

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.3834 OF 2016

DATED:12-08-2016

Between:

M/s. Pantaloon Retail (India) Ltd.,
Knowledge House, Shyam Nagar
Off. Jogeshwari Link Road, Mumbai
Rep. by its Authorized Signatory
Mr. N.K. Ashok
and another

... Petitioners

And

Yeddanapudi Venkata Rama Parvateeswara –
Pushpananda Swamy ... Respondent

COUNSEL FOR THE PETITIONERS: Mr. Tarun G. Reddy

COUNSEL FOR THE RESPONDENT: Mr. M. Balasubrahmanyam

THE COURT MADE THE FOLLOWING:

ORDER:

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This civil revision petition arises out of order dt.18.2.2016 in I.A. No.521 of 2015 in O.S. No.459 of 2014, on the file of the VI Additional District Judge, Visakhapatnam.

I have heard Mr. Tarun G. Reddy, learned counsel for the petitioners, and Mr. M. Balasubrahmanyam, learned counsel for the respondent.

The respondent filed O.S. No.459 of 2014 in the Court of the VI Additional District Judge-cum-Sessions Judge, Mahila Court, Visakhapatnam, for eviction and payment of arrears of rent. The petitioners were granted time for filing a written statement by 09.3.2015, subject to the rider that no further extension of time will be granted. The time for filing the written statement was, however, extended till 25.3.2015. For non-filing of the written statement even during the extended time, an order setting the petitioners *ex parte* was passed on 25.3.2015. On 30.6.2015 the petitioners filed I.A. No.521 of 2015 under Order IX Rule 7 of the Code of Civil Procedure, 1908 (CPC) to set aside the *ex parte* order dt.25.3.2015. The Court below has dismissed this application and feeling aggrieved thereby, the defendants filed this civil revision petition.

In support of their application, the Authorized Signatory of petitioner No.1 submitted that the petitioners have filed an application for rejection of the plaint under the firm belief that the suit is not maintainable, that the same would be dismissed and that meanwhile the Court below has set the petitioners *ex parte* for non-filing of the written statement. The Court below has observed that a written statement is required to be filed within ninety (90) days, and that though a conditional order was passed to the effect that no extension

of time will be granted and in spite of the same extension having been granted, the petitioners failed to file the written statement.

The undisputed facts in this case are that the petitioners filed I.A. No.956 of 2014 for rejection of plaint. This application was dismissed by the Court below on 23.2.2015. Though the date on which the Court below has granted time to the petitioners for filing written statement by 09.3.2015 was not mentioned, it is reasonable to presume that after dismissal of I.A. No.956 of 2014, it has granted the time to the petitioners for filing counter affidavit. It is the pleaded case of the petitioners, and the same is not disputed by the learned counsel for the respondent, that they have carried the matter in revision against the order dt.25.3.2015 in I.A. No.956 of 2014, vide C.R.P. No.1151 of 2015, that after reserving the case for orders on 16.3.2016, this Court has dismissed the Civil Revision Petition on 01.6.2016. As noted hereinbefore, on 25.3.2015 the lower Court has set the petitioners *ex parte* for not filing the written statement. Though the petitioners have not stated the fact of their filing the civil revision petition and its pendency before the Court below, these facts have not been disputed by the learned counsel for the respondent. During the pendency of C.R.P. No.1151 of 2015, the petitioners have filed I.A. No.521 of 2015 for setting aside the *ex parte* order.

In these undisputed facts of the case, I am of the opinion that the petitioners had justifiable reasons for not filing the written statement within the extended time granted by the Court below. However, for inexplicable reasons the petitioners have failed to plead the facts pertaining to their filing revision before this Court and its pendency till 01.6.2016. In the afore-mentioned facts of the case, the order of the lower Court is set aside. I.A. No.521 of 2015 is allowed. The petitioners are granted three weeks' time for filing written statement failing which they will stand set *ex parte*. For the failure of the petitioners to plead relevant facts before the Court below, they shall pay costs of Rs.5,000/- (Rupees five thousand only) to the respondent

within two weeks from today.

Subject to the above directions, the civil revision petition is allowed.

As a sequel to disposal of the civil revision petition, C.R.P.M.P. No.4950 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

12-08-2016

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