequence of forfeiture. In ordinary



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civil litigation, particularly disputes relating to agricultural lands, ancestral properties, village houses, Gram Panchayat sites and other immovable properties where procurement of revenue and survey records often depends upon administrative authorities, such an interpretation would inevitably result in shutting out genuine defences and compelling Courts to determine valuable civil rights without considering the defence on merits. Procedure, intended to facilitate justice, would thereby become the instrument of injustice.

146. Another significant consequence is that the amendment substantially impairs the harmonious operation of Order VIII Rule 10. While Rule 10 continues to empower the Court to pronounce judgment or to make such order in relation to the suit as it thinks fit, the impugned proviso, if construed literally, would leave the Court with no meaningful discretion once one hundred and twenty days expire. Such an interpretation renders the discretionary language employed in Rule 10 largely otiose



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and disturbs the harmonious scheme of Order VIII recognised by the Hon'ble Supreme Court in ***Salem Advocate Bar Association***(*supra*).

147. The Court cannot also overlook the broader constitutional implications. Access to justice is a facet of Article 14 of the Constitution. Fair procedure is not confined to criminal jurisprudence alone; it equally permeates civil adjudication. A procedure which invariably forecloses the defence irrespective of the circumstances of the case may, in exceptional situations, defeat rather than advance the cause of justice. Procedural efficiency, however desirable, cannot eclipse the fundamental requirement that every litigant must receive a fair opportunity of presenting his case.

148. The legislative object of securing speedy disposal can be effectively achieved without altogether extinguishing judicial discretion. The two objectives are not mutually exclusive. Trial Courts can insist upon strict compliance with the prescribed timeline, discourage



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dilatory tactics, impose realistic costs, insist upon satisfactory explanations and confine extension beyond one hundred and twenty days to the rarest and most exceptional cases. Such an interpretation preserves the legislative intent while simultaneously ensuring that procedure remains an aid to justice rather than an instrument of injustice. Accordingly, Point No.(vi) is answered in the '***affirmative***'.

Finding on Point No.(vii):

(vii) Whether Section 158A of the Amendment Act is consistent with the scheme of Sections 122 to 127 of the Code relating to the rule-making power of the High Courts?

149. Considerable arguments were advanced regarding newly inserted Section 158A. Before parting with the matter, it is necessary to briefly advert to the challenge to newly inserted Section 158A. In the considered opinion of this Court, Section 158A cannot be



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construed as conferring overriding supremacy upon the Amendment Act so as to eclipse the statutory rule-making powers of the High Court preserved under Sections 122 to 127 of the Code, nor can it be interpreted as curtailing the constitutional jurisdiction of this Court under Articles 225 and 227 of the Constitution or as authorising departure from the law declared by the Hon'ble Supreme Court under Article 141. The provision is therefore liable to be harmoniously construed with the scheme of the Code and, to that extent, stands read down. Any apparent conflict between the State amendment and the High Court Rules shall be resolved by applying the doctrine of harmonious construction and not by implying repeal or abrogation of the statutory rule-making powers of the High Court.

150. Since this Court has adopted a harmonious construction preserving the constitutional validity of the amendment, it becomes unnecessary to pronounce upon the larger constitutional validity of Section 158A. Suffice it to observe that Section 158A cannot be construed so as to



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dilute either Sections 122 to 127 of the Code; the constitutional powers of the High Court, or the binding law declared under Article 141. The provision shall necessarily operate subject to those constitutional limitations. Accordingly, Point No.(vii) is answered in the '**negative**'.

Finding on Point No.(viii):

(viii) Whether the amendment deserves to be read down?

151. While the legislative endeavour to secure expeditious disposal of civil proceedings undoubtedly deserves judicial deference, the phenomenon of mounting arrears in the justice delivery system cannot be viewed through the narrow prism of procedural timelines alone. Judicial delay is a systemic challenge arising from a confluence of institutional, infrastructural and administrative deficiencies which extend far beyond the conduct of individual litigants. The prescription of rigid procedural timelines, though capable of fostering discipline



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in litigation, cannot by itself achieve the constitutional promise of timely justice unless accompanied by corresponding strengthening of the justice delivery infrastructure.

