

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1276 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order Dt.18.01.2018 in I.A.No.227 of 2018 in O.S.No741 of 2016 passed by the Chief Judge, City Civil Court, Hyderabad, dismissing the petition filed seeking leave to file the Written Statement by setting aside the forfeiture Order dt. 27.12.2017.

The petitioners herein/D.1 to D.3 filed I.A.No.141 and 227 of 2018 before the trial Court to reopen the suit and receive the Written Statement setting aside the Order dt. 27.12.2017 forfeiting the right to file written statement and the trial Court passed Common Order dt. 18.01.2018 in both the petitions.

The case of Petitioner No.2 herein is that the petitioners filed I.A.No.3975 of 2017 under Order 7 Rule 11 CPC for rejection of plaint, but it was dismissed on 29.11.2017 and posted the suit for filing Written Statement and as they could not file the same within the time, their right to file written statement was forfeited. The mother of Petitioner No.2 is residing at USA and his brother is residing at Bangalore on account of his employment and as such he was looking after the suit. He fell ill and was advised to take bed rest and as such he could not contract his counsel between 28.11.2017 to 03.01.2018 to instruct him to prepare written statement. Only after his recovery from illness, he visited the office of the counsel, who informed that the Court was pleased to forfeit the right to file the written statement and recorded the evidence of Pw.1 and posted the suit for judgment on 09.01.2018. Therefore, he filed the above two

petitions to reopen the suit and receive the Written Statement setting aside the forfeiture order dt. 27.12.2017.

Respondents filed Counter alleging that the petitioner availed several opportunities even after expiry of 90 days as contemplated under Order 8 Rule 1 CPC and have deliberately dragged the proceedings in the suit for one reason or the other and now came up with these vexatious applications only with a mala fide intention to squat on the property illegally and unlawfully without any lawful entitlement. The application to reopen the suit is filed on 05.01.2018 as per the copy served on his counsel on 08.01.2018 at 12.20 hours. As per Rule 58 of the Civil Rules of Practice, any interlocutory application has to be filed three days in advance before proceedings are posted for hearing and thus it is in violation of rule. The deponent is neither a party to the mortgage deed nor to the agreement of sale sought to be relied upon by defendant No.1 and he has no *locus standi* to represent the proceedings and therefore, the above petitioners are liable to be dismissed. It is also contended that summons in the above suit were served on 22.11.2016 and Vakalat was filed by Mr. M.A. Basith on 21.12.2016 and previously, it was pending before X Additional Chief Judge, City Civil Court, Hyderabad and later it was transferred to this Court on 26.08.2017 vide Order dt. 18.08.2017. After expiry of statutory period of 90 days for filing Written Statement, the petitioners have filed I.A.No.3975 of 2017, but it was dismissed on merits on 29.11.2017 after hearing both sides. It is also contended that the allegation that the petitioner was suffering from illness is not based on any material and thereby there are no grounds much less sufficient ground to reopen the suit and to set aside the forfeiture order dt. 27.12.2017 and finally prayed for dismissal of the petition.

The trial Court, upon hearing both the counsel, dismissed two applications on the ground that the petitioners did not produce any piece of paper to substantiate his contention that he was suffering from ill-health between 28.11.2017 to 03.01.2018 and declined the relief in both the petitions filed for reopen of the suit and to set aside the forfeiture order dt. 27.12.2017.

Aggrieved by the Order, the present Revision is filed mainly on the ground that failure to file Written Statement is only due to pendency of I.A.No.3975 of 2017 filed under Order 7 Rule 11 CPC to reject the plaint, but it was dismissed after one month and thereafter the petitioner suffered from severe illness, which prevented him from filing written statement within the time stipulated by the Court, but the Court did not take into consideration the facts and circumstances of the case under which the petitioner could not file written statement and committed an error in dismissing the petitions. Failure to file proof in support of sufferance from ill health during 28.11.2017 to 03.01.2018 alone is not a ground since the respondent did not deny the said sufferance from ill health by the petitioners and therefore, the trial Court committed an error in passing the Orders dt. 27.12.2017.

