

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.7412 of 2018

O R D E R:

This Revision is filed assailing the order dated 08.11.2018 in I.A.No.183 of 2018 in O.S.No.75 of 2013 of the Senior Civil Judge, Bodhan.

2. Petitioner is the plaintiff in the suit. He filed the said suit against the respondents for declaration of title and for perpetual injunction on 27.08.2013.

3. Written statement/Counter claim of 1st respondent was filed on 09.12.2013 to declare that the respondents 1 and 2 are the owners of the suit schedule property and to grant them perpetual injunction against the plaintiffs.

4. No rejoinder to the counter claim was filed immediately by the petitioner/plaintiff.

5. On 25.10.2018, petitioner filed I.A.No.183 of 2018 seeking leave to file rejoinder to the counter claim of 1st respondent merely stating that due to inadvertence, he could not file the rejoinder, but was prepared to file the said rejoinder along with the said I.A.

6. The Court below dismissed the said I.A. on 08.11.2018 holding that both the parties have let in evidence and at the stage of defence evidence, the suit documents were sent to District Registrar for collection of stamp duty and penalty. At

this juncture, I.A.No.183/2018 had been filed by the petitioner to permit him to file rejoinder to the counter claim. It observed that reason for not filing rejoinder given in the affidavit filed in support of the said I.A was “Inadvertence” and the said reason cannot be accepted as a justifiable reason to extend the time beyond 90 days when more than 5 years have elapsed.

7. The Court below relied on the judgment reported in ***Y.Venkataramana and others vs. Y.Venkatamma***¹. In the said judgment this Court had held following the judgment of Supreme Court in ***Salem Advocate Bar Association, Tamil Nadu v. Union of India***², that in a situation where counter claim is raised by a defendant, Order VIII Rule 6(A) would apply and the plaintiff has to file written statement to the counter claim; and all rules relating to written statement filed by a defendant would apply to a written statement to be filed by the plaintiff in answer to a counter claim. It however, held that though the said written statement under Order VIII Rule 1 CPC is to be filed within 30 days as per proviso, the said time can be extended by 90 days and the time limitations are no doubt is directory; and extension of time cannot be granted in a routine manner except in exceptionally hard cases.

¹ 2018 (3) ALT 586

² (2005) 6 SCC 344

8. In the instant case, no reason has been assigned by petitioner except “inadvertence” for not filing the written statement to the counter claim raised by the respondents within a reasonable time and in fact the petitioner waited for almost 5 years before requesting the Court to receive the rejoinder to the counter claim.

9. Though the counsel for the petitioner sought to rely on ***Nannapaneni Sowbhagyamma and another v. Nannapaneni Rama Rao and another***³ where in this Court upheld the grant of leave by the trial Court to file a rejoinder wherein the plaintiff sought to file rejoinder to deny independent pleadings raised by the defendants in their written statement, that was not a case where the counter claim was raised by the defendants in the written statement.

10. In any event, ***Salem Advocate Bar Association, Tamil Nadu’s case*** (supra 2) would continue to apply and leave to file written statement to a plaintiff cannot be granted after inordinate delay of almost 5 years when there are no exceptional circumstances pointed by the petitioner except “inadvertence” which cannot be held to be a ground entitling the petitioner to grant of leave.

11. I therefore, do not find any merit in the Civil Revision Petition and is accordingly dismissed at the admission stage.

No costs.

³ 2015 (4) ALD 477

12. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

13.02.2019

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