

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.356 of 2019

ORDER :

This Civil Revision Petition is filed challenging the order dt.30.01.2019 passed in I.A.No.1871 of 2018 in O.S.No.7 of 2018 on the file of the Principal District Judge, Nizamabad.

2. The petitioner herein is defendant in O.S.No.7 of 2018, filed by respondent against him for recovery of sum of Rs.20 lakhs with interest at the rate of 24 % per annum for maliciously prosecuting the respondent.

3. After service of notice, the petitioner engaged a counsel and the matter was posted to 23.07.2018 for filing of Written Statement. On that particular day, Written Statement was not filed by the petitioner, and he was also absent. So, he was set *ex parte* on 23.07.2018.

4. On 19.12.2018, the petitioner filed I.A.No.1871 of 2018 to set aside the order dt.23.07.2018 setting him *ex parte* contending that petitioner was to file Written Statement on 23.07.2018, but on that day he could not consult his counsel and could not file written statement, since he had to go to Warangal to see a near and ailing relative and to attend to him at a hospital there.

5. Copy of Written Statement which was sought to be filed was also filed along with the I.A.

6. Counter-affidavit was filed by respondent opposing the said application and it was contended that the grounds stated in the application were created for the purpose of the case and they are not true. It was also pointed out that petitioner did not show any reason for his not filing written statement earlier to the date when he was set *ex parte*, and the reasons mentioned in the affidavit are false. It was contended that petitioner was moving from one place to another in connection with Assembly elections after the election notification was issued, and he was very much present at Nizamabad and was attending a criminal case before the said Junior First Class Magistrate's Court, Nizamabad.

7. By order dt.30.01.2019, the Court below dismissed the said I.A. It held that when the hearing is completed, parties have no further rights or privileges in the matter, and it is only for the convenience of the Court that Order XX Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It observed that after the stage contemplated by Order IX Rule 7 C.P.C. is passed, the next stage is only passing of a decree which on terms of Order IX Rule 6 C.P.C. the Court is competent to pass, and then the defendant has only a remedy to invoke Order IX Rule 7 C.P.C. It thus observed that when the suit is posted for judgment, at that stage the petitioner filed I.A. under Order IX Rule 7 C.P.C. which is not maintainable; and it is liable to be dismissed.

8. Admittedly, the suit in question is of the year 2018, and had been presented on 22.01.2018. No doubt, the petitioner could not be present when the matter was posted on 23.07.2018 for the purpose of filing of this Written Statement, and he filed application I.A.No.1871 of 2018 only on 19.12.2018 invoking Order IX Rule 7 C.P.C.

9. It is shocking that when there are several suits pending before the same Court, including suits filed much prior to 2018, the Court below was very anxious to decide this suit and had listed the matter for judgment to 20.12.2018. After that also, it had adjourned the matter to 24.12.2018, 02.01.2019, 21.01.2019, 30.01.2019, 20.02.2019. Though, it is also contended by the Counsel for respondent that on earlier dates of hearing, petitioner did not file Written Statement and did not appear before the Court, the question is whether he had sufficient cause for not appearing on 23.07.2018 and his absence on the prior dates, cannot be taken into account.

10. When the application is filed with a short delay, the Court below, without keeping in mind the principle that matters ought to be normally decided on merits instead of technicalities, giving a go-by to substantial justice, rejected the application and showed undue anxiety in deciding the 2018 suit, filed by respondent against the petitioner.

11. Therefore, in the interests of justice, the impugned order dt.30.01.2019 passed in I.A.No.1871 of 2018 in O.S.No.7 of 2018 on the file of the Principal District Judge, Nizamabad, is set aside. The

said I.A. is allowed, and the Written Statement filed by petitioner is directed to be taken on record by the Court below; and the Court below is also directed to proceed further in the matter in accordance with law.

12. According the Civil Revision Petition is allowed with the above directions. No order as to costs.

13. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04.04.2019

Ndr/*

