

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

C.R.P. No. 6510 of 2017

Between:

Jareena Sultana

... Petitioner

and

Chail Sings & others

...Respondents

Date of Judgment: 08-12-2017

Submitted for Approval:

The Hon'ble Sri Justice CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the Judgment ? Yes/No

(CHALLA KODANDA RAM)

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ Civil Revision Petition No. 6510 of 2017

% Dated 08.12.2017

Between:

Jareena Sultana

... Petitioner

and

Chail Sings & others

...Respondents

! Counsel for the petitioner : Sri K. Narsi Reddy

^ Counsel for the respondents : Sri A. Chandra Sekhar

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? Cases cited:

1. AIR 2005 SC 2441
2. (2007) 6 SCC 420



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 6510 OF 2017

ORDER :

Order dated 27.10.2017 dismissing I.A. No. 791 of 2017 filed by the petitioner / defendant No.1 in O.S. No. 2 of 2013, invoking Section 151 of the Code of Civil Procedure, for receiving the written statement, is challenged before this Court.

Sri K. Narsi Reddy, learned counsel appearing for the petitioner, placing reliance on the judgment of the Supreme Court in ***Kailash v. Nanhku***¹, would submit that the provisions of Order VIII Rule 1 of the Code of Civil Procedure fixing the time schedule for filing the written statement are not mandatory and that there is a discretion vested in the Court to allow the written statement to be filed subject to putting the erring defendant on terms. He would further urge that inasmuch as the petitioner has been denied execution of the agreement of sale itself, on which basis, the plaintiffs/respondents have filed the suit for specific performance, and inasmuch as substantial property rights are involved, if an opportunity is not given to the petitioner, he would suffer irreparable loss. Hence, this Court may be pleased to exercise the discretion vested in it and allow the petitioner to file the written statement, subject to stiff conditions, prays the learned counsel.

On the other hand, Sri A. Chandra Sekhar, learned counsel appearing on behalf of respondent No.1 / plaintiff would submit that the petitioner had deliberately stayed away from the proceedings, despite receipt of summons in the suit, and was in fact, set *ex parte* on 04.04.2013. However, the Court below, taking

¹ AIR 2005 SC 2441

a lenient view, had allowed I.A. No. 1168 of 2016 on 03.08.2016, giving the petitioner an opportunity to participate in the suit proceedings. Even thereafter, the petitioner did not choose to file a written statement and it is only after completion of the plaintiff's side evidence, the present Application has been taken out. He would further urge that Section 151 of the Code has no application in the instant case, for, the provisions of Order VIII Rule 1 mandate the written statement to be filed within 30 days from the date of receipt of summons and thereafter, within 60 more days, for the reasons to be explained, and that the Court may exercise its discretion / jurisdiction, by recording cogent reasons, justifying the same. According to the petitioner, in the present case on hand, the reason stated by the petitioner is scanty and not worth-mentioning. He would therefore, remind that the Supreme Court had repeatedly cautioned that undue indulgence shall not be shown to a litigant, who has not been vigilant.

On a careful consideration of the respective submissions, it is clear that the written statement ought to have been filed by the petitioner, at any rate by May, 2013, as the suit came to be filed on 03.01.2013. However, on 04.04.2013, the petitioner was set *ex parte*. She, therefore, filed I.A. No. 1168 of 2016 to set aside the *ex parte* order and the said Application came to be allowed on 03.08.2016. It is thereafter, I.A.No. 791 of 2017 was filed seeking the permission of the Court to file the written statement.

At this stage, it will be useful to note the reasons stated in the affidavit filed in support of the said I.A:

“..... But due to inadvertent mistake written statement on my behalf could not be filed. The non-filing of the written statement is neither intentional nor wilful but for reasons beyond my control.....”

The above-quoted reason hardly satisfies the rigour, which has been imposed by the Supreme Court, so as to fall within the exceptional circumstances / reasons/ inability on the part of the defendant. Admittedly, there is a delay of more than four years in seeking to file the written statement, which would go to show that there was no diligence on the part of the defendant/petitioner in protecting her so-called interests.

In this context, it is apt to observe the judgment of the Supreme Court in ***R.N. Jadi & brothers v. Subhaschandra***², wherein, it has been held thus:

“It is also to be noted that though the power of the Court under the proviso appended to Rule 1 of Order 8 is circumscribed by the words ‘shall not be later than ninety days’ but the consequences flowing from non-extension of time are not specifically provided for though they may be read by necessary implication. Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The Courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.”

While dealing with the above-said case, the Supreme Court had cautiously taken notice of the judgment cited by the learned counsel for the petitioner in ***Nanhku’s case***, and observed that the said case is no authority for receiving the written statement after the expiry of the period permitted by law, in a routine manner. In the above-extracted paragraph, the Supreme Court had set a clear guideline to the subordinate Courts to discourage accepting of the written statements beyond the stipulated time. In those circumstances, there being no weighty reasons for non-filing of the written statement within the stipulated time, the order of the Court below rejecting to receive the same, at a belated stage, cannot be

² (2007) 6 SCC 420

found fault with. The Civil Revision Petition does not, therefore, merit any consideration and the same is accordingly, dismissed. No costs.

However, dismissal of the C.R.P. shall not be construed as depriving the petitioner of an opportunity to participate in further proceedings from the stage at which the Application filed by him to set aside the *ex parte* order was allowed.

CHALLA KODANDA RAM, J

08th December 2017

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