

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.1778 OF 2010

ORDER:

Herard Mr.V.S.K. Rama Rao for petitioners. In spite of service of notice, none appears for respondents.

The defendants are the revision petitioners. The revision petitioners filed I.A. No.4978 of 2009 to set aside the *ex parte* order dated 03.09.2009 and also permit the petitioners herein to file written statement in the suit. The order impugned in the C.R.P. reads thus:

“In this case the court perused the records. The vakalat of the defendants 4 to 6 was filed on 05.06.2009 and it was adjourned to 24.07.2009 and from there it is adjourned to 04.08.2009 and from there it is adjourned to 01.09.2009 and from there to 03.09.2009 and that day calculation shows that 90 days is over and hence, as per law their right to file written statement is forfeited. Even though it is alleged that on behalf of the petitioners they did not file the written statement on account of petitioner No.1 could not get leave and that 2nd petitioner is suffering from hyper tension and that the third petitioner is suffering from rheumatic pains and the said reasons could not be accepted. As per law the written statement is to be filed within 90 days. Hence, there is no provision to permit the petitioners to file their written statement by setting aside the forfeited orders passed against them. Hence, this court holds that there are no merits in the petition and hence the petition is liable to be dismissed.”

Mr.Rama Rao contends that the trial Court has committed serious illegality by refusing both the prayers and the view taken by the trial Court is contrary to the principle laid down by this Court in

Shaik Kareem v. Mohd.Khursheed Ali ¹ and also the decision of the Apex Court in R.N.Jadi & Brothers and Ors. Vs. Subhashchandra ².

According to Mr.Rama Rao, the written statement is filed along with the application and the delay is only 35 days and for that sufficient reasons are stated in the affidavit. The trial Court ought to have exercised its discretion and jurisdiction to further the ends of justice and he prays for setting aside the order impugned in the C.R.P.

Before considering the grounds urged by Mr.Rama Rao, the Court finds it useful to excerpt the law laid down by this Court in Shaik Kareem case(1 supra) which reads thus:

4. The case of the petitioner, briefly, stated is that on 20-7-2004 at the request of his counsel, the matter was adjourned to 3-8-2004 for filing written statement. However, the counsel erroneously noted the date as 3-9-2004. Therefore, there was no representation on 3-8-2004 when the case was called and ex parte order was passed. The said application was contested, inter alia, denying the said allegations and stated that on the earlier date of hearing, the Court passed a conditional order for filing written statement on payment of costs of Rs. 100/- and the matter was posted to 3-8-2004. Neither the said condition was complied nor there was any filing of written statement on 3-8-2004 and therefore, the court below treated the petitioner as ex parte.

5. On considering the rival submissions, the Court below did not find favour with the petitioner's request mainly on the ground that the period of 90 days as contemplated under Order VIII Rule 1 of CPC has elapsed by 22-6-

¹ 2006 (1) ALD 857 (DB)

² (2007) 6 SCC 420

2004 and in spite of the same, no written statement was filed and therefore, the present application is not tenable.

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10. Coming to the facts of the case, it is the case of the petitioner that it is only due to wrong entry made by his counsel in regard to the next date of hearing, the case could not possibly be represented. The reason is attributed to the counsel, instead of 30-8-2004 it was noted as 30-9-2004. Necessarily the petitioner, who is a party to the proceedings, has to depend upon his counsel and there is absolutely no reason to disbelieve the said version. Further, a party should not be allowed to suffer for any mistakes committed on the part of the counsel. Even otherwise, all the reasons as assigned and especially the fact that the proceedings are still at threshold, the interest of justice would require that an opportunity should be given to the petitioner to file written statement so as to enable him to contest the proceedings on merits.”

In R.N.Jadi & Brothers case (2 supra), the Apex Court has observed as under:

“Order VIII, Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the

court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.”

From the above, it is clear that the exercise of discretion or jurisdiction by the trial Court is unsustainable. Without further deliberation and on being satisfied, the order impugned in the C.R.P. is unsustainable. The C.R.P. is ordered by setting aside the order dated 17.03.2010 in I.A. No.4978 of 2009 in O.S No.52 of 2009. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date:17.08.2018
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S.V.BHATT, J