152. It is a matter of judicial notice that in several districts across the State, a significant number of Courts remain vacant for considerable periods owing to delays in the recruitment process and in filling vacancies occasioned by retirement, resignation, promotion or elevation. The burden cast upon the serving judicial officers is consequently multiplied, compelling many of them to hold concurrent charge of more than one Court or to function as itinerant judicial officers by periodically sitting in neighbouring stations to discharge judicial work. Such an arrangement, though necessitated by administrative exigencies, inevitably reduces the effective number of working days available for each Court and correspondingly affects the pace of adjudication.



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153. The problem is further aggravated by inadequate judicial infrastructure. In several court complexes, the availability of court halls, chambers, record rooms, digital infrastructure and supporting ministerial staff remains far below the requirements of an expanding docket. Equally significant is the inadequacy of residential accommodation for judicial officers. The absence of independent judicial quarters at many stations not only affects the willingness of officers to serve in difficult postings but also has a bearing upon the efficient discharge of judicial functions. These institutional constraints are neither illusory nor incidental; they have a direct and measurable impact upon case disposal.

154. The causes contributing to docket explosion are, therefore, multifaceted. The ever-increasing volume of litigation arising from expanding commercial activity, urbanisation and socio-economic transformation; repeated adjournments sought by parties; delays in service of summons and execution of warrants; transfer of judicial



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officers; inadequate supporting staff; delay in securing expert reports and official records from Government departments; prolonged vacancies in the judicial service; and the limited availability of court infrastructure collectively contribute to the accumulation of arrears. Pendency is thus not the product of any single procedural deficiency but the cumulative consequence of several structural impediments operating simultaneously within the justice delivery system.

155. It must also be borne in mind that Article 21 of the Constitution guarantees not merely speedy justice but fair justice. Expedition cannot be pursued by sacrificing procedural fairness, just as procedural fairness cannot become a pretext for interminable delay. The constitutional objective is to secure both. That balance can be meaningfully achieved only when procedural reforms enacted by the Legislature are complemented by sustained institutional investment in the justice delivery system through timely recruitment to the judicial service, prompt



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filling of consequential vacancies, augmentation of court infrastructure, creation of adequate judicial and ministerial posts, provision of modern technological facilities, strengthening of support services and adequate budgetary allocation in consultation with the High Court. Procedural discipline and institutional capacity are complementary, not competing, components of an effective administration of justice. Unless both progress in tandem, the constitutional aspiration of reducing arrears and securing timely adjudication will remain only partially fulfilled.

156. The Court would therefore fail in its constitutional duty if it ignores these realities while interpreting a procedural statute. Fair opportunity of defence remains an indispensable component of civil adjudication.

157. For all the aforesaid reasons, this Court is of the considered opinion that the third proviso to Order V Rule 1 and proviso to Rule 1 and 10 of Order VIII of the Code of Civil Procedure, as inserted by Section 4 of the



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Amendment Act, cannot be construed as imposing an absolute and inflexible embargo upon the Civil Court from receiving a written statement beyond the outer limit of one hundred and twenty days. Such a literal construction would not only render the proviso susceptible to the vice of arbitrariness under Article 14 but would also bring it into direct conflict with Order VIII Rule 10, Section 151, Sections 122 to 127 of the Code, and the binding principles declared by the Hon'ble Supreme Court in ***Salem Advocate Bar Association***(supra), ***Kailash***(supra), ***R.N. Jadi***(supra), ***Desh Raj***(supra) and the subsequent line of authorities. To preserve the constitutional validity of the enactment, uphold the legislative objective of expeditious disposal, maintain the integrity of the procedural scheme of the Code and prevent grave miscarriage of justice in exceptionally rare cases, the third proviso to Order V Rule 1 necessarily warrants the application of the Doctrine of Reading Down. Accordingly, the expressions "*the defendant shall forfeit*



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the right to file the written statement” and “the Court shall not allow the written statement to be taken on record” shall be construed as directory only to the limited extent indicated in this judgment, preserving a narrowly circumscribed judicial discretion exercisable only in exceptional and compelling circumstances, strictly in accordance with the principles formulated herein.

