

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2883 OF 2010

ORDER

The Civil Revision Petition under Article 227 of the Constitution arises out of the order dated 10.06.2010 passed by the learned II Additional District Judge, Vijayawada (for brevity, 'the trial Court'), in I.A.No.1076 of 2010 in O.S.No.160 of 2009.

The petitioner is the second defendant in the suit. He filed the subject I.A. under Order 9 Rule 7 CPC to set aside the order dated 25.01.2010 setting him *ex parte* and to receive his written statement. By the order under revision, the trial Court dismissed the I.A.

By order dated 16.07.2010, this Court granted interim stay of all further proceedings in the suit for eight weeks and the said stay was extended until further orders on 09.09.2010.

Notice having been served, the respondent/plaintiff bank did not choose to enter appearance before this Court through counsel.

Perusal of the order under revision reflects that the trial Court was of the opinion that the petitioner/2nd defendant was not entitled to extension of time as he had failed to file his written statement within 90 days. It is no doubt true that under the Proviso to Order 8 Rule 1 CPC, the defendant is required to file his written statement not later than 90 days from the date of service of summons. However, it is for the Court to exercise its discretion judiciously in the event there is delay on the part of the defendant in filing a written statement and the defence cannot be shut out in every case on a mere technicality that the written statement had not been filed within time. In the present case, the petitioner/2nd defendant not only sought setting aside of the order whereby he was set *ex parte* but also wanted to file his written statement. As interests of justice require that the parties to the *lis* are given due opportunity of hearing and as the written statement of the second defendant would ensure that a fair

adjudication takes place, the trial Court ought not to have adopted a pedantic approach.

The order under revision is accordingly set aside. The trial Court is directed to set aside the order dated 25.1.2010 whereby the petitioner/2nd defendant stood forfeited of his right to file a written statement. The trial Court shall receive the written statement of the petitioner/2nd defendant and proceed in the matter in accordance with law.

The Civil Revision Petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

10th FEBRUARY, 2016

Svv