

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A.No.546 of 2006

ORDER:

This appeal is filed by the defendants against the order dated 27.02.2006 in I.A.No.305 of 2002 in O.S.No.78 of 1999 on the file of the Court of Junior Civil Judge, Huzurabad.

The said IA is filed under Order IX Rule 13 CPC to set aside the *ex parte* order dated 29.10.2001.

Heard Sri K. Vasudeva Reddy, learned counsel for the appellants/defendants and Smt. Nandita Guha, counsel appearing on behalf of Sri Y. Rama Rao, learned counsel for the respondent/plaintiff.

A perusal of the impugned order shows that the lower Court after verifying the case record has come to a conclusion that the defendants did not file written statement within the time granted and also within the extended time. Therefore, the defendants were set *ex parte* on 20.02.2001 and the suit was decreed on 29.10.2001. Thereafter, the present application being I.A.No.305 of 2002 was filed praying the lower Court to set aside the *ex parte* decree dated 29.10.2001 and seeking an opportunity to file the written statement. The same was opposed by the plaintiff in the suit. The plaintiff filed his counter stating that the defendants did not file any proof like medical certificate etc. and that the reasons furnished are not correct.

The lower Court, after hearing the matter, dismissed the said I.A. by its order dated 27.02.2006 which is now impugned in the present appeal.

The learned counsel for the appellants/defendants argued that Order VIII Rule 1 CPC is not mandatory and that it is merely directory. He submits that for strong and cogent reasons, the plaintiff was unable to file his written statement in time. He also cited two judgements of the Supreme Court reported in **Siddalingayya v. Gurulingappa and others**¹ and **Kailash v. Nanhku and others**², therefore, prayed that a liberal view should be taken and that permission should be given and *ex parte* decree should be set aside.

A perusal of the docket reveals that the defendants entered appearance through their counsel on 06.10.1999. Since then, they had taken 13 adjournments up to 16.02.2001. The matter was adjourned 'finally' for written statement on 09.11.2000 and thereafter it was posted for filing written statement as last chance. Then time was extended to 29.01.2001 for written statement on payment of costs of Rs.25/- and again posted to 07.02.2001. Later, it was adjourned to 16.02.2001 on further costs of Rs.50/-. Ultimately, the order dated 20.02.2001 was passed as setting aside the defendants *ex parte*. From 20.02.2001 till 29.10.2001 the matter was adjourned for plaintiff's evidence. Ultimately, on 18.10.2001 PW.1 was examined and the suit was decreed on 23.10.2001. These facts are highlighted to

¹ 2017 (11) Scale 225

² (2005) 4 SCC 480

show that the delay that has occurred in the matter and the number of adjournments that were granted.

It is a fact that Order VIII Rule 1 CPC is held to be directory and not mandatory and there could be situations where defendants may be prevented from filing the written statement. Then the Court can extend the time. But, then this is the exception rather than a rule.

Even the judgment of **Kailash's** case (2 supra) cited by the learned counsel for the appellants pronounced by their Lordship R.C. Lahoti, D.M. Dharmadhikari and P.K. Balasubramanyam make it clear that Order VIII Rule 1 CPC should be considered as directory, it should not be used as a method for delay of trial and hearing of the suits. That judgment itself states that in 'exceptional circumstances', the court may extend time for filing written statement beyond 90 days.

Ordinarily, the time schedule prescribed by Order IX, Rule 1 CPC has to be honoured. The defendants should be vigilant and should take steps for filing written statement on the appointed date. The extension of time, if any, sought for by the defendants should not be granted as a matter of routine and merely for asking more so, when the period of 90 days has expired.

The Hon'ble Supreme Court held that departure from the time schedule fixed by Order VIII Rule 1 CPC is being allowed to meet any exceptional circumstances occasioned by reasons beyond the control of the defendants and such

extension was required in the interest of justice even if the hands of the court were not free.

The judicial discretion to extend time should be exercised on settled parameters. The court may put the defendants on terms including the imposition of costs, insist on affidavit, medical certificate or other documentary evidence being annexed with the application.

In the case on hand, except for seeking extension of time, no explanation whatsoever is furnished for seeking time from October 1999 till February, 2001. Even when they were set *ex parte* on 20.02.2001, they did not take steps to file written statement. Nearly eight months elapsed thereafter and the decree was passed on 29.10.2001. Soon thereafter, the present application is filed. In the interim period between the *ex parte* order and the *ex parte* decree and no application was filed. Therefore, this Court finds that there are no bona fides in the said application.

Accordingly the Civil Miscellaneous Appeal is dismissed confirming the impugned order dated 27.02.2006 in I.A.No.305 of 2002 in O.S.No.78 of 1999 by the Junior Civil Judge, Huzurabad. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 17.11.2017
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