

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE TADAKAMALLA VINOD KUMAR

Civil Revision Petition Nos.6908 and 6920 of 2018

COMMON ORDER : (per Hon'ble Justice M.S. Ramachandra Rao)

Since these two Civil Revision Petitions arise out of the orders passed on 10.10.2018 in Interlocutory Application No.1789 of 2018 in Original Suit No.817 of 2017 and Interlocutory Application No.1787 of 2018 in Original Suit No.816 of 2017 on the file of the Chief Judge, City Civil Court, Hyderabad, they are being disposed of by this Common Order.

2. The petitioner in Civil Revision Petition No.6908 of 2018 is the sole defendant herein, and petitioners in Civil Revision Petition No.6920 of 2018 are defendant nos.1 and 2 herein.

3. The respondents in both the Revisions had filed the said suit against the petitioners herein for recovery of Rs.35 lakhs in Original Suit No.816 of 2017, and for Rs.55 lakhs in Original Suit No.817 of 2017.

4. Summons in both the suits were served on petitioner in Civil Revision Petition No.6908 of 2018, and petitioners in Civil Revision Petition No.6920 of 2018 on 11.11.2017.

5. *Vakalat* was filed by counsel on behalf of petitioner in Civil Revision Petition No.6908 of 2018 on 15.11.2017, and *Vakalat* was filed by another counsel on behalf of petitioners in Civil Revision Petition No.6920 of 2018 on 17.11.2017.

6. Both the matters were then adjourned to 05.12.2017 for filing of Written Statement by petitioners.

7. On that day, Written Statement not having been filed, the Court below extended time to file Written Statement up to 26.12.2017.

8. On that date also, Written Statement was not filed by petitioners and time was extended up to 08.01.2018.

9. On 08.01.2018 also, no Written Statement having been filed, time was extended up to 12.02.2018, and as a last chance on 12.02.2018, it was extended up to 19.02.2018.

10. On 19.02.2018, since Written Statement were not filed in both the suits, though the suits were posted as a last chance, the right of petitioners to file Written Statement was forfeited by the Court below, and the matter was posted to 28.03.2018 for adducing evidence by the respondent.

11. On 28.03.2018, the petitioner in Civil Revision Petition No.6908 of 2018 filed I.A.No.1789 of 2018 and also Written Statement (S.R.No.8178 of 2018) dt.28.03.2018 along with documents; and petitioners in Civil Revision Petition No.6920 of 2018

filed I.A.No.1787 of 2018 along with Written Statement (S.R.No.8178 of 2018) dt.28.03.2018 also making a counter-claim along with the documents.

12. In the affidavits filed by petitioners in support of these applications, it is contended that the petitioners could not file Written Statements within the time fixed by law on the ground that : *(a)* petitioners were facing serious personal and family problems due to various reasons including death of a close relative, i.e., the brother in law of petitioner in Civil Revision Petition No.6908 of 2018, who is the brother of the 2nd petitioner in Civil Revision Petition No.6920 of 2018, and also the death of a grand-mother; and the family of the petitioners was preoccupied in discharging their customary duties and conducting of death ceremonies; and *(b)* there was a delay in obtaining relevant documents and giving instructions to file Written Statement.

13. Reference was also made to Original Suit No.666 of 2017 filed by petitioner against respondent before the XV Additional District Judge, Ranga Reddy District, and also to a Criminal Case No.1304 of 2017 on the file of Inspector of Police, Miyapur.

14. Counter-affidavits were filed by respondents in both the applications opposing the condonation of delay and contending that sufficient case was not shown for grant of extension of time to file Written Statement in both the suits, and the affidavits filed in support

of the applications to receive Written Statements filed by petitioners, are vague.

15. By separate orders dt.10.10.2018, the Court below dismissed I.A.No.1789 of 2018 in Civil Revision Petition No.6908 of 2018, and also I.A.No.1787 of 2018 in Civil Revision Petition No.6920 of 2018.

16. The Court below observed that in both the matters summons had been served on petitioners on 11.11.2017, that the said applications were filed to receive Written Statement after the expiry of (120) days on 28.03.2017, and that they were therefore without any merit.

17. Challenging the same, the present Civil Revision Petitions are filed.

18. Heard the counsel for petitioners, Sri Kiran Palakurthi, Advocate, and Sri S. Balchand, Advocate, counsel for respondents, in both the Civil Revision Petitions.

19. The counsel for petitioners sought to contend that the Supreme Court in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India**¹ and **Kailash vs. Nanhku and another**² held that the time limit mentioned in Order VIII Rule 1 C.P.C. is not mandatory, and the word '*shall*' used therein should be considered as directory.

¹ 2005 (6) S.C.C. 344

² (2005) 4 SC.C. 480

20. The counsel for petitioners further contended that the requirement of filing a Written Statement within a specific time is a rule of procedure meant to advance the cause of justice and not to defeat it; and the Supreme Court had held in these two decisions that Order VIII Rule 1 of Civil Procedure Code, 1908 should be interpreted in such a way as would promote justice.

21. No doubt, in both these decisions cited by counsel for petitioners, the Supreme Court observed that Order VIII Rule 1 of Civil Procedure Code, 1908 is part of procedural law and is directory, but held that prayer for extension of time made by defendant shall not be granted as a matter of routine, and merely for the asking when the period of (90) days has expired.

22. In **Salem Advocate Bar Association** (1 supra), the Court held that time can be extended only in exceptionally hard cases and that while extending time it has to be borne in mind that Legislature had fixed the upper time limit of (90) days, and the discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1 of Civil Procedure Code, 1908.

23. In **Kailash** (2 supra), it was held that extension of time should be allowed for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave prejudice would be caused if the time was not extended.

24. From the above two decisions, it is clear that while the period of (30) days fixed in the main part of Order VIII Rule 1 of Civil Procedure Code, 1908 to file Written Statement is only directory and not mandatory, the proviso to Order VIII Rule 1 of Civil Procedure Code, 1908 fixed an upper limit of (90) days from the date of service of summons for filing a Written Statement if valid reasons are given for not doing so and such reasons are also recorded by the Court below while receiving Written Statement.

25. The reasons, according to both the above decisions, should be such that they are beyond the control of the defendant and in exceptionally hard cases only such extension should be granted beyond (90) days.

26. By no stretch of imagination, can the reasons mentioned in the affidavits in respect of I.A.No.1789 of 2018 in Civil Revision Petition No.6908 of 2018 and I.A.No.1787 of 2018 in Civil Revision Petition No.6920 of 2018 be said to fall in these two categories. It may be that there were bereavements in the family of petitioners, but that cannot be a ground for not filing Written Statement for over (120) days. In fact, the dates of death of the relatives of 2nd petitioner in Civil Revision Petition No.6920 of 2018 are not even mentioned in the affidavit filed in support of these applications.

27. Moreover, it cannot be said that the petitioners did not have adequate time to procure the documents, since (120) days is a

reasonable period of time for any party to procure documents from the Court.

28. We are therefore of the opinion that the case of petitioners in these two Revisions does not fall in the excepted categories warranting extension of time to the petitioners beyond the period of (90) days fixed in the proviso to Order VIII Rule 1 of Civil Procedure Code, 1908.

29. We, therefore, do not find any merit in the Civil Revision Petitions, and they are accordingly dismissed. No order as to costs.

30. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE TADAKAMALLA VINOD KUMAR

Date: 09.09.2019

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