Undisputedly, the suit summons were served on the petitioner 22.11.2016 and Mr. M.A. Bastha, Advocate appeared by filing Vakalat on 21.12.2016. But, conveniently he filed I.A.No.3975 of 2017 under Order 7 Rule 11 CPC, to reject the plaint on various grounds. But, it was, admittedly, dismissed by the Court on 29.11.2017. According to Order 8 Rule 1 CPC, the defendant shall within 30 days from the date of service of summons on him present Written Statement of his defence, subject to proviso annexed thereto which permits the Court to extend time beyond 30 days and the upper limit is 90 days from the date of service of summons

on the defendant. But here in this case, summons were served on defendant on 22.11.2016 and the counsel appeared on 21.12.2016 on behalf of the defendant to defend the claim of the respondent herein and only one day was available by the date of appearance of Mr.Basitha, Advocate to file Written Statement, in view of Order 8 Rule 1 CPC, but the trial Court granted time. However, I.A. No.3975 of 2017 was filed under Order 7 Rule 11 CPC, but the date of application is not disclosed in the present proceedings. However, it is an undisputed fact that the petition was dismissed on 29.11.2017. Though summons were served on 22.11.2016 and appeared through counsel by filing Vakalat on 21.12.2017, the initial time fixed for filing written statement was expired one day after filing Vakalat and 90 days permitted under the proviso was expired before February, but it appears that the petitioner failed to file his written statement, at later point of time and till 29.11.2017, the petitioner did not file his written statement for no reason, he invented a story of sufferance from ill-health, during the period from 28.11.2017 to 03.01.2018 to seek leave of this Court to file Written Statement after setting aside forfeiture order dt.27.12.2017.

The only ground urged before this Court is sufferance from ill-health, but this fact was not substantiated by any material though he allegedly suffered from ill health for more than a month. When he suffered from ill health, which prevented him to meet the counsel to give instructions to prepare written statement, he might have undergone treatment for such a prolonged period, but he did not produce any iota of evidence in support of his contention. Even otherwise, the time allowed under Order 8 Rule 1 CPC and the proviso thereto expired long prior to passing an Order forfeiting the right to file written statement under Order 8 Rule 10 CPC, but the Court has no power to grant time beyond 90 days.

If the petitioner intends to file Written Statement, he can file written statement under Order 8 Rule 1 read with Rule 10 CPC, while seeking relief to set aside the Order forfeiting the right to file written statement, but instead of filing such application under Order 8 Rule 10 CPC, the present petitions were filed under Section 151 CPC to reopen the suit and to set aside the forfeiture order.

In a judgment in *S.V.Krishna Reddy v S.Mariam Bee and others*¹, this Court in similar situation held that petition for two reliefs is not maintainable.

In the facts of the above decision, the petition under Order 1, Rule 10(4), Order 6, Rule 17 of CPC and Rule 28 of A.P. Civil Rules of Practice was filed, dealing with respondents whom petitioner seeks to implead as necessary parties for adjudication of all questions relating to sale of property by 1st respondent and sought amendment of the plaint impleading defendants 2 to 4. So as to join them as parties to the execution along with 1st defendant, introducing new cause of action which amendment can be sought only on separate application under Order 6, Rule 17 of CPC.

A similar question came up before this Court on *Massarath Yasmeeen v. Mohammed Azeemuddin and another*² wherein this Court discussed the scope of separate application for each distinct prayer and the Court held that if relief is separate and distinct, two separate applications be filed under Rule 55. When one relief is ancillary to main relief or interconnected to main relief, two prayers can be asked for, in one petition. Even if two separate applications are necessary Court may direct party to file two applications and the Court cannot dismiss the petition on such technical ground.

