

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.5208, 5441 and 5390 OF 2015

COMMON ORDER:

Impugning the orders of the learned Chief Judge, City Civil Court, dated 10-09-2015 in I.A.No.3539 of 2013 in O.S.No.161 of 2005, I.A.No.3540 of 2013 in O.S.No.162 of 2005 and I.A.No.83 of 2014 in O.S.No.163 of 2005, the plaintiff in the suit, who is a proprietary entity, also shown him individually as if two plaintiffs maintained the revision.

The applications filed supra before the lower court were by the defendant under Order IX Rule 7 CPC. No doubt, there is no limitation to file application under Order 9 Rule 7 CPC, but for an application either under Order 9 Rule 9 CPC or under Order 9 Rule 13 CPC, as the case may be. However, what is contemplated from the wording of Order 9 Rule 7 CPC is that where defendant appears on the date adjourned for hearing and shows good cause for previous non-appearance, the court can set aside the ex-parte order.

From the impugned order, it has to be seen whether there is a good cause. The affidavits in support of the applications were filed by the Advocate for the defendant entity and not by any of the persons responsible with the day-to-day management of the entity. No doubt, once it is the personal knowledge of the Advocate attributing the cause to him, but for any other supporting affidavits, the Advocate's affidavit cannot be ignored though otherwise Advocate cannot file affidavit so casually.

From the affidavit of the Advocate of the defendants, what was stated is on the date fixed for filing of the written statements, he was held up in traffic jam and could not appear in time and thereby when called absent and for no representation, instead of treating as 'no written statement' even to proceed under order 8 Rule 10 CPC to decide the claim on merits, set ex-parte. Subsequently, the plaintiffs sought for amendment of the suit claims in the absence of ex-parte defendant and the same were allowed respectively in all the three suits as per the orders of the trial Court, dated 01-08-2013. It is at the instance of the plaintiffs and from decision of the court, by so recording, summons were issued to the defendant to appear and answer from the amendment of the plaint plea. When such is the case, that automatically gives entitlement to the defendant after appearance to file written statement atleast within 30 days if not within time extended to maximum of 90 days from the mandate of Order 8 CPC, though earlier he remained ex-parte and application filed after some lapse of time with no plausible explanation. It is there from while so observing the learned Chief Judge allowed the applications.

The observations for allowing the applications are that a perusal of the record goes to show that, as per docket order dated 18-09-2012, the defendant received summons and he was absent. Therefore, he was set exparte on that date and posted for plaintiff's evidence to 29-10-2012. Subsequently, the applications were filed by the plaintiff and amendment was allowed. Consequently, amendments were carried out and neat copy was also filed. Since sole defendant remained ex-parte and as per the submission of the

plaintiff fresh summons were issued to the defendant, as per orders dated 01-08-2013. It is in the meantime, the defendant filed the present application to set aside the ex-parte order and to receive the written statement.

When such is the case, there is sufficient cause in allowing the applications and receive the written statements. Thereby, for this court while sitting against the orders in revisions there is nothing to interfere, but for to say, as the suits are of the year 2005, and already a decade is lapsed, the trial court shall make every endeavor for disposal of the suits commonly and preferably within six months from the date of receipt of a copy of this common order. No order as to costs.

Accordingly, the Civil Revision Petitions are dismissed. No costs.

Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.11.08.2016
Prv

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