

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

CIVIL REVISION PETITION Nos.466 & 467 of 2014

COMMON ORDER:

These two Revision petitions arise between the same parties out of two similar suits. Therefore they are being disposed of by this common order.

2. The petitioner in both these Revision petitions is the plaintiff in O.S.Nos.513 and 514 of 2005 on the file of the XI Additional Senior Civil Judge, City Civil Court, Hyderabad, which were filed against the respondent for recovery of amount allegedly due from it.

3. Originally plaints in both the suits were rejected vide order dated 23.01.2007 passed in I.A.No.818 of 2006 in O.S.No.513 of 2005, and I.A.No.819 of 2006 in O.S.No.514 of 2005.

4. This was questioned by the petitioner vide C.C.C.A.Nos.95 and 96 of 2007 and the said appeals were allowed by this Court and the suits were remitted back to the Court below for reconsideration.

5. Thereafter, the suits were restored to original numbers and were posted for written statement of the respondent. As there was no representation on behalf of the respondent, it was set ex parte vide order dated 21.12.2012 in both the suits.

6. On 16.08.2013, i.e., almost eight months thereafter, the respondent filed I.A.No.41 of 2013 in O.S.No.513 of 2005 and I.A.No.44 of 2013 in O.S.No.514 of 2005 under Order 9 Rule 7 C.P.C., to set aside the order dated 21.12.2012 setting it ex parte.

7. Affidavits in support of these applications were filed by the counsel for the respondent stating that on the date of 21.12.2012 due to heavy traffic she was late to the Court and by the time she reached the Court the matter had been called and the respondent had been set ex parte. She further stated that although she was instructed to file a counter claim along with written statement, she did not get the relevant data for finalising the counter claim amount, and therefore, she could not file the present applications at an earlier point of time.

8. Counter affidavit was filed by the petitioner opposing these two applications contending that the Court below could not have set aside the order setting the respondent ex parte since the applications had been filed not immediately after 21.12.2012, but 220 days after the said order. It was contended that the Advocate on record cannot file an affidavit and petition under Order 9 Rule 7 C.P.C. on behalf of his party as per Order 3 Rule 4 C.P.C. It was pointed out that the respondent through out the suit proceedings was intentionally abusing the Court process. Although Order 8 Rule 1 C.P.C., is mandatory in nature and written statement should be filed within 30 days from the date of service of summons and the time can only be extended in exceptional cases that too not beyond 90 days, it is not open to the respondent to drag on the proceedings by filing applications of this nature without acting diligently in pursuing the matter. Reference was also made to certain other proceedings wherein according to the petitioner notices had been served on the respondent in the said suits. Allegation of suppression of material facts and certain documents by the respondent was also made.

9. By separate orders dated 13.11.2013 the Court below allowed these two applications observing that although there is delay of nearly 11 months in filing the applications, considering the nature of power under Order 9 Rule 7 C.P.C., which contemplates participation of defendant in suit proceedings even if he is set ex parte, and considering the entire gamut of the matter it is a fit case to give liberty to the respondent to contest the matters so as to enable the Court to dispose of the matter on merits. It, however, imposed costs of Rs.1500/- on the respondent in both the cases.

10. Challenging the same, these two Revision petitions are filed.

11. The petitioner-Party-in-person contended that the orders passed by the Court below in these two applications cannot be sustained since the respondent had wantonly approached the Court almost eight months after it was set ex parte in the suits and did not assign any valid reasons for not approaching the Court within a reasonable time for setting aside the orders setting it ex parte, and that the Court below could not have condoned the said delay even on payment of costs. He reiterated the stand taken by him before the Court below.

12. Learned counsel for the respondent Sri Tulasi Raj Gokul, on the other hand, contended that although there is some delay on the part of the respondent in

approaching the Court to set aside the orders setting it ex parte in the suits, having regard to the fact that the applications in both the suits had earlier been rejected by the trial court and the said order had been set aside by the High Court and the matter was remitted back to the Court below, it was felt by the Court below that an opportunity should be given to the respondent to contest the matters. He contended that even if the respondent had been set ex parte, he would have to be allowed to participate in further proceedings in the suits and since the respondent had paid the costs imposed under the impugned orders and the trial had commenced after taking on record the written statements filed by the respondent, the Revisions should be dismissed.

13. I have noted the submissions of both sides.

14. Order 9 Rule 7 C.P.C., provides that where a Court had adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

15. In the present case, admittedly the respondent had been set ex parte on 21.12.2012. Applications to set aside the said orders were filed on 16.08.2013 i.e., almost eight months thereafter. It may be that on 21.12.2012 there was difficulty for the counsel to appear before the Court when the matter was called, but in such an event shortly thereafter, the respondent ought to have filed applications to set aside the orders dated 21.12.2012. But the respondent did not do so. It waited for eight months and got the applications filed on 16.08.2013.

16. The reasons for this delay, according to the affidavit filed by the respondent's advocate, was that relevant data for finalising the counter claim amounts were not given to her. If the respondent had been furnished the material to the counsel, the counsel could draft counter claims and filed them along with the written statements. It is thus a clear case of negligence of the respondent and the respondent cannot be allowed to take advantage of its own wrong and plead that some injustice would be caused if opportunity is denied to the respondent to file written statements and contest the suit.

17. No other explanation is furnished by the respondent by way of affidavit or otherwise as to why the applications to set aside the orders dated 21.12.2012 came

to be filed on 16.08.2013 and not earlier.

18. In my considered opinion, keeping in view that the suits were of the year 2005, it was incumbent on the respondent to promptly take steps to set aside the orders setting it ex parte in the suits and its failure to do so indicates that it intended only to delay the disposal of suits. I am of the opinion that good cause had not been shown by the respondent for the delay of about eight months in filing these applications and the Court below ought not have ignored it while allowing the applications.

19. Therefore, these Revision petitions are allowed and the orders dated 13.11.2013 in I.A.No.41 of 2013 in O.S.No.513 of 2005 and I.A.No.44 of 2013 in O.S.No.514 of 2005 are set aside and both the applications are dismissed.

20. Consequently, pending miscellaneous petitions, if any, shall stand disposed of. No order as to costs.

M.S. RAMACHANDRA RAO,J.

23rd June, 2015

Js.