

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.3855 of 2014

ORDER :

This Revision is filed challenging the order dated 17-10-2014 in I.A.No.704 of 2014 in O.S.No.96 of 2008 on the file of Principal Junior Civil Judge, Amalapuram.

The petitioner herein is the defendant in the suit. The respondents filed the suit against the petitioner for permanent injunction restraining the petitioner from interfering with their peaceful possession and enjoyment of the plaint schedule property and to restrain the petitioner from constructing the compound wall on the western boundary of the plaint schedule property shown as A and B schedule property.

Written statement was filed by the petitioner on 23-06-2008 referring to certain sale transactions under document Nos.692 and 693 of 2006, dated 14-03-1986.

The plaintiffs' side evidence is closed. The petitioner/defendant has to commence her evidence.

At that stage, six years after suit was filed I.A.No.704 of 2014 was filed by the petitioner under Order 8 Rule-1-A (3) read with Section 151 of C.P.C. to receive certified copies of the sale deeds referred to above, xerox copies of said sale deeds, certain tax notices received and decree and judgment in the suit O.S.No.22 of 2004 on the file of Principal Junior Civil Judge, Amalapuram.

In the affidavit filed in support of this application, it is stated by the petitioner that she is fiercely contesting the suit and she is advised to file I.A.No.704 of 2014 to submit certified copies of the sale deeds and link documents and their xerox copies to enable the Court to have benefit of their contents. She also stated that she is enclosing bunch of tax receipts and demand notice, which are required to be marked as evidence. She claimed that she applied and obtained those documents subsequent to the filing of suit and there were no latches or negligence on her part.

The respondents filed counter opposing said application contending that the affidavit filed by the petitioner does not disclose any reason for not obtaining the documents earlier and producing them along with written statement atleast before the trial of the suit was taken-up. It was also contended that petitioner was in custody of the original sale deeds, but she did not say anything about the originals; the documents now sought to be produced are in the nature of secondary evidence; and certified copies/xerox copies of the sale deeds are inadmissible in evidence. It was also contended that the other documents also do not appear to be relevant and admissible.

By an order dated 17-10-2014, the Court below dismissed the said application. The Court below observed that the petitioner ought to have filed the documents which she intends to file now along with her written statement atleast

when evidence of respondents was going on and the explanation offered for not filing them earlier is not reasonable and plausible. It observed that this application is filed only to delay the proceedings, since the suit is identified suit of the year 2008 and has to be disposed of by the end of that month. It held that only in limited circumstances, Court can receive documents by condoning the delay and in case on hand, no reasonable or justifiable cause has been offered explaining delay in filing the petition. It therefore dismissed the application.

Questioning the same, this Revision is filed.

Counsel for the petitioner contended that substantial stakes of the petitioner to immovable properties are involved in the suit and although, there is some negligence on the part of counsel in filing documents along with written statement, still in the interest of justice by imposition of heavy costs, the order of the Court below be set aside and the Court below be directed to receive the documents sought to be filed by the petitioner. He contended Order VIII Rule-1A of C.P.C. is in the nature of procedural provision and since procedure is hand maid of justice, a party cannot be punished by being deprived of opportunity to lead evidence in support of his claim, merely because procedure comes in the way.

Counsel for the petitioner relied upon the decisions of

Sambhaji and others v. Gangabai and others^[1], ***Dugge***

Venkataiah and another v.Bellamkonda Meri Dhanamma^[2] and Kailash v.Nanthku and others^[3] in support of his contentions.

Counsel for the respondents, on the other hand, contended that order passed by the Court below is correct and does not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of Constitution of India. He contended that Order VIII Rule 1-A of C.P.C. does not permit a party to file documents whenever he feels; grant of leave under Sub-rule (3) of Order VIII Rule-1-A of C.P.C. is not for the mere asking and the Court is not a mere post-office to allow applications filed with inordinate delay. He also pointed out that the reason given in the affidavit filed in support of the application to receive documents is not correct, since even according to the petitioner, the petitioner had custody of the originals of the sale deeds at the time of filing of written statement, but the same had not been filed and no valid reason has been assigned for not filing them.

I have noted submissions of both sides.

Order VIII Rule-1-A of C.P.C. states as under:

“ (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2).....

(3) A document which ought to be produced in Court by the defendant under this rule, if not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

This provision has been considered by this Court in

Ravi Satish v. Edala Durga Prasad^[4]. This Court had held that the said provision permits document to be received only when leave is granted by the Court and grant of leave is not for the mere asking. It observed that Court is not a mere post-office to receive documents, even in the absence of any reasons furnished for failure to file the said documents along with the written statement. This decision has been followed in ***Voruganti Narayana Rao v. Bodla Rammurthy and others***^[5] by this Court. This Court explained the object of introducing this provision to curb the phenomenal delays in the procedural aspects leading to procrastination of the proceedings before the Civil Court. It held that Parliament has thought it to fit to stipulate a time limit for the parties to file their defence and produce the documents along with the defence, so that the cases can be disposed of without avoidable delays. It held that the Court, before which the defendants produced the documents after filing the written statement, needs to be circumspect in examining whether proper reasons are assigned by the defendant for not producing the documents along with the written statement, and that unless reasons assigned by the defendant disclose sufficient cause

for his failure to produce the documents within the time stipulated in Rule 1-A of Order VIII C.P.C., the Court shall not permit the defendant to file such documents later. It observed that undoubtedly, unduly liberal approach in this regard would frustrate the purpose for which the provisions of Code of Civil Procedure were amended.

