

(2005) 06 AP CK 0073
In the Andhra Pradesh High Court
Case No : C.R.P. No. 1547 of 2005

Sanepalli Subbi Reddy

APPELLANT

Vs

Bathalal Narasimha Naidu and Others

RESPONDENT

Date of Decision : 15-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1, 148, 151

Citation : (2005) 5 ALD 189 : (2005) 4 ALT 438

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : S.S. Bhatt, for the Appellant; None appeared, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The Revision Petitioner-1st defendant had preferred the present Civil Revision Petition as against the order, dated 21 -12-2004 made in I.A. No. 317 of 2004 in O.S. No. 73 of 2004 on the file of the Junior Civil Judge, Kamalapuram.

2. On 13-4-2005, this Court ordered "Notice before admission". One of the respondents refused to receive and other respondents are served, but none represents the respondents.

3. The revision petitioner moved the above interlocutory application u/s 148 read with Section 151 of C.P.C. seeking the Court to enlarge the time for filing the written statement and receive the same in the interest of justice. The written statement also had been enclosed with the application. In view of the fact that the written statement was filed beyond the period of ninety days, and inasmuch as no reasonable cause had been shown to condone the delay and receive the written statement, the learned Judge dismissed the same. Aggrieved by the same, the present Civil Revision Petition is preferred.

4. Sri S.S. Bhatt, the learned Counsel representing the revision petitioner-1st defendant would submit that no doubt the word "shall" is the language in Order

8 Rule 1 proviso. But however, this Court on more than one occasion interpreted the word "shall" not being mandatory and hence, the Court has discretion to extend the time while exercising its power u/s 148 of the Code of Civil Procedure, if reasonable and just cause has been shown. The learned Counsel would contend that in the facts and circumstances of the case, it cannot be said that the learned Judge exercised the discretion properly. The learned Counsel also would maintain that the normal rule is that a matter needs to be decided on merits and not ex parte. In the light of the facts, which had been explained in the affidavit filed in support of the application, the learned Judge, instead of allowing the application and giving an opportunity to the revision petitioner-defendant to contest the matter, had closed the doors by dismissing the application. Hence, the civil revision petition is to be allowed.

5. In the affidavit filed in support of the application it is stated that on 1 -9-2004, the learned Judge posted the suit to 17-11 -2004 for filing the written statement. On 17-11-2004, the petitioner was not present as he had gone to Madras at that time. To his misfortune, his advocate also had gone to Hyderabad at the relevant point of time and hence, written statement could not be filed, and the matter was posted to 25-11 -2004. In the meanwhile, there was a delay of eight (8) days beyond ninety days and hence, the application was moved along with the written statement to enlarge the time to receive the written statement permitting him to further proceed with the matter. The said application was opposed.

6. Order 8 Rule 1 of the CPC as amended by Act 22 of 2002 reads as hereunder-
WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM

(1) Written Statement:- The defendant shall, within 30 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 30 days, he shall be allowed to file the same on such other day, 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. It is no doubt true that the proviso specifies that when the defendant who is obliged to file the written statement within the said period of 30 days fails to file, he shall be allowed to file the same on such other day as may be specified by the Court, for the reasons recorded in writing, but which shall not be later than ninety days from the date of service of summons.

8. It is no doubt true that the rigor of the language of the proviso cannot be watered down. But at the same time, the discretionary power of the Court also cannot be totally curtailed. Hence, all the provisions of the CPC may have to be harmoniously construed.

9. In Centenary Baptist Church Vs. Shyamsunder and Another, , the learned Judge of this Court held that the word "shall" used in the provision cannot be said to be mandatory. Similar view was expressed by another learned Judge in

C.R.P. No. 1917 of 2004 dated 17-4-2003 Nachipeddi Ramaswamy Vs. P. Buchi Reddy, , no doubt, recording certain other reasons.

10. Now the question which may have to be decided in the present C.R.P. is whether the discretion exercised by the learned Judge is in proper perspective and judicious and whether the impugned order requires interference at the hands of this Court in exercise of its revisional jurisdiction.

11. Unless the conduct of the party is so blame worthy, the general rule is that a party should be given an opportunity to contest the matter. In the present case on hand, the delay is only 8 days, which is not inordinate. While considering the delay to be condoned beyond the period of ninety days, the number of days which had been specified, also may have to be taken into consideration while deciding applications of this nature. If the party is not diligent, or if the party is negligent, or if the delay is wilful, intentional and deliberate only with a view to delay the proceedings, then only it can be said that the conduct of the party is blame worthy and in such cases the rigor of the provision under Order 8 Rule 1 C.P.C. may have to be observed in strict sense. Otherwise, the discretion may have to be exercised by giving an opportunity to the party to contest the matter since the general rule is that a matter has to be decided on merits and deciding of a matter ex parte always is an exception. In view of the same, and in the light of the fact that the party was held up at Madras, and the Advocate also had gone to Hyderabad at the relevant point of time, the learned Judge could have exercised the discretion and could have given an opportunity to the revision petitioner to contest the matter. Hence, the learned Judge did not exercise the discretion properly. In the light of the same, the revision petitioner is bound to succeed.

12. Accordingly, the Civil Revision Petition is hereby allowed. It is needless to say that the written statement be received and the learned Judge shall further proceed with the matter in accordance with law. No costs.