158. This Court answers point No.(viii) in the '**Affirmative**'. Reading down becomes necessary for more than one reason. Firstly, it preserves legislative intent. Secondly, it avoids constitutional invalidation. Thirdly, it maintains consistency with Article 141. Fourthly, it harmonises Rules 1 and 10 Order VIII of Code of Civil Procedure. Lastly, it secures procedural fairness.

159. Consequently, this Court holds that the expression “the defendant shall forfeit the right” and “the Court shall not allow the written statement to be taken on record” cannot be understood as creating an inflexible and absolute prohibition applicable irrespective of facts and



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circumstances. The said expressions shall instead be construed to mean that ordinarily the Trial Court shall not receive the written statement after expiry of one hundred and twenty days. Departure from the rule shall remain an exception.

XX. Parameters Governing Exercise of Judicial Discretion

160. Having read down the provision, it becomes necessary to indicate the parameters governing exercise of discretion. Extension beyond one hundred and twenty days shall never be granted routinely. Mere negligence, inadvertence, oversight or administrative convenience shall not constitute sufficient cause. The defendant must establish circumstances which are genuinely exceptional and beyond his control. Illustratively prolonged illness; natural calamities; delay in obtaining indispensable public documents; circumstances rendering appearance impossible despite due diligence; or other causes of



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comparable gravity. The burden shall lie entirely upon the defendant. The Trial Court shall record detailed reasons.

161. Appropriate and realistic costs shall ordinarily be imposed. Repeated adjournments shall not be granted. The discretion shall be exercised only where refusal would result in grave failure of justice. The Trial Court must also consider whether the defendant has acted bona fide and with due diligence throughout the proceedings. Thus, while the legislative mandate prescribing one hundred and twenty days shall ordinarily govern all civil suits, the constitutional obligation of Courts to prevent miscarriage of justice remains preserved in exceptionally rare cases. Such interpretation, in the considered opinion of this Court, simultaneously advances the object of speedy disposal and the constitutional guarantee of fair adjudication. The doctrine of reading down thus enables this Court to preserve the validity of the Amendment Act while ensuring that the salutary principles declared by the Hon'ble Supreme Court in ***Kailash(supra)***, ***Salem***



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Advocate Bar Association(*supra*), ***R.N. Jadi, Desh Raj***(*supra*), ***Shoraj Singh***(*supra*) and ***Bharat Kalra***(*supra*) continue to guide the exercise of judicial discretion in the rarest of deserving cases. The operative directions shall accordingly follow.

XXI. Directions to the Trial Courts

162. In order to ensure uniform implementation throughout the State, the following directions are issued:

(i) Every Trial Court shall endeavour to ensure strict adherence to the legislative timeline prescribed under amended third proviso to Order V Rule 1 and third proviso to Rule 1 of Order VIII.

(ii) Applications seeking acceptance of written statements beyond one hundred and twenty days shall be entertained only in exceptional circumstances.

(iii) The Trial Court shall record detailed reasons demonstrating why the case falls within the exceptional category.



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(iv) The Trial Court shall consider whether the defendant has acted bona fide, diligently and without intention to protract the proceedings.

(v) Realistic and deterrent costs shall ordinarily accompany every order extending time.

(vi) The discretion recognised by this judgment shall not be exercised mechanically or routinely so as to dilute the legislative object underlying the Amendment Act.

(vii) The Trial Court shall remain conscious that the power preserved by this judgment is an equitable jurisdiction intended only to prevent grave injustice and not to encourage procedural indiscipline.

