

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA
PRADESH

C.R.P.No.6712 of 2017

Between:

Y.Venkata Ramana and two others

.....Petitioner

and

Yellaboyani Venkatamma @ Y.Munivenkatamma

.....Respondents

Date of Judgment pronounced on : 23-04-2018

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO**C.R.P.No.6712 of 2017**

23-04-2018

Y.Venkata Ramana and two others

.... Petitioners

Versus

\$ Yellaboyani Venkatamma @ Y.Munivenkatamma

..... Respondents.

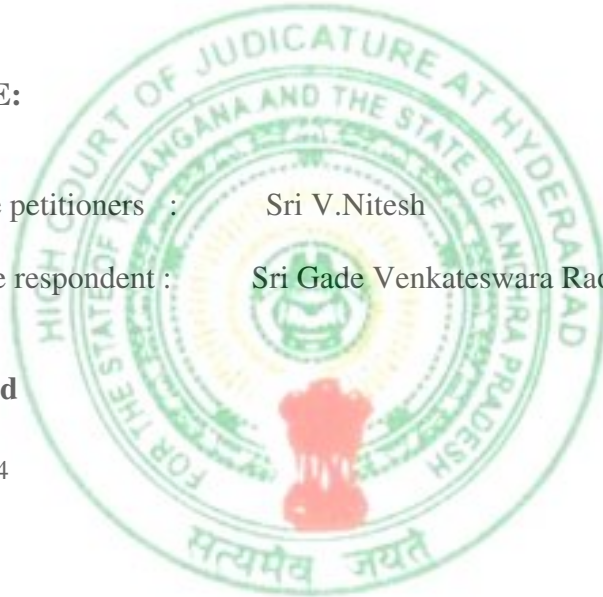
< **GIST:**> **HEAD NOTE:**

!Counsel for the petitioners : Sri V.Nitesh

^Counsel for the respondent : Sri Gade Venkateswara Rao

? **Cases referred**

(2005) 6 S.C.C. 344



THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**C.R.P.No.6712 of 2017****ORDER:**

This Revision Petition is filed by the petitioners under Article 227 of the Constitution of India challenging the order dt.12-10-2017 in I.A.No.101 of 2017 in O.S.No.290 of 2007 of the Principal Junior Civil Judge, Punganur, Chittoor District.

2. The petitioners are defendants in the suit.

3. The said suit was filed by the respondent declaring that a decree in respect of item-8 of O.S.No.178 of 1997 passed by the said Court in I.A.No.1094 of 2003 on 12-02-2007 is not binding on the respondent and for injunction restraining the petitioners from interfering in any way with the peaceful possession and enjoyment of the plaint schedule properties.

4. The said suit was filed on 05-11-2007. The petitioners herein filed a Written Statement raising counter claim on 05-07-2008.

5. The respondent/plaintiff did not immediately file any Written Statement to the said counter claim made by the petitioners.

6. After lapse of nine years, on 18-11-2016, without permission of the Court, the respondent/plaintiff filed Written Statement to the petitioners' counter claim.

7. After the trial commenced in 2017, when the matter was coming up for marking of documents and cross examination of P.W.1, the petitioners/defendants filed I.A.No.101 of 2017 invoking Order VIII Rules 6-A (3) and 6-G and Section 151 CPC praying the Court to reject the Written Statement of the respondent/plaintiff filed in answer to the counter claim of the petitioners/defendants without leave of the Court.

8. In the affidavit filed in support of the said application, they contended that the respondent having remained silent after the filing of the counter claim by the petitioners, filed his answer to the counter claim by way of Written Statement on 18-11-2016 along with her chief examination affidavit without the leave of the Court and the same is liable to be rejected since the rules relating to Written Statement filed by a defendant shall apply to a Written Statement filed by a plaintiff in answer to a counter claim made by the defendant.

