

**National Polymers and ors. Vs. Eastern Polymers**

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**Court :** Delhi

**Decided On :** Oct-14-1996

**Reported in :** 65(1997)DLT800; (1997)115PLR8

**Judge :** J.K. Mehra, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 9, Rule 7

**Appeal No. :** Civil Revision Appeal No. 1012 of 1994 and Civil Miscellaneous Appeal No. 3764 of 1994

**Appellant :** National Polymers and ors.

**Respondent :** Eastern Polymers

**Advocate for Pet/Ap. :** Gita Mittal and; Anil Chawla, Advs

**Judgement :**

**J.K. Mehra, J.**

(1) I have heard the parties. In this case, the respondent filed a written statement-cum-counter claim. Since the counter claim happened to be beyond the pecuniary jurisdiction of the Trial Court it returned the same to be presented to the Court of competent jurisdiction, but did not return the plaint in the present suit and directed that the suit will continue to be tried by him and granted the petitioners time to file written statement refers the counter claim. A photocopy of the written statement

was placed on record though it was not signed.

(2) The counter claim was presented in this Court and was registered as a suit and is still being tried on transfer to the Court of Additional District Judge after the pecuniary jurisdiction of the District Judge was enhanced. Thereafter the matter has been adjourned repeatedly by the Trial Court trying the suit where from the present Civil Revision has arisen, to enable the petitioner to file the written statement but no written statement was filed. No Explanation is forthcoming as to why the written statement was not filed on repeated opportunities being afforded to the petitioners. This is a case of gross negligence on the part of the petitioner in omitting to file the written statement within the time allowed. I am informed by Counsel that the photostat copy of the written statement was not signed afresh by the petitioners and the matter was adjourned repeatedly to enable the petitioners to place on record a signed written statement. The only infirmity in the copy of the written statement on record was that it was not signed which could be cured at any stage of the trial. The Trial Court has been rather indulgent in favor of the petitioners in affording them opportunities to file the properly signed statement, but it could not be said that the statement of defense/written statement was not on record at all. The Trial Court had proceeded against the petitioners ex-parte on 31.1.1994. It is the case of the petitioners that they had wrongly noted the date as 28.2.1996 instead of 31.1.1996 and on that date they discovered that they had already been proceeded against ex-parte. Thereafter they obtained instructions from their clients at Bombay and filed an application under Order 9 Rule 7 for recall of the order proceeding against them ex-parte. In the meantime, the matter was listed before the Court for ex-parte evidence, but the respondent had not been able to lead ex-parte evidence as it was not ready which means that no further proceedings have so far taken place from the day petitioners were proceeded against ex-parte.

(3) I am informed that subsequent to the Court fixing the case for ex-parte evidence, the petitioners had filed their signed written statement on record which is available on the file of the Trial Court. In view of what has been noticed above and in view of the fact that the case has not progressed any further, I think, it will be in the interest of justice to set aside the order proceeding ex-parte against the

petitioners and allow the petitioners to place the written statement on record. As lies already been observed that the petitioners had been extremely negligent in prosecuting this case diligently and there is no Explanationn forthcoming for such gross negligence, I think, it will be in the interest of justice to compensate the respondent for the time lost on that score. Accordingly, this petition is allowed. The impugned order dated 23.8.1994 is set aside. The application of the petitioners under Order 9 Rule 7, Civil Procedure Code is allowed. The order dated 31.1.1994 to the extent that the Court proceeded against the petitioners ex-parte, is set aside. The Trial Court will take on record the written statement which has since been placed on the file. The above will, however, be subject to the conditional costs of Rs. 5,000.00 which should be paid within four weeks from today. The parties shall appear before the Trial Court on the next date of hearing already fixed by the said Court

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