XXII. Concluding Reflections:

163. For the reasons recorded hereinabove, this Court is of the considered opinion that the challenge mounted by the petitioners cannot be accepted in its entirety. The Karnataka Legislature undoubtedly possesses legislative competence under Entry 13 of List III of the Seventh Schedule to amend the Code of Civil Procedure in



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its application to the State. Equally, the legislative objective of ensuring expeditious disposal of civil disputes by prescribing a definite time frame for filing the written statement is constitutionally legitimate and advances an important public purpose. Courts cannot lose sight of the pressing need to introduce procedural discipline in civil litigation. The prescription of an outer limit of one hundred and twenty days, by itself, therefore, does not suffer from any constitutional infirmity.

164. The constitutional difficulty, however, arises from the latter part of the impugned proviso's, which declares that upon expiry of one hundred and twenty days, the defendant shall forfeit the right to file the written statement and that the Court shall not permit the written statement to be taken on record. If these expressions are construed literally and in absolute terms, they would have the effect of completely extinguishing the limited judicial discretion which the Hon'ble Supreme Court has consistently recognised in ***Kailash v. Nanhku***(supra),



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Salem Advocate Bar Association, Tamil Nadu v. Union of India(supra), ***R.N. Jadi & Brothers***(supra), ***Desh Raj***(supra), ***Shoraj Singh***(supra) and ***Bharat Kalra***(supra). The true ratio of these decisions is not confined to the numerical prescription of ninety days under the unamended provision; rather, it lies in the principle that procedural prescriptions governing filing of written statements must be harmoniously construed with Order VIII Rule 10 so as to preserve judicial discretion in exceptional cases where refusal to exercise such discretion would result in manifest injustice.

165. This Court also finds considerable merit in the submission of the petitioners that the Legislature has amended only one limb of the statutory framework by incorporating in a proviso while consciously leaving untouched Order VIII Rule 10, Section 151 of the Code. Order VIII Rule 10 continues to authorise the Civil Court to “*make such order in relation to the suit as it thinks fit*”. Section 151 continues to preserve the inherent powers of



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the Civil Court to secure the ends of justice, while Sections 122 to 127 continues to preserve the statutory rule-making powers of the High Court. These provisions constitute an integral part of the Code and cannot be rendered redundant by implication. The partial nature of the amendment itself furnishes a compelling reason for adopting the doctrine of harmonious construction. Any interpretation that renders these provisions otiose would offend settled principles of statutory interpretation and create an avoidable inconsistency within the Code itself.

166. The evolution of Order VIII Rules 1 and 10 vividly demonstrates this constitutional balance. The Central Amendment Act, 2002 introduced an outer time limit coupled with language suggestive of forfeiture of the defendant's right to file a written statement. While upholding the legislative intent of ensuring procedural discipline, the Hon'ble Supreme Court in ***Salem Advocate Bar Association*** (supra) harmoniously construed Rules 1 and 10 and held that the prescription of time could not be



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interpreted as completely extinguishing the Court's jurisdiction under Rule 10 to receive a written statement in exceptional cases. That principle has remained the governing law for more than two decades and has been consistently reaffirmed in a long line of authoritative pronouncements. The Amendment Act, by introducing the third proviso to Order V Rule 1 and the first proviso to Order VIII Rule 10 without correspondingly amending the substantive part of Rule 10, substantially revisits the very question which stood answered by the Hon'ble Supreme Court. Such provisions cannot, therefore, be interpreted so as to nullify the statutory discretion preserved under Rule 10 or efface the law declared by the Hon'ble Supreme Court. The constitutional duty of this Court is to preserve legislative intent while simultaneously maintaining strict adherence to the binding precedents of the Hon'ble Apex Court.