9. Counter was filed by the respondent opposing this application stating that copy of the Written Statement had not been supplied to her; contents of the Written Statement filed by the petitioners were not gone through by her counsel; and when the respondent was preparing chief examination affidavit, she came to know that the petitioners had filed counter claim; thereafter at the request and also with the permission of the Court, she had filed Written Statement answering counter claim filed by the petitioners along with chief examination affidavit and document. She contended

that even during the marking of the documents, neither the petitioners nor their counsel raised any objection in respect of filing of the Written Statement by the respondent to the counter claim raised by the petitioners and that the said application I.A.No.101 of 2017 was filed only to protract the proceedings.

10. By order dt.12-10-2017, the Court below dismissed the said application. It observed that counter claim had been filed on 05-07-2008 by the petitioners and the respondent had stated in his affidavit in the I.A. that copy of the Written Statement filed by the petitioners had not been supplied to her; and though the respondent did not take any permission of the Court, as per Order VIII Rule 6-A (3) of the CPC, the respondent was at liberty to file Written Statement in answer to the counter claim of the petitioners within such period as may be fixed by the Court. It held that the petitioners did not take any objection at the time of filing of the Written Statement by the respondent to the counter claim which was filed on 18-11-2016, that later, the matter was posted for trial from time to time, and once the Written Statement and counter claim filed by the petitioners are on record, it is the duty of the respondent to file Written Statement in answer to the counter claim. It observed that if at all there is any grievance with regard to the title between the respondent and petitioners, they can contest the suit by examining the witnesses and by placing necessary documents.

11. Assailing the same, petitioners have filed this Revision Petition.

12. Heard Sri V.Nitesh, learned counsel for the petitioners and Sri Gade Venkateswara Rao, learned counsel for the respondent.

13. Learned counsel for the petitioners contended that the provisions relating to filing of a Written Statement are made applicable by order VII Rule 6-G to the filing of the Written Statement in answer to a counter claim by a plaintiff also; that as per proviso to Order VIII Rule 1, Written Statement had to be filed within 30 days unless the defendant is allowed to file the same on such other day as may be specified by the Court for reasons to be recorded in writing, but even such period shall not be later than 90 days from the date of service of summons; and merely because at the time when the respondent/plaintiff filed his Written Statement in answer to the counter claim of the petitioners, no objection had been raised specifically by the petitioners, the duty of the Court to record reasons while receiving it when it is filed with a delay of nine years cannot be abdicated by it; and the Court cannot absolve itself of such responsibility particularly when such inordinate delay is there on the part of respondent/plaintiff to file the Written Statement in answer to the counter claim of the petitioners. He pointed out that even the Court below had recorded a finding that the respondent/plaintiff's counsel had received copies of the Written Statement and the plea of the respondent/plaintiff that she was not supplied with copy of the

Written Statement-cum-counter claim is incorrect; and in such circumstances, the exercise of jurisdiction by the Court below in refusing to entertain the objection raised by the petitioners is unsustainable. He contended that the Court below had failed to exercise jurisdiction vested in it by law by refusing to reject the Written Statement filed by respondent in answer to the counter claim made by the petitioners.

14. Learned counsel for the respondent however refuted the said contentions. He stated that since no objection had been raised at the time of filing of the Written Statement by the respondent on 18-11-2016 to the counter claim made by the petitioners, the petitioners are deemed to have waived any such objection and the order passed by the Court below is correct.

15. I have noted the contentions of the parties.

16. From the facts narrated above, it is clear that the petitioners, who are defendants in the suit, had filed Written Statement-cum-counter claim on 05-07-2008. Nine years later, on 18-11-2016, without seeking permission of the Court, the respondent/plaintiff filed his Written Statement in answer to the said counter claim.

17. The question is "*whether the court below had rightly exercised its discretion in dismissing petitioners' application to reject*

the said Written Statement filed by the respondent to the counter claim by the petitioners or not?”

18. Order VIII Rule 6 (A) permits a defendant, in addition to his right of pleading a set-off under Rule 6, to raise by way of counter claim against the claim of the plaintiff, any right or claim in respect of cause of action accruing to the him against the plaintiff either or after the filing of the suit. However, he is required to file the counter claim before he delivered his defence or before the time limited for delivering his defence has expired.

19. Order VIII Rule 6-G makes applicable the rules relating to a Written Statement by a defendant to apply to a Written Statement filed by the plaintiff in answer to a counter claim.

