

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.300 of 2019

O R D E R:

This Revision is filed challenging the Docket Order dt.11.07.2017 in O.S.No.5 of 2016 passed by the Senior Civil Judge at Manthani, permitting the defendant No.s 1, 2 and 5 therein (respondent No.s 1, 2 & 5) to file written statement by granting time up to 14.07.2017.

2. Service of the summons in the said suit was effected on the 1st defendant/1st respondent on 02.05.2016; that vakalat was filed by advocate for 2nd defendant/2nd respondent on 05.06.2017; and summons was served on 5th defendant/5th respondent on 27.04.2016 and the Assistant Government Pleader filed a Memo on 06.06.2016 for 5th defendant/5th respondent.

3. When the matter came up for hearing on 11.07.2017, it was noted that no written statement was filed by respondent No.s 1 to 5/defendant No.s 1 to 5.

4. When time was sought for filing written statement by defendant No.s 1, 2 & 5/respondent No.s 1, 2 & 5, counsel for the plaintiff/petitioner herein opposed the same.

5. Counsel for the respondents on the other hand contended that the post of the Presiding Officer was kept vacant for more than three years and on account of that, they could not file written statement within the stipulated period.

6. The Court below accepted the said reason and permitted defendant No.s 1, 2 & 5/respondent No.s 1, 2 & 5 to file written statement by 14.07.2017.

7. Assailing the same, this Revision is filed.

8. Counsel for the petitioner contended that the maximum time, which could be granted for filing a written statement as per the amended Order VIII Rule 1 CPC was only 90 days and there are no exceptional circumstances to permit the respondents to file written statement after the said period in this case.

9. Counsel for the 1st respondent/1st defendant refuted the said contention and contended that because there was no Presiding Officer, the 1st respondent was precluded from presenting the written statement within the stipulated period of 30/90 days fixed under Order VIII Rule 1 CPC.

10. This contention is without any merit, because even if there is no Presiding Officer in the Court in question, the Judge of the neighbouring Court would always be put In-Charge/FAC of the Court where there is no Presiding Officer. Therefore, nothing prevented the respondent No.s 1, 2 & 5 from filing written statement within the time prescribed by law before the In-Charge Judge.

11. In **Salem Advocate Bar Association. T.N. v. Union of India**¹ 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.

12. Since admittedly, in the instant case summons had been served on respondents 1, 2 & 5 on 02.05.2016, 05.06.2017 and 06.06.2016, respectively, the Court below could not have extended time for filing the Written Statement up to 14.07.2017.

13. Therefore, this Civil Revision Petition is allowed and the impugned Docket Order dt.11.07.2017 in O.S.No.5 of 2016 of the Senior Civil Judge at Manthani, is set aside. No order as to costs.

¹ 2005(5) ALD 1(SC)=2005(6) SCC 344

14. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

27th June, 2019.

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