167. The present batch of petitions has afforded this Court an opportunity to revisit the evolution of the law



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governing the filing of written statements under the Code of Civil Procedure. The Central Amendment Act, 2002 introduced a stringent timeline under Order VIII Rule 1 accompanied by language suggestive of forfeiture of the defendant's right to file the written statement. However, the Hon'ble Supreme Court, in the landmark decision in ***Salem Advocate Bar Association*** (supra), while giving due weight to the legislative objective of expeditious disposal of civil suits, harmoniously construed Order VIII Rules 1 and 10 and authoritatively held that although procedural timelines are to be strictly adhered to, the discretion preserved under Rule 10 survives to be exercised in exceptional and deserving cases. That exposition of law has, for more than two decades, consistently guided the administration of civil justice and has been reiterated in ***Kailash*** (supra), ***R.N. Jodi & Brothers*** (supra), ***Atcom Technologies*** (supra), ***Desh Raj*** (supra) **and** ***Bharat Kalra*** (supra). The Amendment Act, by incorporating the third proviso to Order V Rule 1



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and the first proviso to Order VIII Rule 10, substantially revisits the very consequence which stood authoritatively interpreted by the Hon'ble Supreme Court. Yet, the Legislature has consciously refrained from amending the substantive part of Rule 10, which continues to empower the Court to "*make such order in relation to the suit as it thinks fit.*" The newly inserted proviso, if construed as an absolute prohibition, would not merely render the substantive provision otiose but would also virtually neutralise the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution. It is precisely to avoid such a consequence that this Court has invoked the doctrine of harmonious construction and the principle of reading down, thereby preserving the legislative intent of ensuring procedural discipline while simultaneously maintaining the limited judicial discretion recognised by the Hon'ble Supreme Court as indispensable to prevent manifest injustice in exceptional cases. Such an interpretation alone preserves the constitutional validity of



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the Amendment Act, maintains the internal coherence of the Code, upholds the binding precedents of the Hon'ble Supreme Court, and ultimately serves the larger interests of litigants as well as the institution of justice.

168. Equally significant are the practical consequences flowing from a literal construction of the impugned proviso. Such an interpretation would operate indiscriminately against every defendant irrespective of the cause for delay. It would visit with identical consequences a litigant who deliberately delays the proceedings and another who, despite exercising utmost diligence, is prevented from filing the written statement by circumstances wholly beyond his control. Cases of prolonged illness, hospitalisation, legal disability, death of a party, delayed substitution of legal representatives, natural calamities, military service, judicial custody, inability to secure indispensable public records or other compelling circumstances would all stand visited with the same irreversible consequence of forfeiture. In ordinary



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civil litigation, particularly disputes relating to agricultural lands, ancestral properties, village houses, Gram Panchayat sites and other immovable properties where procurement of revenue and survey records often depends upon administrative authorities, such an interpretation would inevitably result in shutting out genuine defences and compelling Courts to determine valuable civil rights without considering the defence on merits. Procedure, intended to facilitate justice, would thereby become the instrument of injustice.

169. Yet another significant anomaly that appears to have escaped the attention of the Legislature while introducing the third proviso to Order V and proviso to Rule 10 of Order VIII by the Amendment Act is its failure to account for the statutory mandate contained in Section 89 of the Code. Section 89 obligates the civil court to make every endeavour to facilitate an amicable settlement of all civil disputes, particularly in suits involving family members, where preservation of familial relationships



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assumes greater significance than expeditious adjudication. In such proceedings, delay in filing the written statement may legitimately arise on account of bona fide settlement negotiations undertaken either at the instance of the parties or under the guidance of the Court. If the amended proviso is construed as prescribing an absolute and inflexible embargo against receiving a written statement beyond the stipulated period, irrespective of ongoing settlement efforts, it would not only frustrate the very object of Section 89 but also deprive the civil court of its inherent discretion to extend time in exceptional cases where such extension would advance the cause of justice and facilitate reconciliation. The amendment, therefore, overlooks a distinct class of civil litigation in which procedural flexibility is indispensable for effectuating the legislative policy of promoting consensual resolution of disputes. This omission constitutes yet another compelling reason for holding that the amended proviso cannot be interpreted as completely denuding the Court of its



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inherent jurisdiction to extend the time for filing the written statement in deserving cases where the ends of justice so demand.

