

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.6275 OF 2012

ORDER:

The defendants are the revision petitioners.

The revision petitioners through I.A.No.1080 of 2012 prayed for receiving the written statement and allow the defendants to contest the suit. The trial Court by recording the following reasons dismissed the prayer viz., the defendants filed the present application to drag on the matter and if really they have interest in the property they ought to have filed written statement immediately after the implead petition was allowed and the present application is filed at a belated stage.

Mr.Gaddam Sinivas, counsel for petitioners, relies on the decision of the Apex Court in ZOLBA v. KESHAO AND OTHERS¹ and contends that the time within which the written statement is required to be filed is treated as mandatory by the trial Court and the same is untenable having regard to the binding precedent in ZOLBA case. He further contends that the reasons assigned appear like the trial Court is taking a pedantic view on the procedural issues and such approach defeats the fair opportunity in conducting trial. Further, the written statement was filed along with the instant application and the revision petitioners ought to have been given sufficient opportunity to contest the suit. The decision in ZOLBA relied on by the revision petitioners states thus:

“Considering the facts and circumstances of the present case and the statements made in the application for

¹ (2008) 11 SCC 769

condoning the delay in filing the written statement, we are not in a position to hold that the appellant was not entitled to file the written statement even after the expiry of the period mentioned in the proviso to Order 8 Rule 1 of the CPC. After reading the provisions, in particular the proviso to Order 8 Rule 1 of the CPC, we are unable to hold that the provisions under Order 8 Rule 1 are mandatory in nature.

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.....it would be open to the court to permit the appellant to file his written statement if exceptional circumstances have been made out. It cannot also be forgotten that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Therefore, unless compelled by express and specific language of the statute, the provisions of Order 8 Rule 1 of CPC or any procedural enactment should not be construed in a manner, which would leave the court helpless to meet extraordinary situations in the ends of justice.

After perusing the record and also the fact that the written statement was already filed along with the I.A.No.1080 of 2012, this Court is convinced that there is illegality in the discretion exercised by the trial Court. The order under revision, hence is set aside.

The revision is, accordingly, allowed. The trial Court is directed to dispose of the suit within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

Pending miscellaneous petitions, if any, stand closed.

S.V.BHATT, J

12th September, 2018

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