

G. Nagaiah and ors. Vs. Sarala Devi

G. Nagaiah and ors. Vs. Sarala Devi

SooperKanoon Citation : sooperkanoon.com/435696

Court : Andhra Pradesh

Decided On : Apr-09-2004

Reported in : 2004(4)ALD151

Judge : P.S. Narayana, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 8, Rule 10; [Code of Civil Procedure \(CPC\) \(Amendment\), 2002](#)

Appeal No. : AS No. 174 of 2002

Appellant : G. Nagaiah and ors.

Respondent : Sarala Devi

Advocate for Def. : S. Venkata Subba Rao, Adv.

Advocate for Pet/Ap. : M. Venkat Ram Reddy, Adv.

Disposition : Appeal allowed

Judgement :

P.S. Narayana, J.

1. The respondent in this appeal A.S. No. 174 of 2002 moved an application in C.M.P. No. 4478 of 2004 in C.M.P. No. 1323 of 2002 in A.S. No. 174 of 2002 to vacate the interim stay granted by this Court on dated 31-1-2002 made in C.M.P.

No. 1323 of 2002. This Court in C.M.P. No. 1323 of 2002 made the following order:

'Interim stay of passing of final decree alone. Rendition of accounts to go on. Notice.'

In this case, both the Counsel while advancing arguments made a request to dispose of the main appeal itself and that is why the appeal itself is taken up for final disposal.

2. Aggrieved by the judgment and decree dated 31-10-2001 in O.S. No. 22 of 2001 on the file of Senior Civil Judge, Nalgonda, the defendants had preferred the present appeal. It is not in dispute that the matter was coming up for filing of the written statement and though several opportunities were given, since the written statement was not filed by the defendants, the learned Senior Civil Judge, Nalgonda exercising the powers under Order 8, Rule 10 of the Code of Civil Procedure (hereinafter referred to as 'the Code' for the purpose of convenience) had accepted the claim of the plaintiff and ultimately, had decreed the suit declaring the respective shares of the plaintiff and defendants and also passed a preliminary decree accordingly with a direction that the defendants shall render accounts of the dissolved firm to the advocate-commissioner to be appointed in final decree proceedings for settling the profits to the extent of the respective shares of the plaintiff and defendants specified in the judgment.

3. Sri M. Venkatram Reddy, the learned Counsel representing the appellants would maintain that no doubt, there were some latches on the part of the appellants-defendants. But, however, the written statement also was prepared but due to their misfortune, the appellants-defendants could not file the written statement and inasmuch as costs had not been paid and the written statement was not filed and there was no representation, the learned Senior Civil Judge, Nalgonda proceeded to decide the matter exercising the powers under Order 8, Rule 10 of the Code. The learned Counsel would also maintain that the Court is having power to extend time for filing the written statement despite the fact that Order 8, Rules 1 and 10 of the Code is amended by the Act 22 of 2002. The learned Counsel for the appellants relied on Nachipeddi Ramaswamy v. P. Buchi

Reddy reported in : AIR 2003 AP409 . The Counsel also would submit that while the written statement was not filed within time, always it is not imperative to make ex parte judgment and it is within the discretion of the Court either to make ex parte judgment or to give further opportunity. The Counsel would also maintain that normally a matter may have to be decided on merits and the practice of making ex parte judgments may have to be deprecated. The Counsel also placed strong reliance on Dineshwar Prasad Bakhi v. Parmeshwar Prasad Sinha in : AIR1989 Pat139 .

4. Per Contra, Sri S. Venkata Subbarao, the Counsel representing the respondent-plaintiff in the appeal would contend that the appellants-defendants had not been diligent in prosecuting the matter and in fact, the reasons recorded in the judgment disclose that the object of the appellants-defendants is only to delay the matter and in such circumstances, the learned Senior Civil Judge, Nalgonda after recording the reasons had exercised the discretion by invoking Order 8, Rule 10 of the Code which is definitely in accordance with law. The Counsel also had touched certain aspects concerned with the merits and demerits of the matter. The Counsel would contend that only a preliminary decree relating to the rendition of accounts had been made and the other details are to be worked out at the final decree proceedings and in this view of the matter, no prejudice would be caused to the appellants-defendants and hence, the appeal is liable to be dismissed.

5. Heard both the Counsel and perused the judgment and decree under the appeal.

6. The factual details may not be necessary in the light of the fact that the following points specified here under would arise for consideration in this appeal.

(1) Whether the learned Senior Civil Judge, Nalgonda, in the facts and circumstances is justified in invoking Order 8, Rule 10 of the Code and in decreeing the suit?

