

Chikkula Chendraiah Vs. Tata Seetarammaiah and ors.

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Court : Andhra Pradesh

Decided On : Mar-04-1960

Reported in : AIR1961AP102

Judge : Munikanniah, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 8, Rule 1

Appeal No. : Civil Revn. Petn. No. 1719 of 1957

Appellant : Chikkula Chendraiah

Respondent : Tata Seetarammaiah and ors.

Advocate for Def. : K. Madhava Reddy, Amicus Curiae

Advocate for Pet/Ap. : A. Satyanarayana Rao, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Munikanniah, J.

1. This revision petition is filed against the order of the Munsif Magistrate, Khammameth, refusing to receive the written statement filed by defendant No. 5 as, according to the learned Munsif Magistrate, the right of that defendant to file

the written statement has been forfeited on 2-3-1957.

2. A few facts need be mentioned for formulating the question that arises for determination in this revision petition. The petitioner is the 5th defendant in O. S. No. 74/1 of 1954 on the file of the Munsif Magistrate, Khammameth. This defendant was not originally made party to the suit. The 'B' diary contains under date 1-8-1956 that the petition of Tata Seetha Ramiah dated 17-11-1955 for impleading him has already been granted and it was ordered that the case be put up on 31-8-1958. The next note in the 'B' diary is of 3-1-1957. It is noted thereunder that the advocate of defendant has objected, as the copies of the suit documents have not been given and the pleader for the plaintiff has been directed to give the copies. The suit thereafter stood adjourned to 29-11-1957, and on that date the court noted that there was compliance by the plaintiffs pleader with the previous order of the court and so the file is ordered to be put up on 13-2-1957 for written, statement. The next entry in the 'B' diary is only of 2-3-1957 and it is in the following terms:

'The plaintiff and the defendants Nos. 1 to 4 and 5 are present through their pleaders. The defendant No. 5 in spite of SO many opportunities, failed to comply with the order of the court for submitting the written statement. Hence, his right is forfeited. Put up file on 26-3-1957 for framing issues'.

3. Thereafter, the application against which the present revision petition is filed was preferred by the 5th defendant for setting aside the above order forfeiting his right to file the written statement. The 5th defendant also seems to have filed along with that application his written statement. Thereafter on 12-4-1957 the case was posted to 25-4-1957 for arguments of defendant No. 5 and after two or three adjournments the order in question was passed on 7-9-1957.

4. The learned Munsif Magistrate held the view that though the 5th defendant's right to file the written statement has been forfeited, he can still appear in the suit as he cannot be declared ex parte and produce evidence and thus make out his case, if necessary. He believed that he is however prohibited to entertain the written statement after the order of forfeiture passed by that court. The learned Munsif Magistrate also held that the powers under Section 151 C. P. C. to reopen

the matter cannot be exercised as, according to him, this is also prohibited, In this view, he dismissed the application of the 5th defendant (petitioner herein).

5. This takes me to the consideration of the question whether having regard to the provisions of the Civil Procedure Code a trial Court can forfeit the right of the defendant to file a written statement. At the outset it is necessary to notice that the Lower Court, somehow, felt that because some opportunities available to the defendant before the first hearing were not availed of to file the written statement the court can place an embargo on the defendant and prevent him from filing a written statement. But in my view, there is no warrant in the Code of Civil Procedure for a court to assume such powers. Therefore for a correct appraisal of the exact legal position in situations such as these, the relevant provisions of the Code have to be examined.

6. Before advertng to the specific rules, it is well to recall to mind the force of the observations of the Supreme Court contained in *Sangram Singh v. Election Tribunal Kotah*, (S) : [1955]2SCR1 which are meant for guidance of courts. Referring to the interpretation of the Code of Civil Procedure, Bose, J. speaking for the Supreme Court said at page 429 :

'It is 'procedure', something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a 'construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives arid property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light

of that principle'.

7. The provision which has to be referred to in this connection is Rule 1 of Order VIII. It is in the following terms:

'The defendant may, and if so required by the court shall, at or before the first hearing or within such time as the court may permit, present a written statement of his defence'.

The language is plain enough to concede the right to the defendant the option of filing the written statement at or before the 'first hearing', or with the permission of the court thereafter; but it is incumbent upon the defendant -- for no option is given to him in such a case -- to file the written statement into court when so ordered by the court. But even in the later contingency, it appears from the language of this rule the court cannot compel the filing of the written statement before the first hearing.

Moreover it might be possible for a defendant, where compliance with the order to file a 'written statement at or before the first hearing is rendered difficult, to obtain time and having obtained time and having so got the permission exercise his right to present a written statement of his defence. There is thus nothing in this rule which enables a court of first instance to pass an order forfeiting the right of the defendant to file a written statement even though the written statement has not been filed in spite of the orders of the court at or before the final hearing; for, it is apparent on a reading of this rule the time for filing the written statement could be extended.

Further it is not as though the unavailing of opportunities by a defendant because the case underwent several adjournments that could be taken as the criterion for placing any embargo on the right of the defendant to file a written statement, but only the non-compliance with an order of the court and non-filing of the written statement where there is one such order at or before the first hearing that entails the necessity for obtaining permission for further time.

