Anirudhan Nair, Ramachandran, Santhakumari Nair and Sreedevi Vs Viswanathan, Balakrishnan, Mohan Dasu and Vijayalakshmi

Court: High Court Of Kerala

Date of Decision: Sept. 3, 2008

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 8 Rule 1
Constitution of India, 1950 â€" Article 227

Hon'ble Judges: Sasidharan Nambiar, J

Bench: Single Bench

Advocate: T. Krishnan Unni, for the Appellant; Harish R. Menon, for the Respondent

Final Decision: Allowed

Judgement

M. Sasidharan Nambiar, J.
This petition is filed under Article 227 of the Constitution of India by the efendants in O.S.292/2006 on the file

of Munsiff Court, Parappanangadi challenging Ext.P3 order dismissing I.A.1729/2007, an application to receive the written statement filed beyond

the period provided under Rule 1 of Order VIII of Code of Civil Procedure. Petitioners did not file the written statement within the period of thirty

days or ninety days provided under Rule 1 but after a period of more than one year. Learned Munsiff dismissed the application holding that ten

chances were given to file written statement with a gap of one month each and still written statement was not filed and in such circumstance without

showing special circumstance written statement cannot be received. Learned senior Counsel argued that petitioners have appeared in the suit and

filed a counter in the injunction application which was being contested and in such circumstance, written statement should have been received on

terms. Learned Counsel appearing for respondents argued that learned Munsiff considered the question in the proper perspective and on the failure

of petitioners to disclose special circumstances to receive the written statement, petition was dismissed and there is no illegality in the order.

2. Rule 1 of Order VIII of CPC provides a period of thirty days from the date of receipt of the summons to file the written statement. It also

provides for a further period of 90 days to receive the written statement recording reasons. True, it does not mean that after the expiry of 90 days,

written statement cannot be received at all. If the written statement is to be received thereafter, defendants have to show sufficient cause which

prevented them from filing the written statement within the period. As found by the learned Munsiff affidavit filed in support of Ext.P1 application

does not explain the reasons properly for receiving a written statement subsequent to the period of 90 days. But considering the fact that suit is one

for injunction and the dispute is with regard to the existence of a way claimed by petitioners and also taking into consideration the fact that delay

could be compensated by cots,though the affidavit is not satisfactory, on terms petitioners could be permitted to file a written statement. Written

statement filed along with Ext.P1 application will be received on payment of Rs. 2000/-.

Writ Petition will stand allowed and Ext.P3 order will stand quashed and I.A.1729/2007 will stand allowed and the written statement received, on

the petitioners paying or depositing a cost of Rs. 2000/- to the respondents within seven days from today.

Learned Counsel appearing for petitioners submitted that cost is paid and learned Counsel appearing for respondents submitted that the cost

awarded is received. Recording that fact, the Writ petition stands allowed.