170. An equally significant aspect that merits emphasize concerns the application of the amended provisions to suits of partition. The procedural rigour introduced by the Amendment Act cannot be applied in a manner that defeats substantive rights, particularly in suits for partition where rights flow by birth under the substituted Section 6 of the Hindu Succession Act, 1956. A daughter, whether married or unmarried, or a sister who is impleaded as a defendant in a partition suit instituted by a male coparcener, cannot be denied an opportunity to place her claim on record solely on the ground that the written statement is tendered beyond the prescribed period of one hundred and twenty days. It is well settled that where only the plaintiff seeks the relief of partition and none of the defendants have sought such relief by filing a written statement coupled with payment of the



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requisite court fee, the suit, in the strict sense, is confined to the plaintiff's claim for separation of his share. The pre-existing coparcenary rights of the other coparceners, including daughters, do not stand extinguished merely because they have not filed a written statement within the stipulated period. The right to seek partition is a continuing and recurring cause of action and, in law, such a defendant is not precluded from instituting an independent suit seeking partition of the remaining joint family properties. If the Court were to mechanically reject the written statement by applying the statutory timeline without retaining any measure of judicial discretion, it would inevitably drive such a coparcener to institute a fresh suit, resulting in multiplicity of proceedings, inconsistent decrees and avoidable burden on the justice delivery system. Such a consequence would neither advance the object of expeditious adjudication nor serve the ends of justice. It is, therefore, imperative that the limited judicial discretion preserved by this judgment be



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exercised in appropriate partition suits to receive a written statement beyond the prescribed period where refusal to do so would compel a coparcener, particularly an illiterate, uninformed or otherwise disadvantaged daughter or sister possessing a substantive right by birth, to embark upon another round of litigation for enforcement of the very same right.

171. Yet another aspect which merits serious consideration is the interplay between the newly inserted third proviso to Order V and the scheme of Order VIII Rule 10 of the Code. The amendment proceeds on the assumption that every defendant is capable of filing a written statement within the prescribed period. Such an assumption, however, overlooks a distinct class of litigants, namely minors and persons of unsound mind, whose interests are protected under the Code through the appointment of a guardian or next friend. In suits instituted against a minor or a person of unsound mind, the written statement cannot be filed unless a guardian ad



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litem is appointed by the Court and such guardian accepts the appointment. The process of appointment, issuance of notice to the proposed guardian, acceptance of guardianship, and obtaining necessary instructions inevitably consumes time, which is often beyond the control of the defendant. To illustrate, where a partition suit is instituted against a minor coparcener, or a suit for declaration is filed against a person suffering from mental incapacity, the Court is under a statutory obligation to first ensure due representation of such defendant before requiring the filing of a written statement. If, during the interregnum, the rigid outer limit prescribed by the third proviso is allowed to operate mechanically, the valuable rights of such vulnerable litigants may stand extinguished without any fault attributable to them. Such a consequence would be contrary not only to the protective scheme embodied in Order XXXII of the Code but also to the principles of natural justice. The Legislature, while introducing the third proviso, has failed to carve out an



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exception for these special categories of litigants, thereby overlooking situations where procedural timelines must necessarily yield to the paramount requirement of ensuring effective and meaningful representation. This omission furnishes an additional reason for holding that the third proviso cannot be construed as an absolute bar excluding the Court's inherent jurisdiction to extend the time for filing the written statement in exceptional and deserving cases.

172. Constitutional adjudication does not compel this Court to invalidate every statutory provision merely because one possible interpretation may render it unconstitutional. Where a provision is reasonably capable of an interpretation consistent with constitutional principles, the Court is under a duty to adopt such construction. The Doctrine Of Reading Down is founded upon this salutary principle and maxim '*Ut Res Magis Valeat Quam Pereat*'. In the considered opinion of this Court, the impugned amendment is capable of being



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harmoniously construed with the scheme of Order VIII Rule 10, Section 151, Sections 122 to 127 of the Code and the binding law declared by the Hon'ble Supreme Court under Article 141 of the Constitution. Such an interpretation preserves the legislative object of securing expeditious disposal of civil disputes while simultaneously safeguarding the constitutional guarantee of fair procedure and effective access to justice.

