

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.455 and 490 of 2018

COMMON ORDER :

Since these two Revisions arise out of the same suit, they are therefore being disposed of by this Common Order.

2. The petitioner in both these cases is plaintiff in O.S.No.223 of 2011 on the file of III Additional District Judge, Ranga Reddy at L.B. Nagar.

3. He filed the said suit against respondents for recovery of possession of the plaint schedule property, and to declare that certain documents executed were null and void, etc.

4. The 1st respondent herein is 16th defendant in the above suit.

5. Summons in the suit were served on 1st respondent.

6. Since there was no counter-affidavit filed by 1st respondent, the 1st respondent was set *ex parte* on 21.06.2011.

7. On 02.03.2017, i.e., more than 5 ½ years thereafter, the 1st respondent was set *ex parte*.

8. The 1st respondent filed I.A.No.212 of 2017 under Order IX Rule 7 of Civil Procedure Code, 1908 to set aside the order dt.21.06.2011 setting it *ex parte*; and I.A.No.274 of 2017 invoking Section 148 of Civil Procedure Code, 1908 to enlarge the time by condoning the delay in filing the Written Statement.

9. In the affidavit filed in support of I.A.No.212 of 2017, the representative of 1st respondent stated that he was a Chief Executive Officer (C.E.O.); that they did not notice the Court Summons due to their business preoccupations and could not appear before the Court on the said date, and so, the 1st respondent was set *ex parte*; that the summons were traced subsequently by staff of 1st respondent while searching documents of land in its office and after enquiry from 12th defendant, the 1st respondent came to know about the suit and its pendency. It is contended that non-appearance of 1st respondent was only unintentional and opportunity be given to 1st respondent to contest the suit by setting aside the order dt.21.06.2011, setting it *ex parte*.

10. In the affidavit filed in support of I.A.No.274 of 2017, it is contended by 1st respondent that on 21.06.2011 the representative of 1st respondent was out of station to attend business preoccupations, and so, the 1st respondent was not able to appear before the Court on the said date, and the Court had set them *ex parte*. He stated that when he returned back to Hyderabad he came to know that the 3rd respondent in the suit had filed a separate petition for rejection of plaint, and he was under the impression that since the plaint itself was under challenge, he need not contest the suit with a separate stand. He stated that subsequently he came to know that the petition for rejection of plaint was dismissed and so opportunity may be given to

file Written Statement by enlarging the time by condoning the delay in filing the Written Statement.

11. Counter-affidavit was filed by petitioner opposing both applications. It was pointed out that the 1st respondent was aware of the pendency of the suit, and that the 1st respondent had intentionally remained *ex parte* after receiving summons in the suit, and six years thereafter I.A.No.212 of 2017 has been filed.

12. By orders dt.12.04.2017, the Court below allowed both applications. After considering the contentions of parties, it noted that the suit is filed for declaration and recovery of possession, and that it was filed on 19.04.2011; that issues in the suit were settled on 14.09.2012 and PW.s1 and 2 were examined and evidence of petitioner / plaintiff was closed; and at that stage, these applications were filed. It noted that the main suit is a comprehensive suit and though the reasons assigned by the 1st respondent do not appear to be 'considerable', having regard to the main *lis* between the parties opportunity should be given to the 1st respondent to contest the suit for he was not diligent in prosecuting the case by imposing costs of Rs.1000/-. A direction was given to file Written Statement by 22.06.2017.

13. Assailing the same, the present Civil Revision Petitions are filed by the plaintiff.

14. The counsel for petitioner contended that the 1st respondent having been totally negligent in taking steps to defend its interest after receiving summons, and there being no valid reason offered by the 1st respondent for its absence on 21.06.2011, the Court below could not have set aside the *ex parte* order dt.21.06.2011 and extended the time for filing written statement.

15. The counsel for 1st respondent however supported the orders passed by the Court below and contended that in view of the fact that the suit was filed for declaration and recovery of possession the discretion exercised by the Court may not be interfered with in exercises of the jurisdiction conferred by this Court under Article 226 of the Constitution of India.

16. I have noted the contentions of both sides.

17. Under Order VIII Rule 1 of Civil Procedure Code, 1908, a defendant has to file his Written Statement within thirty (30) days from the date of service of the summons on him. This period can however be extended up to ninety (90) days at the discretion of the Court.

18. Interpreting this Rule, the Supreme Court in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India**¹ held that time granted for filing Written Statement mentioned in Order VIII Rule 1 of Civil Procedure Code, 1908 though directory, time can be extended only in exceptionally hard cases and the Court should not extend time

¹ AIR 2005 S.C. 3353

routinely so as to nullify the period fixed under Order VIII Rule 1 of Civil Procedure Code, 1908. It observed as follows :

“22. Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the Legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1.”

19. The counsel for respondent relied on the decision of the Supreme Court in **Kailash vs. Nanhku and others**². In the said judgment also it was observed that no straight-jacket formula can be laid down except that the observance of time schedule contemplated by Order VIII Rule 1 of Civil Procedure Code, 1908 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. It also reiterated that a prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, and especially when period of 90 days has expired. It observed that extension of time may be allowed only by way of exception, for reasons to be assigned by the defendant and also to be placed on record in writing by the Court on its being satisfied. It held that the circumstances must be exceptional, occasioned by reasons beyond the control of the defendant.

² (2005) 4 S.C.C. 480

20. In the instant case, when it is admitted by the 1st respondent that he had received the summons and the only reason assigned was preoccupation of the 1st respondent, and the application for extension of time as well as application under Order VII Rule 9 are filed almost six years after the 1st respondent was set *ex parte* on 21.06.2011, merely because issues of title or possession are raised in the suit, the Court below could not have showed any indulgence to the 1st respondent. No exceptional circumstances beyond the control of the 1st respondent have been either pleaded or established by the 1st respondent for permitting it to file written statement by setting aside the order dt.21.06.2011 setting it *ex parte* and extending time for filing the Written Statement.

21. Therefore, the Civil Revision Petitions are allowed, and the impugned orders are set aside. I.A.Nos.212 and 274 of 2017 in O.S.No.223 of 2011 are both dismissed. No order as to costs.

22. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 26.03.2019

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