

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1544 of 2019

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.20-03-2019 in I.A.No.890 of 2018 in O.S.No.255 of 2008 of the XIV Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

2. Petitioner herein is 3rd defendant in the suit.
3. Initially, the suit was filed on 25-03-2008 against 1st defendant only. Thereafter I.A.No.200 of 2012 was filed on 25-01-2012 to implead the petitioner and other defendants. Notices were sent to petitioner and other defendants in I.A.No.200 of 2012. They received the same, but did not appear and so they were set *ex parte* on 12-10-2012.
4. In the meantime, on 12-06-2012, petitioner filed vakalat through counsel.
5. He then filed I.A.No.596 of 2012 to set aside the order dt.23-04-2012 setting him *ex parte*. That was allowed on 12-10-2012 and I.A.No.200 of 2012 was also allowed subsequently.
6. After petitioner was impleaded, again notices were sent to him and 3rd defendant. Summons were not served initially, but later they were served on 30-01-2015. Since no written statement was filed on

30-03-2015, petitioner was called absent, he was set *ex parte* along with defendant No.3.

7. Later when the suit was posted for cross-examination of P.W.1 and the plaintiff did not turn up for marking the documents, the suit was dismissed for default. Later it was restored.

8. When suit was coming up for cross-examination of P.W.1 on 02-08-2018, it was noticed that petitioner had already filed vakalat on 12-06-2012 and he had been set *ex parte* on 30-01-2015. Therefore the order passed against petitioner was *suo motu* set aside and the suit was posted to 13-08-2018 to enable the petitioner and 3rd defendant to file written statement.

9. On 13-08-2018, petitioner and 3rd defendant were again absent and there was no representation on their behalf. So their right to file written statement was forfeited.

10. Petitioner then filed I.A.No.890 of 2018 to set aside the order dt.13-08-2018 stating that he was informed by his counsel that he should file written statement by 13-08-2018, that his counsel even prepared it and asked him to come to his office and to verify and put his signature, and on 09-08-2018 petitioner could not contact his counsel as he had viral fever. He stated that so he could not file his written statement on 13-08-2018 and his right to file written statement was thus forfeited.

11. Counter-affidavit was filed by plaintiff opposing this application. He contended that if petitioner was really suffering from viral fever, he should have filed medical prescription to substantiate the reason given for non-filing of written statement on 13-08-2018. He alleged that the suit had undergone several adjournments for filing of written statement and ample opportunity was given to the petitioner to file written statement, but he did not do so.

12. By order dt.20-03-2019, the Court below dismissed I.A.No.890 of 2018. After referring to the above facts and the conduct of the petitioner in not filing written statement having filed vakalat on 12-06-2012, it observed that as per amended Code of Civil Procedure, only 30 days time is available for filing written statement and at best, it can be extended to 60 days. It held that time available to the petitioner to file written statement starts from 12-06-2012 when his counsel filed vakalat for him and it does not start from 13-03-2015 when he was set *ex parte*. It observed that ample opportunity had been given to him but he kept silent for 6 years and then filed this application pleading ill-health.

13. Assailing the same, this Revision is filed.

14. Learned counsel for petitioner contended that grave prejudice would be caused to the petitioner if petitioner is not allowed to contest the suit by setting aside the order dt.13-08-2018.

15. In **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India**¹, the Supreme Court held that though time limit of 30 days contained in Order VIII Rule 1 C.P.C. to enable a defendant to file written statement is not mandatory, in a routine manner time beyond 90 days cannot be granted and only in exceptional cases can time be extended.

16. In the instant case, having entered appearance through counsel on 12-06-2012, petitioner chose to remain silent and did not bother to file written statement and sought to take advantage of the dismissal of the suit for default a couple of times. This conduct cannot be countenanced.

17. The Court below has given elaborate reasons that opportunity cannot be given to the petitioner again since he did not avail the opportunities granted to him in the year 2012 when he filed vakalat, in 2015 after he received summons again on 30-01-2015 and for third time when he was given time to file written statement on 13-08-2018. No evidence of illness suffered by petitioner was placed on record.

18. Therefore, I see no reason to interfere with the order passed by the Court below.

19. The Civil Revision Petition fails and it is accordingly dismissed. No costs.

¹ (2005) 6 SCC 344

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-08-2019

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