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Court : Andhra Pradesh

Decided On : Sep-13-2012

Judge : C.V. Nagarjuna Reddy

Appeal No. : Civil Revision Petition No.1517 of 2012

Appellant : Pillala Chennakesavulu

Respondent : Pillala Reddikumar and Another

Judgement :

This Civil Revision Petition is filed against Order, dated 15-09-2011, in IA.No.93 of 2011 in OS.No.18 of 2007, on the file of the Court of the learned Senior Civil Judge, Kadiri.

I have heard Mr.K.Venkat Rao, learned Counsel for the petitioner, and Mr.C.Sumon, learned Counsel for the respondents.

The respondents have filed the abovementioned suit for partition and separate possession of the suit schedule property. The petitioner herein is defendant No.2, his father is defendant No.1 and his mother is defendant No.3 in the said suit. As the defendants did not file written statement, they were set *ex parte*. IA.No.315 of 2009 was filed on behalf of all the defendants including the petitioner herein for setting aside the *ex parte* order. The said IA was allowed by the lower Court permitting all the defendants to file a written statement. The parents of the petitioner *i.e.*, defendants 1 and 3 have filed separate written statements in

December, 2007. However, no written statement was filed by the petitioner. On 22-10-2010, issues were framed and the case was posted to 22-11-2010 for trial. After filing the affidavits in lieu of chief-examination by the plaintiff witnesses, when the case was coming up for cross-examination of PW.1, the petitioner filed IA.No.93 of 2011 for permission to file written statement. This application was dismissed by the lower Court by the Order under revision.

At the hearing, the learned Counsel for the petitioner submitted that as his client was seriously ill, he could not file written statement when his parents have filed separate written statements in the year 2007 and that even though a written statement was prepared on behalf of the petitioner on 22-09-2010 itself, by inadvertence, the same could not be filed.

The lower Court held that the reason putforth by the petitioner that he was seriously ill was not supported by any medical evidence and that his request for permission to file a written statement at a time when the case was posted for cross-examination of PW.1 is highly belated and not acceptable.

Along with this Civil Revision Petition, the petitioner has filed some of the documents purported to be the medical certificates, a perusal of which would show that they pertain to the year 2007. Even today, the learned Counsel for the petitioner has placed before the Court some additional documents, which reveal that they also pertain to the year 2007. No medical certificates for the subsequent period have been produced by the petitioner even now before this Court. Even if the medical certificates on which the petitioner is seeking to place reliance are taken into consideration, on their face value, they only show that he was ill in the year 2007. As pointed out by the lower Court, if the petitioner was really ill during the relevant period nothing could have prevented him from filing documentary evidence in support of his illness.

Coming to the plea of the petitioner that the written statement was prepared as far back as 22-09-2010 and that inadvertently, the same could not be filed, in my opinion, if this plea was correct nothing could have prevented him from filing the same in the Court atleast on 22-10-2010, when the lower Court has framed issues and adjourned the case to 22-11-2010.

In order to prevent avoidable delays, the Parliament has amended the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 (for short 'the CPC'), by Act 22 of 2002 with effect from 01-07-2002. As per the amended provision, the defendant shall, within 30 days from the date of service of summons, present the written statement of his defence. The proviso thereto, however, gives discretion to the Court to extend the time for a period not later than 90 days from the date of service of summons, if it is satisfied with the reasons assigned by the defendant for not filing the written statement within 30 days.

Even though Order VIII Rule 1 of the CPC, the abovementioned provision is couched in mandatory terms, in **Kailashvs. Nanhku (2005) 4 SCC 480**, the Supreme Court held that that said provision is directory in nature as, in cases where the defendants are prevented from filing written statements for genuine reasons, it will cause extreme hardship to them if they are not permitted to file written statements within the stipulated time. The Apex Court, however, added a caveat that only in exceptional situation, the Courts can permit filing of written statements beyond the period of 90 days. P.K.Balasubramanyan, J, who was a party to the judgment in **Kailash** (1 supra), observed in **R.N.Jadiand Bros. vs. Subhashchandra (2007) 6 SCC 420** that the Court cannot show unduly liberal approach in its anxiety to do justice and exercise its discretion to permit a party to violate even the procedural law in a routine manner. These judgments fell for review in **Mohammed Yusuf vs. Faij Mohammad and others (2009) 3 SCC 513**, wherein the Supreme Court set aside the order of the High Court by which the belated application of the defendant for filing written statement was allowed, after setting aside the orders of the trial Court and the District Court. The Supreme Court, on finding that the defendant was not diligent in filing written statement, opined that the High Court should not have allowed the Writ Petition filed by the defendant and permitted him to file written statement in the absence of proper reasons putforth by him justifying the delay.

Applying the above settled law to the facts of this case, I am of the opinion that the petitioner failed to show any diligence whatsoever in filing written statement for a period of more than 3 years even though an opportunity was presented to him by the lower Court in the year 2007 itself by setting aside the *ex parte* order.

Interestingly, all the defendants including the petitioner appear to be represented by a common lawyer. Therefore, the petitioner cannot have any excuse for not filing a written statement when his parents have filed separate written statements in the year 2007 itself.

On the analysis as above, I do not find any jurisdictional error in the order of the lower Court in dismissing the petitioner's application for permitting him to file written statement after commencement of trial.

The Civil Revision Petition is, accordingly, dismissed.

As a sequel, interim order, dated 18-04-2012, is vacated and CRPMP.No.2028 of 2012 is disposed of.

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