

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.5725 of 2010

ORDER:

This Revision Petition is filed challenging the docket order dt.03-12-2010 in I.A.No.542 of 2010 in O.S.No.2133 of 2008 of the V Additional Senior Civil Judge (FTC), Ranga Reddy District.

2. Petitioner herein is 2nd defendant in the suit. The 1st respondent/plaintiff filed the suit against the petitioner/2nd defendant and another for a perpetual injunction restraining them from interfering with the alleged peaceful possession and enjoyment of 1st respondent over the plaint schedule property.
3. Summons in the suit were served on the petitioner and he engaged a counsel who filed a vakalat on 05-11-2008 on his behalf and also on behalf of 1st defendant in the suit. Order VIII Rule 1 CPC mandates that the defendant shall within 30 days from the date of receipt of summons to him, present a written statement of his defence and if he does not do so, he may be allowed a further period not exceeding 90 days from the date of service of summons. In the present case, no written statement was filed by the petitioner up to 23-07-2009 when he was set *ex parte*. The 1st defendant had also been set *ex parte* on the same day.
4. Counsel appearing for both the defendants had filed an application under Order 9 Rule 7 CPC to set aside the Order passed only against 1st defendant/2nd respondent. The said application was allowed on condition that a written statement be

filed subject to payment of costs of Rs.500/- but 1st defendant/2nd respondent did not comply with the said condition and therefore the application was dismissed on 03-12-2010.

5. The petitioner herein on 02-08-2010 filed I.A.No.542 of 2010 under Order 9 Rule 7 CPC to set aside the Order dt.23-07-2009 against him and to permit to file written statement in the case. In the affidavit filed in support of this application, he merely stated that on account of oversight of his counsel, the order dt.23-07-2009 setting him *ex parte* was passed and that he had already filed a written statement.

6. This application was opposed by 1st respondent/plaintiff contending that ample opportunities had been given to the petitioner to file written statement; that he did not do so; and almost two years after when the petitioner had been set *ex parte*, he had come forward with this application blaming the advocate. Therefore, he prayed that the I.A. be dismissed.

7. By order dt.03-12-2010, the Court below dismissed I.A.No.542 of 2010 stating that the reasons given by the petitioner are not justifiable or genuine and the application is devoid of merits. It also referred to the order passed permitting 1st defendant to file written statement after setting aside the order against him and the failure of 1st defendant to avail of the said opportunity while pointing out that the counsel for 1st defendant as well as petitioner who is 2nd defendant are one and the same.

8. Challenging the same, this Revision Petition is filed.

9. Learned counsel for the petitioner contends that the

impunged order is unsustainable and that since substantial stakes are involved, even though there is some delay on the part of the petitioner in approaching the Court in filing the application to recall the order setting him *ex parte*, indulgence be shown to him. He also contended that Court below has relied upon what transpired on the application filed by 2nd respondent/1st defendant, that it is an irrelevant consideration while deciding the application filed by the petitioner herein to recall the order setting him *ex parte* on 23-07-2009.

10. Learned counsel for the respondent on the other hand supported the order passed by the Court below. He contended that having regard to the provisions of the Order VIII Rule 1 CPC, more than 90 days time for filing the written statement cannot be granted, that the petitioner, having engaged a counsel, was totally negligent in taking steps to file written statement for almost two years after vakalat was filed and therefore no indulgence should be shown to him.

11. Admittedly the summons in the suit were issued to the petitioner and a learned counsel filed vakalat on his behalf on 05-11-2008. The written statement ought to have filed by defendant in the suit within 30 days from the date of receipt of summons as per Order VIII Rule 1 CPC and if for any reason he cannot do so, further time may be granted, which shall not exceed 90 days. It is no doubt true that the object of the time limit is to expedite the hearing of the suit and that the provision regarding time has been held by the Supreme Court in **Salem Advocate Bar Association, Tamilnadu Vs. Union of India (UOI)** case to be not mandatory and as only directory. Yet the

Supreme Court emphasized that grant of extension of time for filing Written Statement cannot be done in a routine manner and time can be extended only in exceptionally hard cases. So a party defendant, having received summons and engaged a counsel, without valid reason, cannot avoid filing a written statement for a period exceeding 90 days by simply blaming his counsel for not noticing that he had been set *ex parte* in the suit.

12. In the present case, the petitioner had been set *ex parte* on 23-07-2009 and he had filed the application I.A.No.542 of 2010 on 02-08-2010 more than a year later. What prevented the petitioner during this period from not knowing the events in the suit has not been stated. This shows that the petitioner has been negligent in taking steps to get the order setting him *ex parte* set aside.

13. In view of the negligence shown by the petitioner, I am of the opinion that the Court below has rightly not shown indulgence to him by dismissing I.A.No.542 of 2010.

14. Therefore, I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.

15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-06-2015

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