While such is the case there is also nothing in the Civil Procedure Code enjoining upon the court to keep vigilance over the defendant in order to see whether the opportunities provided by several adjournments in the case before the first hearing have not been utilised by the defendant for filing a written statement and to cancel as it were the right of the defendant to file a written statement thereafter.

On the other hand, the proper course to be adopted by the court is not to interfere any time at or before the first hearing and, if the need arises, to consider whether permission should be granted for granting further time, of course at the request of the defendant. The court may also insist by making an order to the effect that the written statement has necessarily to be filed by the defendant at or before the first bearing, and then, if it is found that there is no compliance with this order of the court, the exercise of its discretion to extend time may then be on stricter terms. Such being the case, it is inconceivable how the lower court could have passed an order on 2-3-1957 forfeiting the right of the defendant to file a written statement.

Further more, it is not possible to read into this rule as incorporating within itself the levy of penalty by way of forfeiture of the right of the defendant on account of the delay caused by the defendant in filing the written statement, but it only enables to consider whether permission could be granted to the defendant for filing a written statement out of time having regard to the circumstances of each case. The practice by courts of first instance therefore of forfeiting the right of a defendant to file his written statement has to be deprecated as it is illegal,

8. A mis-conception as to what is 'first hearing' and till what time the court of first instance has to wait ordinarily before having to exercise the power I to grant permission for filing a written statement seems to have crept into consideration of the instant case. The connotation 'first hearing' it should be observed is no longer a matter for speculation. In(S) : [1955]2SCR1 the term 'first hearing' has been considered by the Supreme Court. It is therein staged:

'The first hearing is either for the settlement of issues or for final hearing'.

9. A decision of the Division Bench of the Madras High Court reported in Kodi Makku Naicker v. Agathiappa, ILR 1949 Mad 804: AIR 1949 Mad 622 proceeded

on the concession made by the counsel for the petitioner therein that the words 'first hearing' occurring in Rule 1 of Order VIII signifies only the day on which the issues are framed. Having regard to this and also to what has been said above, it should be taken that the defendant has, in any case, a right to file a written statement at or before the settlement of issues, but only he cannot postpone the filing of the written statement of his own accord if the court required him to file at or before the first hearing and insist on filing it if the court does not also accord permission for filing it later on.

It may be also pointed out in this connection that the Division Bench in ILR 1949 Mad 804; (AIR 1949 Wad 622) deals with different set of circumstances arising from those for which Rule 7 of Order VIII is certainly applicable. There the court ordered that the written statement should be filed before 14-3-1947 and the contesting defendants 1 to 3 filed a written statement on that day. Issues were also framed on 9-4-1947. But the petitioners who were defendants 6 and 15 in that suit filed an application not only to set aside an ex parte order concerning them, but they sought to file a written statement by an application of 13-11-1947 construing that Rule 9 of Order VIII would apply to the case.

It has been held by that Division Bench that the court may grant them permission by way of indulgence or that if the court, thinks that the written statement is necessary, it may call upon the defendants to do so under Rule 9 of Order VIII and that otherwise these defendants had no such right. But the same cannot be said, in my view, with reference to a right to file a written statement available under Rule 1 of Order VIII C. P. C. and especially so, when no order requiring the defendant to file the statement has been made by the court in accordance with Rule 1 of Order VIII.

Therefore the mere fact that there had been opportunities, by reason of the fact that the case underwent many adjournments before the issues are framed, would not by itself preclude the defendant from exercising his right to file a written statement and much less the court could be said, to be empowered by Rule 1 of Order VIII to pass a final order forfeiting the right of the defendant to file a written statement.

10. In the instant case the orders contained in the 'B' diary bring out clearly that issues in the suit are yet to be framed. While so, by order on the application under revision, the court refused to receive the written statement and also revoked the order of forfeiture of the right of the 5th defendant to file a written statement. From what has been said above, the order of forfeiture, in my view, is clearly unwarranted and unauthorised as it is not supported by any valid procedure; and as in the circumstances it cannot but be observed that the refusal to use the powers available to the court under Section 151 C. P. C. tended to make the order as one vitiated by reason of abstinence to exercise its inherent powers in even an appropriate case like the present one.

11. Before, taking leave of this petition, it is necessary to deal with the aspect of the case referred to by the lower court concerning the right of the defendant to lead evidence though he is not permitted to file a written statement. At the outset it may be pointed out that that question does not directly arise in this case nor could it be said that that right undoubtedly available to the defendant could be made the ground or reason for believing that the denial of the right of a defendant to file a written statement could be justified.

The line of reasoning adopted by the lower court based on the assumption that the defendant is not totally denied his right to lead evidence should therefore be considered as neither pertinent nor proper in the present context. What is essential in determining the question posed before the lower court is without observing the requirements of Rule 1 of Order VIII there could be a denial by the court of the right of the defendant to file a written statement. As the above discussion answers this question and in the negative, this revision petition has to be allowed with costs.

12. In the result the lower court is directed to receive the written statement and proceed to frame the issues in the suit.

13. It has been found that not infrequently trial courts somehow resort to the procedure of forfeiting the right of the defendants to file written statements on the ground that there is delay. I felt a thorough discussion of the question is necessary. At my request, Mr. K. Madhava Reddy, Advocate also gave me assistance along with Mr.

Satyanarayana Rao, counsel for the petitioner; and the assistance so rendered by them in the matter is therefore acknowledged thankfully.

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