

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.469 OF 2019

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the petitioners aggrieved by the order dated 31.01.2019 passed in I.A.No.517 of 2018 in O.S.No.105 of 2016 on the file of the Senior Civil Judge at Huzurnagar, wherein the application to file additional written statement, was dismissed.

2. Heard learned counsel for the revision petitioners, learned counsel for the respondents and perused the record.

3. Learned counsel for the revision petitioners would submit that due to miscommunication by their Advocate on record after transfer of the suit from Junior Civil Judge's Court, Kodad, to Senior Civil Judge's Court, Huzurnagar, additional written statement was not filed by the revision petitioners. Therefore, the Court below treated that there was no additional written statement. Immediately, the revision petitioners filed an application to allow them to file additional written statement and it was denied erroneously. It is contended that substantial issues are required to be dealt with in view of change of nature of suit from partition to declaration of title and ultimately prayed to set aside the impugned order and allow the said I.A. as prayed for.

4. Per contra, learned counsel for the respondents submitted that the impugned order is a well reasoned order and ultimately prayed to dismiss the revision petition.

5. It is pertinent to note that when there is change in the nature of suit from partition to declaration of title, additional written statement

was required to be filed by the revision petitioners (defendant Nos.2, 4 to 8) but it was not filed within the time stipulated. So, as stated on oath that their counsel, who was representing them before the Junior Civil Judge's Court, Kodad, has not informed the revision petitioners with regard to require preparation and filing of additional written statement which led to denial of opportunity of filing additional written statement to put forth their defence. The earlier written statement, if any, filed by the revision petitioners would not help them to defend their case. The substantial justice is required to be rendered after taking the contentions of both sides. If the revision petitioners are not allowed to file additional written statement, it would cause grave injustice to them. Further, the revision petitioners have made out sufficient cause for not filing the written statement within the time stipulated. Under these circumstances, the Court below ought to have given an opportunity and allow the application as prayed for. The Court below failed to exercise the jurisdiction vested therein in favour of the revision petitioners. Therefore, the impugned order is liable to be set aside.

6. In the result, the Civil Revision Petition is accordingly allowed, directing the revision petitioners (defendant Nos.2 to 4 to 10) to file the additional written statement within 15 days from today. It is needless to state that after receipt of additional written statement as directed by this Court, the Court below shall proceed further in accordance with law. The Original Suit shall be disposed of expeditiously.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Date: 31.10.2019
ssp

Dr. SHAMEEM AKTHER, J

