

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2453 of 2015

ORDER:

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The present Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 22.04.2015 passed in I.A.No.194 of 2015 in O.S.No.142 of 2012 on the file of the Senior Civil Judge, Siricilla, wherein an application filed by the petitioner to permit him to file written statement, was dismissed.

The facts in issue are as under:

The petitioner herein who is the defendant No.2 in the suit filed an application under Order 8 Rule 10 read with Section 151 of C.P.C. seeking permission to file written statement.

The averments in the affidavit filed in support of the petition would show that the respondent/plaintiff filed the above suit against the petitioner and defendant No.1 for declaration of title and perpetual injunction in respect of agricultural dry land admeasuring Ac.1.38 gts., situated in Sy.No.61 of Vilasagar Village, Boinipally Mandal, Karimnagar District and to declare that the registered sale deed bearing No.285 of 2006 dated 01.02.2006 and consequent entries in the pahanies for the year 2010-2011 showing the name of defendant No.1 in column Nos.12 and 13 are null and void and not binding on him.

After defendant No.1 filed his written statement, issues were framed and the suit is posted for plaintiff's evidence. It is stated in the affidavit that on receipt of summons, the petitioner engaged an advocate and on 13.03.2013 the suit was posted for filing his written statement. It is said that due to old age and bad health condition he could not move from the bed and could not file written statement in time. It is further urged that non-filing of the written statement is neither intentional nor wanton. The trial Court forfeited the right of the petitioner to file written statement and proceeded with the suit. After analyzing the material on record, the trial Court dismissed the petition. Challenging the same the present revision is filed.

Learned counsel for the respondent/plaintiff filed counter stating that he has no objection for filing of the written statement at this point of time since the matter is getting delayed due to filing of the Civil Revision Petition.

In Salem Advocate Bar Association, Tamil Nadu vs. Union of India

the Apex Court categorically held that the provisions including the proviso to Order 8 Rule 1 of the CPC are not mandatory but directory. It has been held in that decision that the delay can be condoned and the written statement can be accepted even after the expiry of 90 days from the date of service of summons in exceptionally hard cases. It has also been held in that decision that the use of the word "shall" in Order 8 Rule 1 of the CPC by itself is not conclusive to determine whether the provision is mandatory or directory

In view of the judgment referred to above; having regard to the circumstances of the case and taking into consideration the concession made in the counter, the Civil Revision Petition is allowed and the order dated 22.04.2015 passed in I.A.No.194 of 2015 in O.S.No.142 of 2012 on the file of the Senior Civil Judge, Siricilla is hereby set-aside.

Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

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29.09.2015

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