

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. Nos. 318 and 454 of 2019

COMMON ORDER:

These two Revisions arise between the same parties and out of the same suit and so they are being disposed of by this common order.

2. Petitioners in both these Revision are defendants 2 and 3 in O.S.No.1377 of 2013 on the file of the I Additional District Judge, Ranga Reddy District at L.B. Nagar.
3. The 1st respondent herein filed the said suit against the petitioners and others for a Perpetual Injunction restraining the defendants from interfering with her alleged peaceful possession and enjoyment of the plaint schedule property.
4. Pending suit, the 1st respondent had filed I.A.No.1915 of 2013 under Order XXXIX Rules 1 & 2 CPC seeking temporary injunction against the petitioners and other defendants in respect of the plaint schedule property.
5. Petitioners received summons in the suit but did not file written statement as well as counter in the I.A. and so they were set *ex parte* on 21.04.2014 in both the I.A., and in the suit.

6. On 27.10.2015, 1½ years later, petitioners filed I.A.No.1629 of 2015 under Order IX Rule 7 CPC to set aside the order dt.21.04.2014 setting them *ex-parte* in the suit.

7. Petitioners also filed I.A.No.1630 of 2015 in I.A.No.1915 of 2013 on 27.10.2015 to set aside the order dt.21.04.2014 passed in I.A.No.1915 of 2013 setting them *ex-parte*.

8. In both the applications, it is the pleading of the petitioners that they filed vakalat on the date of appearance; that the matters were posted to 21.04.2014 for filing written statement in the suit as well as counter in I.A.No.1915 of 2013; that the matters had been listed on that day for filing of written statement/counters; that 2nd defendant went out of station and their counsel got held up in Miyapur Court and though the 2nd petitioner/3rd defendant started from Kukatpally to come to L.B.Nagar to attend the matter before the court, due to heavy traffic at Balanagar and due to heavy rain, he could not reach the Court in time. He stated that he came to know subsequently that the matter was called and they were set *ex-parte*. He contended that absence before the Court on 21.04.2014 was neither willful nor wanton but for the above said reasons. He also stated that he lost his original documents and suffered from viral fever.

9. No counter affidavit was filed by the 1st respondent in spite of the time being granted.

10. However, the Court below dismissed both the applications after referring to the contentions of the petitioners. It observed that the petitioners did not place any iota of evidence to substantiate their contentions and they do not appear to be true. It also observed that petitioners did not explain what prevented them to file I.A.s till 27.10.2015, though they were set *ex-parte* on 21.04.2014, since the petitioner could have filed a petition immediately on the next date or any other convenient day, but they did not do so. It also observed that no medical certificate had been filed to show that 2nd petitioner was suffering from viral fever and that the 2nd petitioner did not explain in which month and for how many days he suffered from viral fever. It held that no valid and cogent reasons were given by the petitioners for not filing counter in I.A.No.1915 of 2013 as well as written statement in the suit.

11. Assailing the same, these Revisions are filed.

12. Counsel for the petitioners contended that the petitioners had in fact filed written statement and counter affidavit along with the said applications and that the Court

below was not correct in stating that they did not file written statement till 2015. She stated that the original documents were lost and the delay may be condoned on payment of heavy costs.

13. I have noted the contentions of the counsel for the petitioners.

14. Order VIII Rule 1 CPC states that a defendant has to file a written statement within 30 days of service of summons. Proviso thereto added by Civil Procedure Code (Amendment) Act , 2002 (Act 22 of 2002) with effect from 01.07.2002 states that Court has got power to extend time for a period not later than 90 days for reasons to be recorded in writing.

15. This provision fell for consideration before the Supreme Court in ***Salem Advocate Bar Association, Tamilnadu v. Union of India***¹. The Court held that though Order VIII rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil cases which persuaded Parliament to enact the provision in its present form, ordinarily the time schedule contained in the provision is to be followed as a rule and departure there-from would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter

¹ 2005(6) SC 486

of routine and merely for the asking, more so, when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also to be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.

16. This judgment was subsequently reiterated in **Smt Rani Kusum v. Smt Kanchan Devi & Others**².

17. Thus from the above two decisions, it is clear that unless there are exceptional circumstances beyond the control of the defendant, the time limit of 90 days should not be normally extended.

18. In the instant case, assuming that there were valid reasons for the absence of the petitioners on 21.04.2014, still the fact remains that they did not approach the Court by

² AIR 2005 SC 3304

filings application under Order IX Rule 7 CPC and Section 151 CPC to set aside the orders setting them *ex-parte* till 27.10.2015. No reason is assigned why both the petitioners could not do anything for a period of 1½ years after they were set *ex-parte* in the suit.

19. Though viral fever suffered by the 2nd petitioner is pleaded as an excuse, no material is filed as to the duration of the fever.

20. Extension of time to file written statement, in view of the above circumstances, cannot be granted because the circumstances do not appear to be beyond the control of the petitioners and the petitioners had been negligent in conducting their defence in the suit and in the I.A. Mere filing of written statement on 27.10.2015 would not suffice and the said written statement cannot be taken into account in the absence of any valid reasons given, by them as to why they could not file it earlier within the time stipulated under Order VIII Rule 1 CPC.

21. I therefore, do not find any merit in both the Civil Revision Petitions and they are accordingly dismissed at the admission stage. No order as to costs.

22. Consequently, miscellaneous petitions pending if any, in these Revisions, shall stand closed.

M.S. RAMACHANDRA RAO, J

29th March, 2019.

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