20. Therefore Order VIII Rule 1 CPC is applicable to the respondent/plaintiff. It states:

“R.1. Written Statement:- The defendant shall, within thirty days from the date of service of summons on him, present a Written Statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

21. This provision has been interrupted by the Supreme Court in **Salem Advocate Bar Association, T.N. Vs. Union of**

India¹. The Supreme Court held that though a Written Statement had to be filed within 30 days as per Act 46 of 1999, the rigour of this provision was reduced by Amendment Act 22 of 2002 which enabled the Court to extend the time for filing Written Statement on recording sufficient reasons therefor, but the extension can be maximum of 90 days. It also considered the question whether the Court has any power or jurisdiction to extend the period beyond 90 days. It held that though maximum period of 90 days to file the Written Statement had been provided, consequences on failure to file Written Statement within the said period had not been provided for in Order VII Rule 1 CPC; that the provision in Order VIII Rule 1 providing that the higher limit of 90 days to file Written Statement is directory, but however added that the order extending time to file Written Statement cannot be made in a routine manner, and time can be extended only in exceptionally hard cases. It held that while extending time, it has to be borne in mind that the Legislature has fixed the time limit of 90 days and the discretion of the Court to extend the time shall not be frequently and routinely exercised so as to nullify the time fixed under Order VIII Rule 1 CPC.

22. In the instant case, admittedly the Written Statement was filed by the respondent/plaintiff in answer to the counter claim of the petitioners on 18-11-2016, nine years after such counter claim had been filed by the petitioners on 05-07-2018.

¹ (2005) 6 S.C.C. 344

23. As per Order VIII Rule 1 CPC, such Written Statement ought to have been filed by the respondent within 30 days from the date of receipt of the Written Statement-cum- counter claim of the petitioners.

24. As per the proviso to Rule 1 of Order VIII, the Court normally had power to extend the time for filing such Written Statement by the respondent to the counter claim made by the petitioners only for a period not later than 90 days, that too for reasons to be recorded in writing.

25. For such reasons to be recorded in writing, the respondent/plaintiff should have filed an application seeking permission of the Court to file such Written Statement in answer to the counter claim of the petitioners beyond the period of 30 days.

26. Admittedly he did not do so. The fact that the respondent did not do so and the petitioners did not object at the time of filing such Written Statement in answer to the counter claim, in my considered opinion, cannot absolve the Court below of it's duty to record reasons in writing why it received the Written Statement filed by the respondent in answer to the counter claim of the petitioners beyond the period of 30 days. Admittedly no such reasons have been recorded by the Court below.

27. Also the only reason assigned by the respondent is that he could not file the Written Statement in answer to the counter claim

of the petitioners within time was that copy of the Written Statement-cum- counter claim had not been supplied to his counsel. Even the Court below found this excuse to be incorrect on verifying the record.

28. Once this is so, no indulgence could have been shown by the Court below to allow respondent's Written Statement in answer to the counter claim made by the petitioners and it ought to have rejected the same by allowing the application filed by the petitioners. But it had allowed the Written Statement filed by the respondent in answer to the counter claim to remain on record, as a matter of routine, which the Supreme Court in the above case said cannot be done.

29. The Supreme Court had permitted extension of time beyond 90 days only in exceptionally hard cases. In the present case, the negligence of the respondent or his counsel in reading the Written Statement-cum- counter claim of petitioners and consequently failing to file his response cannot bring the case of the respondent in the category of an exceptionally hard case. By such erroneous exercise of jurisdiction, the Court below had practically nullified the period fixed by Order VIII Rule 1 CPC.

30. Therefore, the Civil Revision Petition is allowed; order dt.12-10-2017 in I.A.No.101 of 2017 in O.S.No.290 of 2017 of the Principal Junior Civil Judge, Punganur, is set aside; and the said I.A. is allowed and the Written Statement filed by the respondent/plaintiff

in answer to the counter claim of the petitioners is struck off the record and shall not be considered for any purpose. No costs.

31. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-04-2018

Note: Mark the L.R. Copy.

B/o.

Kvr

