

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1757 of 2017

ORDER :

The revision petitioners are defendants 1 and 2 of O.S.No.1205 of 2015. The suit is filed by sole plaintiff-revision respondent for recovery of money. Pending suit, I.A.No.22 of 2017 is filed by the defendants under Order IX Rule 7 read with Section 151 C.P.C. to set aside the ex parte order, dated 08.07.2016, passed in the suit. The affidavit averments show that the suit was posted to 08.06.2016 for filing of written statement on payment of costs of Rs.50/-. Though written statement was ready, because of the agitation going on by abstaining of work by advocates, the defendants could not appear and file written statement and thereby they were set ex parte by the Court and non-filing of the written statement earlier, but for those reasons, is not for any wanton reason.

2. The plaintiff while filing counter opposed the petition saying the written statement despite 90 days outer limit not filed having taken more than six adjournments having entered appearance on 25.02.2016 and it is the advocates abstaining the courts or agitations started at best from 01.07.2016 and the time of 90 days expired long prior to that, thereby there are no grounds to set aside the ex parte order, dated 08.06.2017, much less to receive the written statement. So far as the setting of ex parte of the defendants concerned, once the matter is coming for filing of written statement even from reading of Order

VIII Rule 10 C.P.C. and the expression of the Apex Court in **Balraj Taneja and another v. Sunil Madan and another**¹, from its reading, where any party from whom a written statement is required under Rule 1 or Rule 9 of Order VIII C.P.C., fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up. The trial Court did not pronounce judgment at once from non-filing of written statement even by invoking that provision and it is postponed, once such is the case, the setting of ex parte is unsustainable for non-filing of written statement, but for at best to proceed with no written statement and as held in that expression of Balraj Taneja, though without filing of written statement defendant can participate in the proceedings and if the plaintiff averments are with any factual matrix on complication, Court is not bound to decree the suit from that ex parte evidence, thereby on those facts where from the plaintiff averments itself shows any controversy, the party who filed no written statement also entitled to cross-examine the witness, but cannot set up a positive defence without written statement. Once such is the case, the passing of the order setting the defendant's ex parte under Order IX Rule 7 C.P.C is unsustainable and is liable to be set aside.

¹ AIR 1999 SC 3381

3. Now coming to the receiving of the written statement belatedly concerned, as rightly concluded by the lower court and also rightly pointed out by respondent/plaintiff before the lower Court, the written statement not even filed within 90 days and defendants were set ex parte long before the advocates agitation commenced. Once such is the case, it is a ruse in the application giving the reason about the agitation of the advocates prevented to file written statement, as rightly concluded by the lower Court. However, that is not the end of the matter as procedural laws are handmaid in rendering justice and the inherent power of the Court under Section 151 C.P.C. irrespective of the outer limit of 90 days provided by Order VIII C.P.C. can be exercised to sub-serve the ends of justice. Thereby, the written statement can be ordered to be received subject to costs of Rs.5,000/- (Rupees five thousand only) payable by the defendants to the plaintiff, subject to payment of costs and filing of the written statement before the lower Court, within one week from the date of receipt of the order, if not already filed.

4. With the above direction, the civil revision petition is allowed.

Miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

15th December 2017.

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