

M. Narayanswamy Vs. M. Vasu

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Court : Karnataka

Decided On : Sep-01-2004

Reported in : ILR2004KAR4444; 2004(7)KarLJ469

Judge : N.K. Jain, C.J. and ;V.G. Sabhahit, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 8, Rule 1

Appeal No. : W.P. Nos. 3132 and 3507/2004

Appellant : M. Narayanswamy

Respondent : M. Vasu

Advocate for Pet/Ap. : P. Chidananda, Adv.

Disposition : Appeal dismissed

Judgement :

N.K. Jain, C.J.

1. These Writ Appeals are filed against the order dated 8.6.2004 passed in W.P. Nos. 21174/2004 and 21921/2004 wherein the learned Single Judge has declined to interfere with the order passed by the Trial Court in O.S.No. 3901/2003 rejecting the application I.A.s. I and II seeking permission to file written statement in the suit.

2. The learned Counsel appearing for the appellant submitted that the learned Single Judge has erred in not interfering and further not appreciated the fact that the appellant could not file the written statement within 90 days as stipulated under Order 8 Rule 1 CPC. as he was suffering. He further submitted that the learned Single Judge also not appreciated the decision of this Court in MOHAMMED ANWAR SINCE DECEASED BY HIS LRS. v. SABIR AND ORS., : ILR 2004 KAR2759 wherein delay of nine years was not interfered and erred in relying on the decision in A. SATHYAPAL AND ORS. v. SMT. YASMIN BANU ANSARI, : ILR 2004 KAR1399 .

3. Heard the learned Counsel for the appellant and perused the material on record.

4. In Mohammed Anwar's case, the Trial Court rejected the application seeking permission to file the written statement by defendant 2 to 6 on the ground that defendant No. 1 therein had died six years ago and elder brother had a heart stroke and underwent surgery and the written statement could not be filed in time. However, in the Writ Petition, the learned Single Judge felt that sufficient reason had been shown for condoning the delay and by the order dated 8.1.2004 allowed the application for condonation of delay and permitted the petitioners to file the written statement and the said order has been confirmed by this Court in W.A.No. 927/2004 on 8.3.2004. In that case, it was also observed that there are about 25 defendants and during the pendency of the suit, original plaintiff and some of the defendants died and their LRs, were brought on record and there is no progress in the proceedings. Considering the fact situation, the contesting respondent has filed written statement with delay, the learned Single Judge condoned the delay and the discretion exercised has not been interfered in the writ appeal and accordingly, the writ appeal was dismissed.

5. The question as to whether the Court had jurisdiction to condone the delay in view of the provisions of Order 8 Rule 1 CPC., as amended by Amendment Act, 2002 was not considered by this Court in Mohammed Anwar's case and the decision in A. SATHYAPAL's case (supra) had not been reported when this Court decided the writ appeal on 8.3.2004 and the said decision was not brought to the

notice of this Court. In view of the conflicting decisions of the learned Single Judges of this Court as to whether the Court had jurisdiction to permit the defendant to file the written statement beyond ninety days as prescribed under Order 8 Rule 1 CPC., has been specifically considered with reference to the provisions of the Amendment Act, 2002 and the decisions rendered by this Court and the decision of the Hon'ble Supreme Court and the question that was referred to the Division Bench has been specifically answered by holding that the Court trying a civil suit does not have any power to extend time for filing written statement beyond what is stipulated under Order 8 Rule 1 of CPC., Therefore, we clarify that the decision in Mohammed Anwar's case has to be confined to the facts of the said case and should not be taken as a precedent for holding that the written statement can be filed after the expiry of the period contemplated under Order 8 Rule 1 as amended by CPC Amendment Act, 2002 and that the Court has no power to extend the time for filing the written statement beyond what is stipulated under Order 8 Rule 1 CPC.

Accordingly, we clarify the order passed by this Court in MOHAMMED ANWAR'S case and we agree with the ratio laid down by the Division Bench of this Court in A. Sathyapal's case : ILR 2004 KAR1399 wherein the question has been specifically considered with reference to the provisions of the Act and the decision of the Supreme Court in Dr. J.J. MERCHANT AND ORS. v. SHRINATH CHATURVEDI, : [2002]SUPP1SCR469 . Accordingly, we hold that the Trial Court was justified in relying upon the decision of this Court in A. Sathyapal's case (supra) and in rejecting the application for amendment filed beyond the period stipulated under Order 8 Rule 1 CPC., as amended by CPC Amendment Act, 2002. We do not find any error or illegality in the order of the learned Single Judge and pass the following order:

The writ appeals are dismissed.