

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.735 of 2019

ORDER :

This Civil Revision Petition is filed challenging the order dt.18-12-2018 in I.A.No.330 of 2018 in O.S.No.90 of 2017 of the Junior Civil Judge-cum-Judicial Magistrate of First Class at Chevella, Ranga Reddy District.

2. Petitioners are defendants in the suit.

3. After receiving summons in the suit prior to 08-11-2017 petitioner engaged a counsel through whom they filed vakalat on 08-11-2017, but they did not file written statement and they were set *ex parte* on 04-06-2018.

4. They filed I.A.No.330 of 2018 to set aside the said order stating that on expiry of 90 days period, the Court has only power to forfeit the right of petitioners to file written statement but cannot set them *ex parte* after vakalat is filed.

5. The Court below rejected the said application by order dt.18-12-2018. It observed that petitioners have only stated that the Court has exceeded jurisdiction in setting them *ex parte* but did not adduce any reason or documentary evidence for not filing written statement within the stipulated time period and therefore there is no necessity to set aside the order setting the petitioners *ex parte*.

6. Challenging the same, this Revision is filed.

7. Learned counsel for petitioners sought to contend that petitioners are suffering from illness of various types, which prevented them from filing written statement in time, and therefore the Court below should have set aside the order dt.04-06-2018 setting petitioners *ex parte* since it causes injustice to the petitioners.

8. Under Order VIII Rule 1 C.P.C., the petitioners/defendants have to file written statement within 30 days from the date of service of summons, but if they failed to do so, they may be permitted to file the same, provided valid reasons exist, but more than 90 days time cannot be granted to the defendants for filing written statement from the date of service of summons.

9. The Supreme Court in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India**¹ has held that only in extraordinary circumstances, the Court can permit filing of written statement beyond 90 days. This legal position is not disputed by the learned counsel for petitioners.

10. It is not the case of the petitioners that they had moved the Court below at any point of time prior to its order dt.04-06-2018 to extend the time for filing written statement beyond the period of 90 days which would have expired by 05-02-2019 taking the date of

¹ AIR 2003 SC 189 = AIR 2005 SC 3353

service of summons as 07-11-2017, the day prior to the filing of vakalat.

11. In these circumstances, the Court below cannot be found fault with for setting the petitioners *ex parte* since petitioners had not evinced any interest to contest the suit except filing vakalat through counsel on 08-11-2017.

12. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India having regard to the conduct of the petitioners. However, this will not preclude them from participating in the trial of the suit and cross-examining the witnesses examined by respondents.

13. Accordingly the Civil Revision Petition fails and it is dismissed at the stage of admission. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-06-2019

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