

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.3048 of 2018

ORDER:

The order dated 21.03.2018 in I.A.No.503 of 2012 in O.S.No.50 of 2012 passed by the learned Senior Civil Judge, Suryapet, allowing the petition filed under Order XXXVII Rule 3(7) r/w 151 CPC to condone the delay in filing the petition under Order XXXVII Rule 3(5) CPC, subject to providing third party security by the petitioner/defendant for suit claim of Rs.5,07,000/- is under challenge in the instant CRP at the instance of petitioner/defendant.

2a) The suit—O.S.No.50 of 2012 is filed by respondent/plaintiff for recovery of money basing on pronote. The case of the petitioner/defendant is that on receiving suit summons, he engaged the counsel and filed Vakalath on the date of hearing i.e. 27.03.2012 and the trial Court granted time to file written statement and posted the suit to 27.04.2012 and accordingly he filed written statement on 07.04.2012. Later, he came to know that the suit is filed under summary procedure i.e. under Order XXXVII CPC and he failed to comply with the same and to avoid ambiguity he filed the present petition seeking leave of the Court to defend the suit. He thus prayed to allow the petition by condoning the delay.

b) Respondent/plaintiff filed counter and opposed the petition contending that petitioner/defendant has not followed the mandatory

provisions. He further contends that summons were served on the petitioner on 01.03.2012 and he was bound to appear on 11.03.2012 i.e. within 10 days by serving notice of his appearance to the plaintiff's counsel, but he filed Vakalath on 27.03.2012 and hence his appearance cannot be considered and due to non-appearance of the defendant he is entitled for decree as per Order XXXVII, Rule 2(3) CPC. He thus prayed to dismiss the petition with costs.

c) The trial Court after hearing both sides observed that leave to the petitioner/defendant to contest the suit cannot be rejected, as it would not cause injustice to plaintiff and he got every right to put-forth his case to prove his claim against the defendant and accordingly allowed the petition on condition of petitioner/defendant providing third party security for suit claim of Rs.5,07,000/- on or before 04.04.2018.

Hence the CRP.

3) Heard arguments of Sri K.Narasimha Chari, learned counsel for petitioner and Sri P.A.V.Bala Prasad, learned counsel for respondent.

4) The main plank of argument of learned counsel for petitioner is that that he filed I.A.No.504 of 2012 under Order XXXVII Rule 3(5) r/w Section 151 CPC seeking leave of the Court to defend the suit and on 06.10.2017 the said petition was allowed unconditionally permitting the petitioner to defend the suit and his written statement was also accepted by the Court. Thereafter in I.A.No.503 of 2012 which is filed under Order XXXVII Rule 3(7) r/w 151 CPC to condone the delay in

filing I.A.No.504 of 2012, the Court while condoning the delay directed the petitioner to furnish third party security for the suit claim of Rs.5,07,000/-. He would argue, when the leave to contest the suit was unconditionally allowed and written statement filed by the defendant was also accepted, the subsequent order in I.A.No.503 of 2012 to condone the delay in filing I.A.No.504 of 2012 is only a formal one and therefore, the Court while ordering the same ought not to have imposed any condition.

This argument cannot be countenanced.

5a) As per Order XXXVII Rule 3(5) CPC, the defendant at any time within 10 days from the date of service of summons for judgment, may by affidavit disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit. Leave to defend may be granted to him unconditionally or upon such terms as may be appeared to the Court or Judge to be just. Therefore, when the plaintiff under Order XXXVII Rule 3(4) CPC served summons for judgment in Form No 4A in Appendix B, the defendant under Order XXXVII Rule 3(5) CPC may apply for leave to defend and such leave may be granted unconditionally or upon such terms as may appear to the Court or Judge to be just.

b) It is true in the instant case, despite the plaintiff not serving summons for judgment as contemplated under Order XXXVII Rule 3(4) CPC, nevertheless, the defendant, it appears, as an abundant caution

filed a petition—I.A.No.504 of 2012 under Order XXXVII Rule 3(5) CPC seeking leave of the Court to defend the suit and the said petition was allowed unconditionally and permission was granted and written statement was also accepted. What is remained is, I.A.No.503 of 2012 filed under Order XXXVII Rule 3(7) CPC to condone the delay in applying for leave to defend the suit. In fact, chronologically I.A.No.503 of 2012 ought to have been disposed of first and I.A.No.504 of 2012 later. However, I.A.No.504 of 2012 was disposed of on 06.10.2017 allowing the said petition unconditionally. On that ground, it cannot be said that while allowing the I.A.No.503 of 2012 and condoning the delay, the Court was powerless to impose any suitable conditions.

6) As can be seen from the impugned order, the trial Court rightly observed that both the parties as well as the Court committed some mistakes in following the true spirit of Order XXXVII CPC. However, the suit being one under Order XXXVII CPC i.e. ‘summary suit’, the procedural error shall not defeat the substantial justice, for the saying is that a procedure is only handmaid of substantial justice. In ***Surinder Kumar and others v. Praveen Kumari***¹, the High Court of Himachal Pradesh held thus:

“Para 12: Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

¹ MANU/HP/0569/2017

Therefore, the trial Court was right in directing the petitioner/defendant to offer third party security for the suit claim while allowing the I.A.No.503 of 2017.

7) Accordingly, this CRP is dismissed with a direction to the petitioner/defendant to offer third party security for the suit claim on or before 31.12.2018.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

Date: 10.12.2018

Murthy

U. DURGA PRASAD RAO, J

