

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.2279 of 2017

ORDER :

This Civil Revision Petition is filed by petitioner herein assailing the order dt.29.11.2016 passed in O.S.No.952 of 2015 on the file of the IV Junior Civil Judge, City Civil Court, Hyderabad.

2. The petitioner herein is plaintiff in the above suit.
3. The said suit was filed by petitioner against respondents for a perpetual injunction restraining respondents from interfering or dispossessing or demolishing or raising illegal construction over the suit schedule property, which is said to be in the physical possession and enjoyment of petitioner.
4. Respondent nos.1 and 2 / defendants did not file written statement within the time prescribed by law, and therefore, on 08.09.2015, their right to file written statement was forfeited.
5. I.A.No.38 of 2016 was filed by respondent nos.1 to 3 to set aside the said order dt.08.09.2015 forfeiting the right of the respondents to file written statements and to permit them to file the same.
6. Initially, the said I.A. was dismissed for default on 15.02.2016 on the ground that 'Notice' was not given to petitioner.

7. The respondents then filed I.A.No.66 of 2016 to set aside the order dt.15.02.2016 dismissing I.A.No.38 of 2016, and permit the petitioners to file the written statement.

8. The petitioner did not oppose the same, and the said application was allowed on 26.02.2016.

9. Thus, I.A.No.38 of 2016 stood restored to the file of the Court below.

10. Then I.A.No.38 of 2016 was again heard and dismissed by the Court below on 19.04.2016, observing that there was no proper explanation offered by respondents / applicants in I.A.No.38 of 2016 for not filing the written statement within the time stipulated by law and the stipulated period of ninety (90) days was also completed long back, and it would be abuse of process of law to allow the said application.

11. This order was not challenged by the respondents, and it attained finality.

12. Shockingly, the Court below then passed the impugned order on 29.11.2016 stating that there was an order passed by it in I.A.No.66 of 2016; that respondent nos.1 and 2 had filed written statement; and for framing of issues, the matter should be called again on 13.12.2016.

13. Assailing the same, the present Civil Revision Petition is filed.

14. The counsel for petitioner contended that once the Court below had forfeited the right of respondents to file written statement in the suit on 08.09.2015 and refused to set aside the said order by dismissing I.A.No.38 of 2016 on 19.04.2016, the Court below could not have taken on record the Written Statement of respondent nos.1 and 2.

15. The counsel for respondents, who had supported the order of the Court below, contended that once I.A.No.66 of 2016 was allowed it would mean that automatically the order dt.08.09.2015 passed by the Court below forfeiting the right of the respondents to file written statements was set aside; and therefore, the Court below did not commit any error in receiving the written statement filed by respondent nos.1 and 2.

16. I am unable to agree with the said contention.

17. This is because the prayer in I.A.No.66 of 2016 was only to restore I.A.No.38 of 2016, which has been dismissed on 15.02.2016. When I.A.No.66 of 2016 was allowed on 26.02.2016, it merely resulted in restoration of I.A.No.38 of 2016. Thereafter, I.A.No.38 of 2016 was considered separately by the Court below and it was rejected on 19.04.2016. This order was not challenged by the respondents, and it attained finality. So, it binds not only the respondents but also the Court below.

18. Obviously, the Court below by oversight did not note its earlier order dt.19.04.2016 dismissing I.A.No.38 of 2016 and confirming its own order dt.08.09.2015 forfeiting the right of respondents to file written statement, and erroneously passed the impugned order dt.29.11.2016.

19. Therefore, the said order dt.29.11.2016 receiving the written statements of defendant nos.1 and 2 / respondent nos.1 and 2 cannot be sustained.

20. Accordingly, the Civil Revision Petition is allowed.

21. The impugned order dt.29.11.2016 passed in O.S.No.952 of 2015 on the file of the IV Junior Civil Judge, City Civil Court, Hyderabad is set aside.

22. The Court below is directed to ignore the written statements of respondent nos.1 and 2 and return them to respondent nos.1 and 2 and proceed to decide the suit in accordance with law.

23. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 28.02.2019

Ndr/*