

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.6383 of 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.12.06.2018 in I.A.No.208 of 2017 in O.S.No.899 of 2014 passed by the X Additional Chief Judge, City Civil Court, Hyderabad.

The petitioners are defendants in the suit O.S.No.899 of 2014.

The respondent has filed the said suit against the petitioners for recovery of a sum of Rs.43,83,981.45 ps. and also for further interest @ 18% per annum from the date of institution of the suit till the suit is decreed on the principal amount of Rs.28,05,000/-.

After the suit was filed, summons were sent to the petitioners.

One Mr. Mohd. Zakir Hussain, Advocate, has filed a Memo on 30.01.2015 offering vakalat on behalf of the petitioners.

Petitioner No.1 then filed vakalat through a different Advocate on 27.04.2016.

On that day, petitioner No.2 was set exparte and petitioner No.1 was directed to file written statement within the statutory period.

When both the petitioners did not file written statement, they were set exparte on 13.09.2016.

On 14.03.2017, petitioner No.1 filed I.A.No.208 of 2017 to set aside the order dt.13.09.2016 in O.S.No.899 of 2014 setting petitioner No.1 exparte.

In the affidavit filed in support of the said petition, petitioner No.1 had merely stated that there was a Board Resolution passed on 25.02.2015 appointing the deponent to the said affidavit as the person authorised to represent petitioner No.1; the suit was posted to 13.09.2016 for filing written statement; that the petitioner's Advocate on record did not inform petitioner No.1 of the same; and that petitioner No.1 is suffering on account of the negligent conduct of the said Advocate on record. It is further stated that petitioner No.1 Company then changed the Advocate on record and appointed a new Advocate to represent the case; and grave prejudice would be caused to petitioner No.1, if the order dt.13.09.2016 setting it exparte, is not set aside.

Counter affidavit was filed by the respondent opposing the said application. It is contended that petitioner No.1 had adopted a lackadaisical attitude and though time was granted till 13.09.2016 to file written statement from 27.04.2016 when petitioner No.1 had entered appearance through an Advocate, they did not file written statement and cannot blame the Advocate for their inaction.

By order dt.12.06.2018, the Court below dismissed the said application. It observed that as per Order 8 Rule 1 of C.P.C., petitioner/defendant No.1 had to file written statement within 30 days or 90 days as extended by the Court, but the petitioner No.1 failed to file written statement within the said statutory period and the accompanying affidavit did not disclose any cause or ground for non-filing of the written statement or for non-appearance. It relied upon the judgment of this Court in Y. VENKATARAMANA AND OTHERS vs. YELLABOYANI VENKATAMMA @ Y. MUNI VENKATASWAMY¹ and opined that though the higher time limit of 90 days to file written statement is directory, the time to file written statement cannot be extended in a routine manner, except in exceptionally hard cases; and no separate application under Order 8 Rule 1 r/w. Rule 10 of C.P.C. was necessary seeking leave of the Court to file written statement as per another decision of this Court in SAMI ATEEQ AHMED vs. MOHAMMED RAFIQ KHAN AND OTHERS².

Assailing the same, this Revision is filed.

Learned counsel for the petitioners contended that the Court below erred in dismissing I.A.No.208 of 2017 filed under Order 9 Rule 7 of C.P.C. to set aside the order dt.13.09.2016 setting petitioner No.1 exparte erroneously; and since substantial stakes are involved in the suit for petitioner No.1, the delay may be condoned by taking a liberal

¹ 2018 (3) ALT 586

² 2016 (6) ALD 140

view and by imposing heavy costs, since written statement was also prepared and filed along with I.A.No.208 of 2017.

