

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1300 OF 2018

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the order dated 02.02.2018 in I.A. No.1370 of 2017 in I.A. No.1021 of 2017 in O.S. No.228 of 2017 passed by the XI Additional Chief Judge, City Civil Court, Hyderabad.

The petitioners filed I.A. No.1370 of 2017 under Section 148 of the Code of Civil Procedure, 1908 (for short 'CPC') for enlargement of time for filing written statement. The learned XI Additional Chief Judge, upon hearing the argument of both the counsel, dismissed the said petition on the ground that the time extended for filing written statement was expired and the petition was dismissed for non compliance of the conditional order.

In the affidavit accompanying I.A. No.1370 of 2017 the petitioners contended as follows:

“...the junior counsel for the petitioners herein inadvertently noted down the proceedings as the matter being posted to 25.07.2017 for counter and hearing in the above I.A. and that on 25.07.2017 since no counter was filed by the respondents herein the matter was again posted to 07.08.2017. Further, no papers in the above suit were served on the petitioner herein and even the proceedings pertaining to the above suit was being shown as 'call with I.A. on 07.08.2017' on the Case Status Website of this Hon'ble Court.”

The reason for extension of time is inadvertence of the counsel and non service of papers on the petitioners. But instead of looking into the allegations made by the petitioners, the trial court decided

the petition on the ground that when the main petition was dismissed, the time for filing written statement cannot be extended.

The counsel for the petitioners placed reliance on the Judgment of Madras High Court reported in **Gowri Ammal v. Murugan Anbu, sekar and Saroja Ammal**¹ and **Mahanth Ram Das v. Ganga Das**² and contended that though the time granted for filing written statement was expired, the trial court can exercise power under Section 148 of CPC.

In **Mahanth Ram Das** (2nd supra) the Apex Court, at paragraph 7, held as follows:

“....The short question is whether the High Court, in the circumstances of the case, was powerless to enlarge the time, even though it had peremptorily fixed the period for payment. If the Court had considered the application and rejected it on merits, other considerations might have arisen; but the High Court in the order quoted, went by the letter of the original order under which time for payment had been fixed. Section 148 of the Code, in terms, allows extension of time, even if the original period fixed has expired, and S. 149 is equally liberal....”

The same principle is reiterated by the Division Bench of Madras High court in **Gowri Ammal** (1st supra).

Therefore, the order passed by the trial court is contrary to the law declared by the Apex Court and the Division Bench of Madras High Court.

Hence, the order dated 02.02.2018 in I.A. No.1370 of 2017 in I.A. No.1021 of 2017 in O.S. No.228 of 2017 is hereby set aside remanding the matter to the XI Additional Chief Judge, City Civil Court, at Hyderabad to decide the petition on merits advertng to the

¹ (2006) 2 MLJ 729

² AIR 1962 SC 882

plea raised by the petitioners and the respondents, within a month from the date of receipt of a copy of this order.

Accordingly, the civil revision petition is allowed. No costs.

Consequently, Miscellaneous petitions, if any, pending shall stand closed.

M.SATYANARAYANA MURTHY, J

27.02.2018
BV

