
(1962) 04 AP CK 0018

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1924 of 1960

Dildar Hussain and Another

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 13-04-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 3, Order 27 Rule 5, Order 8 Rule 1

Citation : AIR 1963 AP 116

Hon'ble Judges : P. Chandra Reddy, C.J

Bench : Single Bench

Advocate : Mohd. Yunus Saleem, for the Appellant; A. Venkata Ramana, for Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, C.J.—This is a revision against the order of the Chief Judge, City Civil Court, permitting the defendant -- the State of Andhra Pradesh -- to file written statement after the time fixed for the purpose had expired.

2. The suit was Instituted by the Petitioners on 27-1-1960. After service of notice, the defendant was required to file written statement on or before 10-8-1960. On that date, a request was made on Behalf of the Government to grant further time to file written statement but tills was refused and the case was posted to trial to 24-9-1960. Within a few days thereafter, the defendant made an application for leave to file written statement supported by the affidavit of the Government Pleader setting out the-reasons for the delay in filing, the written statement. It was alleged in that affidavit inter alia that the written statement could not be filed till then as the subject-matter or the suit pertained to the erstwhile Hyderabad State and the several files pertaining to the defendant-department had to be collected and studied, that many of the files were in Urdu and the Government Pleader was unacquainted with Urdu and that because he was engaged in sessions cases he could not devote time to the preparation of written statement.

3. The trial Court taking into consideration the circumstances set out in the affidavit granted the defendant some time to file the written statement, it is this order that is now under revision filed by the aggrieved plaintiffs.

4. In support of the revision, it is urged by Sri Yunus Saleem, learned counsel for the petitioners, that when once the trial Court refused to extend the time for filing the written statement the Court must be deemed to have passed an order under Order 17, Rule 3 C.P.C. and as such the only course open to the defendant is to file an appeal against the decree granted by the trial Court, I find it very difficult to assent to this proposition. A perusal of Order 17, Rule 3 C.P.C. furnishes an effective answer to this argument. Order 17, Rule 3 C.P.C. says:

"Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith."

5. Assuming that the expression "to perform any other act necessary to the further progress of the suit for which time has been allowed" is comprehensive enough to take in the failure to file written statement, Order 17 Rule 3 C.P.C. cannot in the instant case come into operation because the Court had not proceeded to decide the suit, it is well-nigh impossible to bring the refusal of a Court to grant further time to file written statement within the connotation of the clause "proceed to decide the suit forthwith", when nothing has been done except to adjourn the case for filing documents. There would have been some force in the argument of the learned counsel for the petitioner, if Order 17 Rule 3 C.P.C. was couched in mandatory language and the Court was under an obligation to try the suit immediately selling the defendant ex parte. Under that rule discretion is vested in the Court to decide the suit forthwith or to grant time to the parties concerned to do any of the things contemplated by it. When the Court had not even taken up the trial of the case, the argument that an appeal has to be preferred against the decree passed under Order 17, Rule 3 C.P.C. cannot be sustained. It is to be remembered that in this case the defendant was not even set ex parte. That being the position, it was open to the trial Court to extend time to the Government to file written statement at its discretion by reason of Order 27, Rule 5 read with Order 8, Rule 1 C.P.C.

The contention of Sri Saleem that the Government cannot be treated on a different footing from that of a private party and, therefore, the Court ought not to have granted the Government any further time is unsubstantial. For one thing, even though Order 27, Rule 5 C.P.C. is inapplicable to a private party the Court has power under Order 8, Rule 1 C.P.C. to extend time for filing written statement from time to time. It is not as if the trial court is clothed with authority to grant extension of time only to Government. Even otherwise, the Code contemplates that the case of the Government should be treated on a different footing as could be gathered from Order 27, Rule 5 C.P.C. The argument of the

learned counsel for the petitioners in this behalf is devoid of substance and it does not deserve serious consideration.

6. No other question arises in the revision case.

7. In the result, the revision petition is dismissed, but, in the circumstances of the case, I make no order as to costs.