Learned counsel for the respondent has refuted the said contentions. He pointed out that the suit was filed on 26.02.2014; that summons in the suit were served on the petitioners before 30.01.2015; on 30.01.2015, a Memo was filed by one Mr. Mohd. Zakir Hussain, Advocate, on behalf of the petitioners, offering to file vakalat; but the vakalat was filed only on 27.04.2016 on behalf of petitioner No.1; the Court then granted time to petitioner No.1 to file written statement within the statutory period; but till 13.09.2016 petitioner No.1 did not do so and, therefore, it was set exparte. He contended that petitioner No.1 cannot be shown any indulgence because the conduct of petitioner No.1 shows that it was negligent in taking steps to defend itself by filing written statement within the time prescribed by law and, therefore, the Civil Revision Petition is liable to be dismissed.

I have noted the contentions of the respective parties.

Under Order 8 Rule 1 of C.P.C., the defendant has to file written statement within 30 days from the date of service of summons. Under proviso thereto, if he does not do so, he can be allowed to file such written statement within a time not later than 90 days from the date of service of summons. This

was interpreted in SALEM ADVOCATE BAR ASSOCIATION, TAMIL NADU vs. UNION OF INDIA³ in the following manner:

“.... though a Written Statement had to be filed within 30 days as per Act 46 of 1999, the rigour of this provision was reduced by Amendment Act 22 of 2002 which enabled the Court to extend the time for filing Written Statement on recording sufficient reasons therefor, but the extension can be maximum of 90 days. It also considered the question whether the Court has any power or jurisdiction to extend the period beyond 90 days. It held that though maximum period of 90 days to file the Written Statement had been provided, consequences on failure to file Written Statement within the said period had not been provided for in Order VII Rule 1 CPC; that the provision in Order VIII Rule 1 providing that the higher limit of 90 days to file Written Statement is directory, but however added that the order extending time to file Written Statement cannot be made in a routine manner, and time can be extended only in exceptionally hard cases. It held that while extending time, it has to be borne in mind that the Legislature has fixed the time limit of 90 days and the discretion of the Court to extend the time shall not be frequently and routinely exercised so as to nullify the time fixed under Order VIII Rule 1 CPC.”

In the instant case, since the Memo was filed on behalf of the petitioners by Mr. Mohd. Zakir Hussain, Advocate, on 30.01.2015, summons in the suit can be taken to have been served on the petitioners before the said date. Even if we take 30.01.2015 as the date of receipt of summons, the time to file written statement ended on 01.03.2015 on expiry of 30 days period. No application was filed by petitioner No.1 for extending time to file written statement. Even though 90 days period to file written statement from 30.01.2015 would expire by 30.04.2015, only on 27.04.2016 i.e., almost one year thereafter petitioner No.1 had filed vakalat through an

³ (2005) 6 SCC 344

Advocate. The Court below had shown considerable indulgence by giving time to petitioner No.1 to file written statement within the statutory period. Whether the statutory period is taken to be 30 days or extended period of 90 days, the last date to file written statement would end on 27.07.2016.

Petitioner No.1 is a Corporate Entity and would have the means to engage a counsel and file written statement. Since, even according to the affidavit filed in I.A.No.208 of 2017, the Board Resolution had been passed on 25.02.2015 itself authorizing a person to represent petitioner No.1 in Court cases, it is the duty of petitioner No.1 and its employees to ensure that written statement was filed within the time prescribed by law i.e., before 30.04.2015 or atleast by 30.07.2016 taking the date of filing of vakalat i.e., 27.04.2016 as the starting date.

Petitioner No.1, however, slept over its rights till 14.03.2017, simply alleging that the counsel has not informed about the status of the suit. This cannot be countenanced, because it is the duty of petitioner No.1 and its employees to keep track of the proceedings in the suit. I am, therefore, of the opinion that petitioner No.1 had been grossly negligent in protecting its interest in the suit and the Court below did not commit any error of jurisdiction in dismissing I.A.No.208 of 2017.

For the aforesaid reasons, the Civil Revision Petition fails and it is accordingly dismissed. Interim order granted, if any, shall stand vacated. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

11.03.2019.

Msr



HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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11.03.2016
Msr