173. Consequently, this Court holds that the third proviso to Order V Rule 1 and proviso to Rule 10 of Order VIII shall be understood as prescribing the ordinary rule that every defendant shall file the written statement within one hundred and twenty days from the date of service of summons. However, the expressions "*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" cannot be construed as imposing an absolute and inflexible prohibition. In exceptionally rare and deserving cases, where the defendant establishes circumstances



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beyond his control despite exercising due diligence, and where refusal to receive the written statement would result in grave miscarriage of justice, the Civil Court shall continue to possess a narrow and exceptional discretion to receive the written statement, for reasons to be recorded in writing and upon such terms, including realistic costs, as the Court may deem fit. Such discretion shall not be exercised routinely or mechanically, but only to prevent manifest injustice and to advance the ends of justice.

174. Insofar as Section 158A Amendment Act, is concerned, this Court holds that the said provision cannot be interpreted as conferring overriding supremacy upon the State amendment so as to eclipse the statutory rule-making powers of the High Court preserved under Sections 122 to 127 of the Code, nor can it be construed as curtailing the constitutional jurisdiction of this Court under Articles 225 and 227 of the Constitution or authorising departure from the binding law declared by the Hon'ble Supreme Court under Article 141. Section 158A shall



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accordingly be read down and harmoniously construed as operating subject to the statutory scheme of the Code, the constitutional powers of the High Court and the binding precedents of the Hon'ble Supreme Court.

175. Reading down is imperative to preserve the constitutional validity of the impugned amendment while simultaneously advancing the legislative object of expeditious disposal of civil disputes. Such an interpretation harmonises the third proviso to Rule 1 Order V, third proviso to Rule 1 of Order VIII with Rule 10 of Order VIII, Section 151 and the statutory framework contained in Sections 122 to 127 of the Code, maintains fidelity to the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution and preserves the Court's limited jurisdiction to prevent manifest injustice in exceptional cases.

176. To ensure uniform implementation of the Amendment Act throughout the State, it is clarified that the statutory period of one hundred and twenty days shall



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ordinarily be adhered to in every suit. Any departure therefrom shall be permissible only in exceptional and extraordinary circumstances beyond the control of the defendant, upon proof of due diligence, for reasons to be recorded in writing and ordinarily on payment of realistic costs. Mere negligence, inaction, oversight or routine administrative delay shall not constitute sufficient cause. The discretion preserved by this judgment is intended solely to prevent manifest injustice and shall be exercised sparingly, cautiously and only in the rarest of deserving cases, without diluting the legislative mandate of expeditious disposal.

177. It is only by adopting the aforesaid construction that the legislative object of expeditious disposal of civil disputes, the institutional independence of the judiciary, the harmonious operation of the Code of Civil Procedure and the constitutional guarantee of fair procedure can simultaneously be preserved.



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178. This Court deems it appropriate to observe that procedural reform, however well-intentioned, cannot by itself eradicate the problem of mounting judicial arrears. The prescription of stringent timelines undoubtedly promotes discipline in litigation, but expedition in the administration of justice is as much a function of institutional capacity as of procedural efficiency. Persistent vacancies in the judicial service, inadequate court infrastructure, shortage of ministerial staff, delays in establishment of new Courts commensurate with the increasing docket, and the necessity of judicial officers holding concurrent charge of multiple Courts or functioning as itinerant Courts are among the systemic factors that substantially contribute to pendency. The constitutional promise of speedy justice under Article 21 can be meaningfully realised only when procedural reforms are matched by corresponding augmentation of judicial infrastructure and timely strengthening of the justice delivery system. It is, therefore, imperative that the State



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Government, in close coordination and consultation with the High Court on its administrative side, periodically assess the existing judicial infrastructure, ensure expeditious recruitment to anticipated vacancies, create adequate court halls and residential accommodation for judicial officers, and provide the necessary logistical and technological support so that the laudable legislative objective of expeditious disposal is translated into a practical reality. Only then can the constitutional vision of accessible, fair and timely justice be fully achieved.

