

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.NO.4020 OF 2018

ORDER:-

This revision petition is taken up for hearing with the consent of both the learned counsel.

2. This revision is filed questioning the order, dated 12-04-2018 passed in O.S.No.5 of 2016 on the file of the court of Judicial Magistrate of First Class, Yellareddy.

3. The grievance of the petitioner is that written statement is filed long after the mandatory period of 90 days fixed by the amended C.P.C. The learned counsel submits that he has also filed a memo in the lower court stating that the vakalat was filed on 13-04-2016 and, therefore, the mandatory period of 90 days expired in July 2016 itself and the written statement was filed much later. The lower court passed the impugned order, wherein it is mentioned as under:-

“There is a representation on behalf of the learned Advocate for the plaintiff by Sri G.Gopal Rao, Advocate. After hearing on behalf of the both the sides, the written statement and counter claim will be taken into consideration.”

The learned counsel's contention is that the 90 days period is mandatory. He, however, cites the judgment of the Hon'ble Supreme Court in *Rani Kusum vs. Kanchan*

Devi and Ors.,[Appeal(Civil) No.5066 of 2015] wherein it was held that the use of the words “*shall*” is not conclusive. Similarly, in the case of *Kailash Vs. Nanhku*⁽¹⁾ also, it was held that 90 days period is not mandatory and that for sufficient reasons the time can be extended. The learned counsel for the petitioner produced a copy of the judgment of the Apex Court in *Mohammed Yusuf vs. Faij Mohammad & Ors [Civil Appeal No.7209 of 2008]* wherein the decision in *R.N.Jadi & Brothers and Ors. Vs. Subhashchandra*⁽²⁾ and *Kailash(supra)* were considered. Para.15 of *Kailash(supra)* was reproduced wherein it is held if Order VIII, Rule 1 CPC is held to be giving a power to the court to extend the time indiscriminately, it would defeat the object sought to be achieved by the amendments to the CPC. Therefore, their Lordships emphasized the grant of extension of time beyond 90 days is not automatic and it should be exercised with caution and for adequate reasons based on clear satisfaction of the court below. The judgment of the Hon’ble Supreme Court in Civil Appeal No.65 of 2014, dated 02-01-2014 is also produced wherein the findings in *Kailash(supra)* are reiterated. In this view of the matter, this court finds that the lower court did not appear to have

¹ AIR 2005 SC 2441

² (2007) 6 SCC 420

exercised its mind properly. The material available does not enable this court to finally pronounce on this matter.

4. Hence, the matter is remanded to the court below to pass a reasoned order in the light of the judgments cited above and to decide in the light of the above case law whether sufficient cause is made out for receiving the written statement beyond the stipulated period as per the amended CPC.

With these observations, the Civil Revision Petition is allowed and the matter is remanded to the court below. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

09-11-2018
TSNR

D.V.S.S.SOMAYAJULU,J

