

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.2850 of 2014

ORDER:

Heard learned counsel for the parties.

The 5th defendant in O.S.No.67 of 2012 is the revision petitioner. On 13.03.2013, the trial Court forfeited the right of revision petitioner to file the written statement. The revision petitioner filed I.A.No.295 of 2014 to set aside the order dated 13.03.2013 and grant opportunity to file written statement. Through the order impugned in the Civil Revision Petition, the said application was dismissed.

The learned trial Judge taking note of the causal manner in which the affidavit has been filed and also after taking note of lack of details for the delay of one year in filing this application has declined to set aside the order dated 13.03.2013.

This Court after perusing the record is of the view that petitioner herein for the relief prayed in I.A ought to have been more diligent and given details in support of prayer for setting aside the order dated 13.03.2013.

Be that as it may, on the question of filing the written statement within the time stipulated by order 8 Rule 1 of CPC, this Court in **Shaik Kareem v. Mohd.Khursheed Ali**¹ and the Apex

¹ 2006 (1) ALD 857 (DB)

Court in **R.N.Jadi & Brothers and Ors. Vs. Subhashchandra** ²

held as under:

In Shaik Kareem case:

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 22-6-2004 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

² (2007) 6 SCC 420

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:

“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.”

In view of the decisions referred above, the order impugned in the revision is set aside subject to following conditions.

- (1) The revision petitioner deposits a sum of Rs.300/- to the credit of Secretary Legal Services Authority, State of Telangana within one week from the date of receipt of copy of this order.
- (2) The petitioner by enclosing a copy of this order together with the payment of costs as directed by this Court files written statement within four weeks from today.
- (3) In default of either of these conditions, without reference to Court, the order is recalled. No order as to costs.

The Civil Revision Petition is ordered accordingly. No order as to costs.

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

Dt: 21.08.2018
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S. V. BHATT, J

