

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.6936 AND 6940 OF 2018

COMMON ORDER

The petitioner in these two revisions, filed under Article 227 of the Constitution, is the defendant in O.S.No.226 of 2017 on the file of the learned VII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. The said suit was filed by the respondent herein for recovery of a sum of Rs.3,75,700/- along with interest thereon. While so, the petitioner-defendant was set *ex parte* on 07.02.2018 on the ground that she had not filed her written statement in the suit. She thereupon filed I.A.No.823 of 2018 in the suit to set aside the order dated 07.02.2018 setting her *ex parte* and to permit her to file her written statement. She also filed I.A.No.824 of 2018 to reopen the case to enable her to file her written statement. By common order dated 08.10.2018, the trial Court dismissed both the I.As. Hence, these revisions.

Heard Sri K.V.Raghuveer, learned counsel for the petitioner-defendant, and Sri Krishna Murthy Devarakonda, learned counsel on caveat for the respondent-plaintiff.

It is not in dispute that the petitioner-defendant entered appearance in the suit on 03.08.2017 through learned counsel. Ample opportunity seems to have been extended to her to file her written statement. Despite the same, she failed to do so and was set *ex parte* on 07.02.2018 on that ground. The case was adjourned to 12.06.2018 for the evidence of the respondent-plaintiff. The matter was again adjourned to 16.07.2018 and the respondent-plaintiff adduced his evidence. The suit was then posted for judgment on 14.08.2018. While so, the subject applications came to be filed by the petitioner-defendant on 26.07.2018.

Observing that almost six months time had been given to the petitioner-defendant to file her written statement, the trial Court noted that even after she was set *ex parte* on 07.02.2018, she did not choose to take steps on 12.06.2018 and 16.07.2018 when the case came up for the evidence of the respondent-plaintiff.

Perusal of the affidavits filed in support of the applications demonstrates that no explanation was put-forth by the petitioner-defendant as to why she remained somnolent on these later dates. Though she claimed that she could not contact her counsel due to ill-health, she admittedly did not produce any proof of the so called ill-health which prevented her from taking steps within time.

This being the admitted situation, the question is whether the petitioner-defendant can be allowed to turn back the clock at this late stage and seek reopening of the suit for the purpose of filing her written statement.

Though the Court would ordinarily be liberal in such situations, each case would have to turn upon its own individual facts. The admitted position in the case on hand is that the petitioner-defendant was utterly negligent and careless in defending the case despite having engaged a learned counsel as long back as on 03.08.2017. Be it noted that even after she was set *ex parte* on 07.02.2018, she could have asserted a right to cross-examine the respondent-plaintiff's witness or witnesses, as the case may be, when they were examined on 16.07.2018. She however did not choose to do so. A party who sleeps over the matter and allows the other side to gain a lawful advantage cannot thereafter seek to rectify the mistake by turning back the clock.

In the case on hand, the respondent-plaintiff already adduced his evidence and the matter is posted for pronouncement of the judgment. It

is therefore too late in the day for the petitioner-defendant to wake up and claim the right to file her written statement. All the more so, as she did not even choose to support her plea of ill-health with requisite documentation. Be it viewed from any angle, this Court finds no grounds to interfere with the common order under revision in these two cases.

The civil revision petitions are devoid of merit and are accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

30th NOVEMBER, 2018
PGS

JUSTICE SANJAY KUMAR