179. Before parting, this Court considers it appropriate to observe that procedural reform is indispensable for restoring public confidence in the civil justice system. The Legislature and the Judiciary are not constitutional adversaries in that endeavour. They are constitutional partners pursuing the same objective through different institutional means. While the Legislature prescribes procedural discipline, it remains the constitutional duty of the Courts to ensure that such



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discipline does not, in exceptional situations, become an instrument for denial of justice.

180. As Justice V.R. Krishna Iyer so felicitously observed, procedural law is "***not a tyrant but a servant; not an obstruction but an aid to justice.***" That philosophy continues to animate the Code of Civil Procedure even after the Karnataka Amendment.

181. The Code of Civil Procedure is ultimately a procedural charter for adjudication. It is not intended to confer victory by default, but to facilitate adjudication according to law. The constitutional promise is not merely of speedy justice, but of speedy and fair justice. Both objectives must coexist. One cannot eclipse the other.

182. Before parting with the matter, this Court also considers it necessary to clarify the temporal operation of the Amendment Act. The question as to whether the amendment applies to suits instituted prior to its commencement is no longer *res integra*. A Coordinate Bench of this Court in ***Smt. T. Gayathri and Another v.***



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Smt. Prabhajit Dhariwal (W.P. No.8090 of 2026, decided on 17.03.2026) has authoritatively held that the amendment is prospective in operation and is applicable only to suits instituted on or after the date on which the Amendment Act came into force. This Court is in respectful agreement with the said view. Consequently, the interpretation placed in the present judgment on the amended provisions shall govern only those proceedings to which the Amendment Act is otherwise applicable and shall have no application to suits instituted prior to the commencement of the said Amendment Act, which shall continue to be governed by the unamended provisions of the Code of Civil Procedure.

XXIII. Order

183. In view of the foregoing discussion, this Court proceeds to pass the following:



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ORDER

(i) The writ petitions are ***allowed in part.***

(ii) The third proviso inserted to Order V Rule 1, third proviso inserted to Rule 1 of Order VIII and proviso to Rule 10 of Order VIII of the Code of Civil Procedure by Section 4 of the Karnataka Amendment Act, 2024 is read down in the manner indicated in paragraphs 131, 132, 157 and 158 of this judgment.

(iii) Therefore the constitutional challenge to Section 4 of the Code of Civil Procedure (Karnataka Amendment) Act, 2024 is not accepted.

(iv) The expressions "*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*" shall not be construed as completely excluding the judicial discretion of the Civil Court in exceptionally rare cases where refusal would result in grave miscarriage of justice.



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(v) It is declared that Section 158-A of the Code of Civil Procedure (Karnataka Amendment) Act, 2024 shall be construed harmoniously with the scheme of the Code of Civil Procedure and shall not be interpreted as overriding or abrogating the statutory rule-making powers of the High Court preserved under Sections 122 to 127 of the Code, the constitutional jurisdiction of this Court under Articles 225 and 227 of the Constitution, or the binding law declared by the Hon'ble Supreme Court under Article 141. To the aforesaid extent, Section 158-A stands read down.

(vi) The jurisdiction preserved by this judgment to receive a written statement beyond the prescribed period shall be exercised by all Civil Courts in the State only in strict adherence to the principles, limitations and illustrative guidelines contained in paragraph 162 of this judgment, and only upon recording reasons demonstrating the existence of exceptional and compelling circumstances.

(vii) It is further declared that the provisions introduced by Section 4 of the Code



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of Civil Procedure (Karnataka Amendment) Act, 2024 shall operate prospectively and shall apply only to suits instituted on or after the date of commencement of the Amendment Act. Suits instituted prior thereto shall continue to be governed by the unamended provisions of the Code of Civil Procedure, in terms of the law declared by this Court in ***Smt. T.Gayathri and Another v. Smt. Prabhajit Dhariwal (W.P. No.8090 of 2026)***.

Before parting, this Court places on record its sincere appreciation for the valuable research assistance rendered by Ms. Varsha.V and Ms. Anuja Malai, Law Researchers attached to this Court.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

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