

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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C.R.P.No.2727 of 2015

Between:

Mohammed Ameer Ali

.. Petitioner

and

Rekha Swami and 4 others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 17.7.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.2727 of 2015

ORDER:

This Civil Revision Petition is filed questioning the order, dated 28.10.2014, in I.A.No.883 of 2014 in O.S.No.406 of 2007 on the file of the Principal Junior Civil Judge, Nizamabad wherein the petition filed by defendant Nos.3 to 5 under Section 151 C.P.C. to set aside the *ex parte* order, dated 16.4.2014 and 24.7.2014, passed by the Principal Junior Civil Judge, Nizamabad against defendant Nos.3 to 5 was dismissed.

2. The present petitioner is defendant No.4 before the trial Court and he was impleaded as legal heir of the deceased defendant No.1. After appearance of the petitioner before the trial Court, instead of posting the matter for filing an additional written statement, the trial Court posted the matter for filing written statement. However, the petitioner did not file written statement or additional written statement before the trial Court within the time granted by the trial Court. Therefore, the trial Court passed an *ex parte* order against the petitioner on 16.4.2014. Thereupon, the petitioner filed I.A.No.883 of 2014 assigning a reason that defendant No.3 was suffering from ill-health, without disclosing the nature of ill-health. The trial Court by its order, dated 28.10.2014, dismissed the said petition on the sole ground that the petitioner did not make out a sufficient cause which prevented him from filing written statement or additional written statement before the trial Court. The order, dated 28.10.2014, passed by the learned Principal Junior Civil Judge in I.A.No.883 of 2014 is now under challenge.

3. In the grounds of appeal, it is contended by the learned counsel for the petitioner that the trial Court, instead of posting the matter for filing additional written statement, posted the matter for filing written statement; that since the petitioner did not file written statement within 90 days, the petitioner was set *ex parte* and therefore, the impugned

order is illegal and prayed to set aside the same.

4. Order VIII Rule 9 C.P.C. deals with filing of subsequent pleadings which includes rejoinder and additional written statement. It further says that the Court can fix a date for filing written statement or additional written statement by all the parties and fix a time of not more than thirty days for presenting the same. In the present case, the petitioner did not file the written statement or additional written statement even within 90 days, though the time fixed under Order VIII Rule 9 C.P.C. is thirty days, on the lame excuse that defendant No.3 was suffering from ill-health. However, the petitioner is only a legal representative of the deceased defendant No.1 and he is bound by the written statement filed by defendant No.1. In **Gajraj v. Sudha and others**,^[1] it is held at para No.5 as under:

“..... A legal representative substituted cannot set up a new or individual right. He cannot take up a new and inconsistent plea contrary to the one taken up by the deceased. The proposed LRs stand in the shoes of the deceased defendant and must accept their position adopted by their predecessor.”

5. In view of the principle laid down by the Apex Court, the petitioner, being the legal representative of deceased defendant No.1, need not file a written statement, but the trial Court granted time to file written statement instead of directing the petitioner to file additional written statement. Taking advantage of the mistake committed by the trial Court, the learned counsel for the petitioner demonstrated that the trial Court committed an error. If the matter is posted for filing additional written statement, the Court shall not grant time for more than 30 days, but here, the Court granted 90 days, as permitted under Order VIII Rule 10 C.P.C. Even then, the petitioner did not file either written statement or additional written statement.

6. At the end of the arguments, learned counsel for the petitioner

requested this Court to set aside the *ex parte* order passed against the petitioner by treating the written statement filed by defendant No.1 as the written statement of defendant No.4 in view of the principle laid down by the Apex Court referred supra.

7. Considering the request made by the learned counsel for the petitioner, the *ex parte* order passed by the trial Court against the petitioner is hereby set aside permitting him to adopt the written statement filed by defendant No.1. The petitioner need not file even a memo adopting the written statement in view of the law declared by the Apex Court and he is permitted to contest the suit without filing any written statement.

8. With the above direction, the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions pending, if any, in this Civil Revision Petition shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 17.7.2015
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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AMD

[\[1\]](#) (1999)3 SCC 109