¹ 1993(3) ALT page 44

² 2011 (6) ALT 202

In *S. Sekhar Babu v. Y. Ramakrishna Reddy and another*³ this Court held that separate applications for distinct prayers are mandatory unless the reliefs are consequential and an application to set aside *ex parte* decree is not maintainable with two prayers i.e one for condonation of delay in filing the said application and the other to set aside the *ex parte* decree, as they are two distinct prayers, two applications be filed under Rule 55 of the Rules. The Court further held that, when only one application made with prayers to condone delay and set aside *ex parte* decree without filing separate application for condonation delay, unless delay is condoned, petition for setting aside of *ex parte* decree cannot be entertained. Both are distinct reliefs. Filing of one application is contrary to Rule 55 of the Rules and allowing of one application made by defendants by Court below is erroneous and such an order passed by Trial Court by misapplying the law laid down by High Court in a decision and without keeping in view Rule 55 of the Rules.

Even assuming for a moment that the petitioner is entitled to claim two reliefs in one petition, by applying the principle laid down in *Kavali Narayana and others v. Kavali Chennamma*⁴, there are certain restrictions in exercise of power to grant of leave to file written statement, though, the decree passed under Order VIII Rule 10 CPC is an *ex parte* decree within the meaning of Order IX Rule 13 CPC.

Learned counsel for the respondent mainly relied on the full bench judgment of the Apex Court reported in *New India Assurance Co. Ltd v. Hilli Multipurpose Cold Storage Pvt Ltd*⁵, wherein the Apex Court in paragraph 16 of the judgment held that under Order VIII Rule 1 of C.P.C, there is a legislative mandate that written statement of defence is to be filed within 30 days. However, if there is a failure to file such written

³ 2008 (1) ALT 475

⁴ 2005 (1) ALD 672

⁵ 2013 AIR (SC) 86

statement within the stipulated time, the Court can at the most extend further period of 60 days and no more. Under the Consumer Protection Act, the legislative intent is not to give 90 days of time but only maximum 45 days for filing the version of the opposite party. Therefore the aforesaid mandate is required to be strictly adhered to.

In view of the law declared by the Apex Court referred above, the Court has to record reasons for grant leave, but in the present case, the trial Court recorded a reason that the petitioner failed to show sufficient ground for his ill health for a period from 28.11.2017 to 03.01.2018 by producing any evidence. Therefore, grant of leave in a most routine manner on being asked by the petitioner is impermissible under law. Thus, the trial Court dismissed the petition strictly adhering to the principle laid down by the Apex Court, which I referred in the earlier paras. Therefore, the petitioner is not entitled to claim leave to file written statement when his right to file written statement was forfeited by exercising power under Order 8 Rule 10 CPC. Therefore, the Order passed by the trial Court is in accordance with law and the same view is expressed by the Apex Court in *Sami Ateeq Ahmed v Mohammed Rafiq Khan*⁶.

In view of the law declared by the Apex Court, followed by this Court, the petitioner is disentitled to ask the relief under section 151 or under Order 8 Rule 10 CPC to set aside the Order of forfeiture to file Written statement.

In view of my forgoing discussion, I find no illegality in the order passed by the trial Court while exercising power under Article 227 of the Constitution of India, since the power of this Court is limited, which is supervisory in nature, and when the Court passed reasoned Order within its jurisdiction limits, this Court cannot interfere with the findings of the

⁶ 2016 6 ALD page 140

Order, while exercising jurisdiction under Article 227 of the Constitution of India, in view of the law declared by the Apex Court in recent judgement in *Raj Kumar Bhatia v Subhash Chandra Bhatia*⁷.

In *Sadhana Lodh vs National Insurance Company Ltd*⁸, the Apex Court held that the supervisory jurisdiction conferred on the High Courts under [Article 227](#) of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under [Article 227](#) of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under [Article 227](#) of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have passed the order.

In view of the law declared in catena of judgments referred above, this Court cannot interfere with findings recorded by the trial Court to reverse or set aside the forfeiture order. Hence, the Order Dt. 27.12.2017 passed by the trial Court is hereby confirmed having found no illegality in the order warranting interference of this Court while exercising power under Article 227 of the Constitution of India.

Accordingly, this Civil Revision Petition is dismissed at the stage of admission.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 26-02-2018
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⁷ 2018(2) SCC 87 FB

⁸ 2003 3 SCC 524

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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