

THE HON' BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2060 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the order dated 20.02.2017 passed in I.A.No.4376 of 2016 in O.S.No.145 of 2005, on the file of the Chief Judge, City Civil Court, Hyderabad, dismissing the I.A. filed under Section 151 C.P.C. to set aside the forfeiture order dated 04.06.2008 in filing the written statement.

2. The petitioner is defendant No.5 in O.S.No.145 of 2005 and his right to file written statement was forfeited on 04.06.2008. In fact, he was not informed about the date by the counsel. Later, he obtained no objection on vakalat from previous counsel engaged by him and filed written statement along with application to set aside the order of forfeiture dated 04.06.2008 in S.R.No.18268 and he was under the impression that the same was taken on file and his written statement was accepted. But, recently he came to know that his petition was rejected and his counsel approached the office to re-submit the petition, it is informed that the petition was missing from the bundle and the Court staff were searching for it and hence, filed the petition to set aside the forfeiture order dated 04.06.2008 and requested to receive the written statement.

3. The respondents filed counter denying the material allegations specifically contending that the suit is coming for evidence, affidavit under Order XVIII Rule 4 C.P.C. is filed by the petitioner in lieu of examination in chief, even without written statement of the petitioner as a deponent, in the two affidavits it is stated that he filed written statement on 17.10.2014 along with petition under Order IX Rule 7 CPC to set aside the order dated 07.04.2017 and it was allowed. So there is no contradiction in the contention and the suit is 11 years old, completed major part of the trial and when the matter was posted for arguments, the present petition is filed only to prolong the suit and prayed to dismiss the petition.

4. The trial Court after considering material on record, dismissed the petition without costs on the ground that as per the docket order, the right to file written statement of defendant No.5 was forfeited on 04.06.2008, even then he made his appearance on 17.01.2008. But filed the present petition on 22.08.2016. Therefore, there is absolutely no grounds to permit him to file written statement setting aside the order of forfeiture of right of the petitioner to file written statement. Aggrieved by the order of the Court, the present revision is filed on various grounds mainly contending that the order passed by the trial Court is erroneous for the reason that the petition was returned and it was misplaced. Therefore, the petitioner cannot

be blamed for non-filing of the petition and prayed to set aside the order, allowing the revision petition.

5. Undisputedly, the petitioner appeared before the trial Court and engaged a counsel to defend him in the suit in the year 2008 itself, but, failed to file written statement within the time prescribed under Order VIII Rule 1 C.P.C. Thereafter, he appeared on 17.01.2008 but did not take any steps to file a petition under Order VIII Rule 10 C.P.C. but filed the present petition under Section 151 C.P.C.

6. According to Order VIII Rule 1 C.P.C., the defendant shall within 30 days from the date of service of summons on him present a written statement of his defence. Proviso annexed thereto permits the Court to extend time beyond 30 days but in any event shall not exceed 90 days from the date of service of summons. However, the Courts not adhering to the mandate contained in Order VIII Rule 1 C.P.C. and liberally granting adjournments for filing written statement to frustrate the very object of incorporation of Order VIII Rule 1 C.P.C. and in fact, it is intended to reduce the time for disposal of the suits but obviously for one reason or the other, the parties and the Courts are not adhering to Rule 1 of Order VIII of C.P.C. strictly.

7. An identical question came up before the Apex Court in New India Assurance Company Ltd v. Hilli Multipurpose Cold

Storage Pvt. Ltd.,¹ on reference, the Full Bench of the Apex Court, while deciding a similar situation under Consumer Protection Act, where 45 days time was fixed for filing version of the respondent, held, that the time fixed for filing written statement is mandatory. In Para-16 of the judgment of the Apex Court made it clear that under Order VIII Rule 1 C.P.C., there is a legislative mandate that written statement of a defence is to be filed within 30 days. However, if there is failure to file such written statement within the stipulated time, the Court can at the most extend further period of 60 days and not more than that even under the Consumer Protection Act, the legislative invention is that the forum shall not give more than 90 days of time but only maximum 45 days for filing version of the opposite parties. Therefore, the time fixed under Order VIII Rule 1 C.P.C. is mandatory for filing written statement. Similar view is expressed by the Division Bench of the Apex Court in New India Assurance Company Ltd v. Hilli Multipurpose Cold Storage Pvt. Ltd.,² and earlier in Smt.Ravi Kumar v. Smt.Kanchana Devi and others³ and Sandeep Thappar v. SMC Technologies Pvt. Ltd.,⁴ the Apex Court consistently took a view that the time prescribed under Order VIII Rule 1 C.P.C. is mandatory and if time is extended beyond the time fixed under the Rule, it would

¹ AIR 2016 SC 86

² 2017(1) Scale 670

³ AIR 2005 SC 3304

⁴ AIR 2014 SC 897

amount frustrating the very purpose of incorporating such time limit.

8. The principles laid down in the above judgments to be followed and applicable to the facts of the present case. The written statement filed by the petitioner after 8 years, when the suit is reached the stage of arguments. If such liberal approach is accepted, it would frustrate the intention of the legislature in incorporating such provision. Therefore, the trial Court rightly declined to receive the written statement at the stage of arguments on contest by the other defendants, after 8 years from the date of appearance before the trial Court. Hence, the order passed by the trial Court is free from any legal infirmities and warrant by this Court, while exercising power under Article 227 of the Constitution of India.

9. The consequences for non-filing of written statement is contemplated under Rule 10 of Order VIII C.P.C. Even according to Rule 10, where any party from whom a written statement is required fails to present the same within the time permitted or fixed by the Court as the case may be the Court shall pronounce the judgment or make against such order in relation to a suit, if it thinks fit and pronouncement of such judgment or decree. Therefore, the order passed by the trial Court under Order VIII Rule 10 C.P.C. and filing of a petition under Section 151 C.P.C. is not in accordance with law. However filing of an application

quoting wrong provision in the petition is not a ground, if the petitioner is otherwise entitled to claim relief.

10. In the result, this Civil Revision Petition is dismissed. No costs.

11. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 28.07.2017
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