The decisions cited by counsel for petitioner are decisions rendered by the Supreme Court and this Court considering the Order VIII Rule-1 C.P.C. and proviso thereto, which mandates that defendant, shall within (30) days from the date of receipt of summons on him, present a written statement of his defence. The said proviso states that “ ***if defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.***” It was observed that procedure is hand maid of justice and that the objective for prescribing procedure is to advance the cause of justice. It was held that in adversarial system, no party should ordinarily be denied the opportunity for participating in the process of justice dispensation and that unless delayed by express and specific language of the statute, the provisions of C.P.C. or any other procedural enactment ought not be construed in a manner, which should leave the Court helpless

to extraordinary situations in the ends of justice.

In ***Sambhaji and others*** (1 supra), on the facts of the said case, the Court set aside the orders of the trial Court and High Court refusing to permit the defendant to file written statement after expiry of period of (90) days. It observed that grounds relied by the appellants seeking acceptance of the written statement filed belatedly, cannot be considered to be trivial or without substance.

In ***Dugge Venkataiah and others*** cited (2 supra), there was delay in filing of written statement and an application filed to receive the written statement beyond time was rejected. The Court held that it would be too harsh to deprive the defendant right to file written statement and after imposing costs of Rs.5,000/-, the trial Court was directed to receive the written statement.

In ***Kailash*** (3 supra), the Supreme Court observed in relation to an order under Order VIII Rule-1 C.P.C. as under:

41. “ Considering the object and purpose behind enacting Rule 1 of Order VIII in the present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact the entire life and vigour of the provision. The delaying tactics adopted by the defendants in law courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because by delaying the trial of election petition, the successful candidates may

succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may lose the battle at the end. Therefore, the judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence.

42. Ordinarily, the time schedule prescribed by Order VIII, Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for asking more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order VIII, Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

43. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the Court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the Court that the prayer was founded on grounds which do exist.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing,

howsoever brief they may be, by the court. In no case, the defendant shall be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for asking and (ii) to compensate the plaintiff for the delay and inconvenience caused to him”.

From the above decisions, it is clear that although the principle that procedure is hand maid of justice and cannot be used to deprive a party of his right to contest the proceedings is recognized, in view of the delays which were occurring in trials in suits, the parliament fixed certain time limits within which the parties are expected to comply with the procedural requirements, such as filing of documents along with plaint, filing of documents along with written statement etc.,

While the power of the Court to permit a party to file documents, which were not filed along with plaint or written statement or to file written statement beyond prescribed period of (90) days in exceptional circumstances, is recognized, even the Supreme Court has emphasized that extension of time would be only by way of an exception, and it cannot be granted as matter of routine merely for asking. It has indicated that if circumstances are exceptional and occasioned by reasons beyond the control of the party and extension is required in the interest of justice and grave injustice would be occasioned, the time can be extended.

In the present case, sale deeds on the basis of which

the petitioner/defendant relied upon are mentioned in his written statement. Therefore, he must have had custody of documents at the time when he filed written statement. Yet the originals of the sale deeds are not produced even at this stage and it is stated in the affidavit filed in support of I.A.No.704 of 2014 that the petitioner had applied and obtained certified copy and xerox copies of the sale deeds and other documents subsequent to the filing of the suit.

The suit had been filed in the year 2008 and in 2014 six years later, this application has been filed. It appears that the petitioner is under the impression that as and when he wishes to file the documents, the Court should receive them for the mere asking. No circumstances are pointed out and no reasons beyond the control of defendant, are indicated as to why the Court has to extend the time for receiving the documents except pleading that since high stakes to property of the petitioner/defendant are involved, indulgence should be shown to the petitioner by granting leave to file the documents in question.

The petitioner is expected to be very careful in taking steps to defend his interest in the subject property, but the facts indicate that he has been negligent in doing so. The delay of six years in filing the subject documents cannot in the circumstances, be said to be reasonable. Since the petitioner has not been diligent, and since the petitioner has been negligent, I do not find any error of jurisdiction in the orders passed by Court below refusing to petitioner to file documents

along with I.A.No.704 of 2014.

The Civil Revision Petition is accordingly dismissed. No costs. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

01-09-2015

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- [\[1\]](#) (2008) 17 Supreme Court Cases 117
 - [\[2\]](#) 2011 (5) ALT 649
 - [\[3\]](#) (2005) 4 Supreme Court Cases 480
 - [\[4\]](#) 2009(3) ALT 236
 - [\[5\]](#) 2011(6) ALT 299