

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

C.R.P.No.903 of 2015

ORDER:

Heard Sri M.Naga Raghu, learned counsel for the petitioner and Sri I.Venkata Prasad, learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.04-03-2015 in I.A.No.184 of 2015 in O.S.No.132 of 2014 of the III Additional District Judge (F.T.C.), Anantapur.
3. Petitioner herein is defendant in the above suit. The respondent-plaintiff filed the suit against the petitioner for recovery of money on the basis of a promissory note allegedly executed by the petitioner in his favour on 18-02-2012. Vakalat was filed on behalf of the petitioner on 24-11-2014 although notices sent to the petitioner were returned with endorsement 'not claimed'.
4. No Written Statement was filed by the petitioner within 30 days from the date she filed vakalat.
5. On 02-03-2015, petitioner filed I.A.No.184 of 2015 under Order VIII Rule 1 CPC along with an affidavit of her advocate seeking extension of time for filing Written Statement till June 2015.
6. In the affidavit filed in support of the said application, she stated that she had gone to Atlanta, United States of America. On 02-06-2014 to spend time with her daughter's family for six months, that her Visa expires in December 2014 and that she instructed her son Mr.Vamsi Krishna to file vakalat before the

Court. She stated that she handed over some signed vakalats to Vamsi Krishna before leaving India since her family matters were pending in Hyderabad Courts when she left India; and one such Vakalat was handed over by her son to her counsel Sri S.Mahaboob Basha to file vakalat and to seek time to file Written Statement. She stated that she expected that she would return in December 2014 to India and that in the meantime, the petitioner and her husband sought to extend their stay in U.S.A. for a further period of six months and filed papers before the concerned authorities in the U.S.A. She therefore contended that without obtaining proper instructions from the petitioner, as the counsel could not file Written Statement, further time be granted to file the Written Statement. It was further contended that in fact summons were not served on the petitioner and she was not in India and is expected to return in June 2015.

7. This application was opposed by the respondent.
8. By Order dt.04-03-2015, the Court below dismissed the said application. It held that the petitioner, having filed her vakalat on the first date of adjournment in the suit, could have arranged to file Written Statement, even if she is not in India by instructing her counsel by using the internet facility. It further held that from the documents filed by the petitioner, it was not clear for how many days the petitioner was permitted to stay in Atlanta, U.S.A.; even if she was away from Ananthapuram and also India at the time of filing of the suit, she had got filed her vakalat in the matter; endorsement on the postal covers indicates that on 06-11-2014 contents of the notice were shown to the people who were connected with the petitioner and then only they were returned to the Court; and therefore it was not a fit case to grant

extension of time to petitioner to file Written Statement.

9. Challenging the same, this Revision Petition is filed.
10. Learned counsel for the petitioner contends that grave injustice would be caused to the petitioner if the impugned order is not set aside and the petitioner is not given opportunity to file Written Statement by extending the time fixed under Order 8 Rule 1 CPC in filing of the Written Statement. He contended that the petitioner was unwell and had gone to U.S.A. for treatment where her daughter was residing and therefore indulgence be shown to the petitioner by setting aside the order passed by the Court below.
11. Learned counsel for the respondent on the other hand refuted the above contentions. He contended that the petitioner was aware of the filing of the suit since she had filed Vakalat on 24-11-2014 itself; in today's world, information can be sent by phone or by *e mail* or by post and there was absolutely no difficulty for the petitioner, whose son was admittedly residing in India, to get the Written Statement filed through the counsel engaged by her; there are no *bona fides* in the plea of the petitioner to grant her any extension of time to file the Written Statement; and therefore, the Revision Petition be dismissed.
12. From the facts narrated above, it is clear that the petitioner had engaged a counsel and filed vakalat on 25-11-2014 itself. The affidavit filed by the petitioner's counsel in the Court below indicates that it was the petitioner's son who gave the vakalat of the petitioner to him. Even if the petitioner and her husband were not in India and they were in U.S.A., the petitioner could have

similarly instructed her counsel through her son, got prepared a Written Statement and have it sent to her counsel by courier or post. Petitioner not only did not do so but in March 2015, filed the present application through her counsel requiring time till the end of June 2015 to file a Written Statement.

13. It looks as if she expects the Court to wait as long as she wants and then only proceed with the matter. Such conduct on the part of a party cannot be countenanced. It clearly shows that the petitioner has not acted in a *bona fide* manner.
14. Therefore, I am of the opinion that the Court below was correct in refusing to grant extension of time to petitioner for filing Written Statement beyond the period of 90 days.
15. Hence, the Civil Revision Petition is without merit and the same is accordingly dismissed. No costs.
16. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-06-2015

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