
(2014) 08 AP CK 0087

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2394 of 2014

Chelimilla Chinna Venkataswamy

APPELLANT

Vs

Billapuram Gopala Krishna

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1, 148

Citation : (2015) 1 ALD 43 : (2015) 3 ALT 736

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : Prakash Reddy, Advocate for the Appellant; Venkata Subba Rao, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

B. Chandra Kumar, J.—This C.R.P. has been filed challenging the order dated 26.06.2014 passed in C.F.R. No. 307 of 2014 in O.S. No. 102 of 2013 by the Junior Civil Judge, Atmakur.

2. The petitioners herein are the defendants in the suit. The brief facts of the case are that the petitioners received summons on 05.12.2013. On 31.12.2013, counsel for the petitioners filed vakalat and requested time to file written statement. The case was adjourned to 03.01.2014 and from that date to 03.02.2014 and lastly to 06.03.2014, i.e., the 90th day for filing the written statement. On the 90th day also, the defendants did not file written statement, but their counsel sought further time. The Court below, without acceding to the request of the counsel for the defendants, forfeited the right of the defendants to file the written statement. Then the defendants filed a petition to set aside the order dated 06.03.2014 and to permit them to file the written statement, which has been dismissed vide impugned order.

3. The main contention of the learned counsel for the petitioners herein/defendants is that the Court below ought to have considered the facts and

circumstances of the case and granted some time since Order VIII Rule 1 CPC has to be treated as directory in nature.

4. On the other hand, learned counsel for the respondents herein/plaintiffs submitted that the defendants have not filed the written statement within the stipulated time even after taking adjournments on three occasions and that they ought to have filed an application assigning valid reasons on 06.03.2014 and since they have failed to do so, the Court below rightly dismissed the petition and that there are no grounds to interfere with the reasoned order passed by the Court below.

5. Order VIII Rule 1 C.P.C. is as follows:-

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

6. Provided that where the defendant fails to file 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.

7. The main issue is whether the period of 90 days prescribed as above is mandatory or directory and whether the Courts can extend further time when the party assigns sufficient reasons for extending time. The main object of the above provision is to avoid delays in conducting trials in civil cases. The Apex Court, in the case between Kailash Vs. Nanhku and others, while dealing with Order VIII Rule 1 CPC, observed that the provision, being in the domain of procedural law, it has to be held directory and not mandatory. It was further held that the power of the Court to extend time for filing the written statement beyond the time schedule provided by Order VIII Rule 1 CPC is not completely taken away. In the same judgment, it was held as follows:-

A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so, when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of the given case.

8. The Apex Court, in the case between Mohammad Yusuf Vs. Faij Mohammad and others observed as follows:-

A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be

achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional case, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts.

9. The Courts have to adopt just and reasonable procedure. Whenever discretion has been given to the Courts, such discretion has to be exercised cautiously. The above referred judgments make it clear that when there are valid reasons, the Courts can grant some more time. But that should not give an impression to the parties that there is no need to adhere to the time fixed under Order VIII Rule 1 CPC.

10. In the instant case, it appears that the counsel for the defendants have requested time on 06.03.2014. The Court below should have granted some time, i.e., 2 or 3 days or at the most one week time by imposing reasonable costs. Of course, the Court below should have insisted the defendants to file an application seeking time. The right to file the written statement is forfeited on 06.03.2014. The defendants have filed an application on 12.03.2014. According to the defendants, one of their close relatives was injured and admitted in hospital. They have also mentioned that they would suffer great loss and hardship if they do not contest the matter.

11. It has to be seen that the valuable rights of the parties will be involved in a litigation and it is always better if the matters are disposed of on merits than on technicalities. The Courts should be neither too liberal nor too harsh. The procedural law should not result in rendering substantial injustice to the parties. The Courts have to adopt the methods to compel the parties to adhere to the procedure and where the circumstances warrant, short adjournments and reasonable costs have to be imposed. If the parties, in spite of granting short adjournment and imposing costs, do not comply with the procedure or the directions of the Court, then the Courts have to use their discretion and pass appropriate and reasonable orders. There is no hard and fast rule on this aspect and it all depends upon the facts and circumstances of each particular case.

12. In the circumstances, it appears that there are laches on the part of the defendants. But merely because there are laches on the part of the defendants, their right to file the written statement should not be forfeited and reasonable costs should be imposed.

13. Accordingly, on payment of costs of Rs. 5,000/- (Rupees five thousand only) by the petitioners herein to the respondents herein within a period of ten (10) days from today, the CRP stands allowed and the impugned order stands set aside. It is made clear that the respondents shall file their written statement within a period of five (05) days from the date of payment of costs to the other side and the Court below shall receive the same.

14. With the above observations, the CRP is disposed of. There shall be no order as to costs.

15. Miscellaneous petitions, if any, pending in this CRP, shall stand closed.