(2) If so, to what relief?

7. The judgment dated 31-10-2001 made by the Senior Civil Judge, Nalgonda in O.S. No. 22 of 2001 reads as hereunder:

'Defendant called absent. No representation till 4 p.m. As seen from the docket proceedings of the suit, defendants have made appearance in the suit on 16-4-2001 and Sri Nookala Narsimha Reddy, Advocate filed the vakalath on their behalf and ever since it has been coming up for filing of the written statement for all these 6 1/2 months. When the written statement was not filed, a cost of Rs. 50/- was imposed on 4-9-2001 to be paid to Legal Services Authority and time was granted till 25-9-2001 for filing of written statement. On 25-9-2001 also written statement was not filed except paying the cost. On that, time was extended till 9-10-2001 on further cost of Rs. 75/-. But, on 9-10-2001 also, written statement was not filed, but cost was paid. Then on a further request, time was extended till to-day for filing of written statement on further cost of Rs. 100/-. Today, neither the costs are paid, nor the written statement is filed and no representation is made. Hence, it is deemed that the defendants have no contest in the suit to file written statement and they are admitting the case of the plaintiff. As permitted by the Provisions of Order 8, Rule 10 of CPC/I accept the claim of the plaintiff without asking the plaintiff to let in an evidence in support of the plaint pleadings.'

8. From the facts as reflected from the judgment, it is clear that certain opportunities were given to the appellants-defendants to file written statement and ultimately since neither costs were paid nor written statement was filed and no representation was made, the learned Senior Civil Judge had taken that it would amount to admitting the case of the plaintiff and accepted the claim of the plaintiff and passed a decree as specified supra.

9. This approach adopted by the learned Senior Civil Judge, Nalgonda cannot be said to be unjustified especially in the light of the conduct of the appellants-defendants. However, in the facts and circumstances of the case, the next question to be decided would be, whether the appellants-defendants be given an opportunity to file written statement and to contest the matter or the judgment and decree made by the learned Senior Civil Judge, Nalgonda in O.S. No. 22 of 2001 to be affirmed as such. It is no doubt true that liberal view was expressed by the

Court in the case of extending period for filing written statement keeping in view the practical difficulties. It is made clear that this liberality cannot be stretched too far and in *Dineshwar Prasad Bakshi v. Parmeshwar Prasad Sinha*, : AIR1989 Pat139 , it was held that:

'It is not imperative on the part of the Court to pronounce its judgment on the basis of the plaint alone on the ground that no written statement has been filed by the defendant. Although the filing of the written statement has been made obligatory and the Court has been empowered to pass its judgment on the basis of the plaint, the discretion of the Court has been preserved and despite non-filing of the written statement, the Court 'may pass any other order as it may think fit' or in terms of Order 8, Rule 10, the Court may further in its discretion require any particular fact mentioned in the plaint to be proved as laid down under Order 8, Rule 5 Sub-rule (2) of the Civil Procedure Code. It may further be borne in mind that none of the procedural provisions contained in the Code of Civil Procedure fetters the discretion of the Court for extending the time to file written statement in view of the provisions contained in Sections 148 and 149 of the Civil Procedure Code. Even if in the opinion of the Judge the defendant is found to be adopting dilatory tactics, in such case, also the Court should examine the case of the plaintiff on its merits before it passes a decree. However, as far as possible, passing of an ex parte decree should be avoided as the same may give rise to various other complications.'

It is needless to say that this decision was rendered prior to Amendment Act 22 of 2002.

10. Be that as it may, taking into consideration the conduct of the appellants-defendants, this Court is inclined to set aside the judgment and decree on the following condition:

11. The appellants-defendants shall deposit the suit costs and Rs. 50,000/- within a fortnight from today. The respondent-plaintiff is at liberty to withdraw the suit costs only without furnishing any security. The learned Senior Civil Judge, Nalgonda, shall keep Rs. 50,000/- to be deposited by the appellants-defendants in a fixed deposit in any nationalized bank which would be subject result of the suit

and the further orders to be made in this regard by the learned Senior Civil Judge, Nalgonda while disposing of the suit. In default on the part of appellants-defendants to comply the conditions specified supra, the impugned judgment and decree would stand. The judgment and decree are accordingly set aside subject to the conditions specified supra and the matter is remanded to the learned Senior Civil Judge, Nalgonda to afford an opportunity to the appellants-defendants to file written statement within a period of four weeks thereafter subsequent to the period of fortnight specified supra without granting any further adjournment in this regard and proceed with the matter in accordance with law.

12. The appeal is allowed accordingly and the matter is remanded. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com