

Abdul Nazar Vs. Mariam Beevi

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Court : Kerala

Decided On : Feb-09-2005

Reported in : 2005(3)KLT308

Judge : K. Thankappan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 148 and 151 - Order 8, Rule 1 - Order 9, Rules 7 and 13

Appeal No. : W.P.(C) No. 4542 of 2005

Appellant : Abdul Nazar

Respondent : Mariam Beevi

Advocate for Pet/Ap. : J. Harikumar,; K. Chandrasekharan Nair and; Harikumar

Disposition : Petition dismissed

Judgement :

K. Thankappan, J.

1. Writ Petition is filed by the plaintiff against the order passed in I.A. No. 3737/2004 in O.S. No. 576/2003 on the file of the Principal Sub Court, Thiruvananthapuram. By the impugned order Ext.P-3, the Court below allowed the application filed by the respondents for accepting the written statement after

setting aside the ex parte order passed against the respondents.

2. The Suit itself was for recovery of an amount of Rs. 2,20,000/- with interest alleged to have been due from the defendants -- respondents. Now the learned counsel appearing for the petitioner submits that Ext.P-3 does not contain any reason for allowing the application for accepting the written statement after setting aside the ex parte order beyond the period prescribed under Order IX, Rule 7 of the Code of Civil Procedure. Further it is submitted that once the Court below had exercised the same jurisdiction and set aside an ex parte order passed against the respondents and in that circumstances, the application now filed by the respondents is liable to be dismissed. The learned counsel further submits that as per Order VIII, Rule 1 C.P.C., the maximum period for filing the written statement is 90 days.

3. Order VIII, Rule 1 of Code of Civil Procedure deals with written statement, which reads as follows:

'The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.'

4. The above proviso was added as per the amendment brought on 1.7.2002 by Act 46 of 1999. Prior to the amendment Order VIII, Rule 1 reads as follows:

'The defendant shall within thirty days from the date of service of summons on him present a written statement of his defence.'

Prior to the above the rule stood as follows:

'The defendant shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.'

5. While the Parliament made the present amendment, this Court is of the view that the Parliament in its wisdom felt to limit the Courts time for allowing completion of the pleadings by the parties and that amendment cannot be construed as a fetter on the Court to allow a party to file a written statement beyond the time prescribed for filing the written statement. For this, a decision reported in *Krishnan Nair v. Sivasankaran Pillai*, 2005 (1) KLT 324 is relevant. Though the above judgment is pronounced by this Court while considering provisions of Order IX, Rule 13, the same reasoning can be adopted while interpreting Order VIII, Rule 1 also with regards to the time to be allowed for filing the written statement. Apart from the above decision, this Court relies on a decision of the Andhra Pradesh High Court reported in *Nachipeddi Rama Swamy v. Kuchi Ready*, AIR 2003 AP 409. In the above decision, the Andhra Pradesh High Court had taken the view that by prescribing a time-limit in procedural matters by itself would not limit the discretionary power of the Court. Further, Sections 148 and 151 of the Code of Civil Procedure empower the Court to exercise the discretion to extend the period of limitation to meet the ends of justice. This discretion can be exercised in deserving cases, depending on the facts of each case and also to the extent and nature of injustice to be meted out.

6. In the light of the above discussion, this Court is of the view that the order under challenge requires no interference by this Court. The learned counsel further submits that if the defendants have not filed any written statement within the prescribed time stipulated under Order VIII, Rule 1, it is the duty of the Court to pass orders under the said rule. This Court is of the view that such power given to the Court need not be taken as a mandatory, it can also be a discretionary. The above question is answered accordingly.

7. In the result, the Writ Petition is dismissed. No costs.