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(2005) 10 AP CK 0006

Andhra Pradesh High Court

Case No: C.R.P. No. 6027 of 2004

Shaik Kareem — APPELLANT

Vs

Mohd. Khursheed Ali — RESPONDENT

Date of Decision: Oct. 25, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 1, Order 9 Rule 7
- Constitution of India, 1950 - Article 227

Citation: (2006) 1 ALD 857 : (2006) 1 ALT 109 : (2006) 1 CivCC 660

Hon'ble Judges: G. Yethirajulu, J; B. Prakash Rao, J

Bench: Division Bench

Advocate: Ali Farooq, for the Appellant; P. Shiv Kumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B. Prakash Rao, J.
Heard Sri Ali Farooq, the learned counsel appearing on behalf of the petitioner and Sri P. Siva Kumar, the learned counsel appearing on behalf of the respondent.

2. Initially this case was posted along with other cases on a reference made to the Division Bench of the question as to whether the time prescribed under Order VIII Rule 1 of CPC is mandatory. However, subsequently the same was deleted and directed to be posted separately.

3. The petitioner herein, who is the defendant in the Court below, seeks to assail the order dated 12-10-2004 in I.A. No. 743 of 2004 in O.S. No. 5506 of 2003 on the file of IX Junior Civil Judge, City Civil Court at Hyderabad by way of Revision under Article 227 of the Constitution of India dismissing an application filed under Order IX Rule 7 of CPC seeking to set aside the ex parte order dated 3-8-2004.

4. The case of the petitioner, briefly, stated is that on 20-7-2004 at the request of his counsel, the matter was adjourned to 3-8-2004 for filing written statement. However, the counsel erroneously noted the date as 3-9-2004. Therefore, there was no representation on 3-8-2004 when the case was called and ex parte order was passed. The said application was contested, inter alia, denying the said allegations and stated that on the earlier date of hearing, the Court passed a conditional order for filing written statement on payment of costs of Rs. 100/-and the matter was posted to 3-8-2004. Neither the said condition was complied nor there was any filing of written statement on 3-8-2004 and therefore, the court below treated the petitioner as ex parte.

5. On considering the rival submissions, the Court below did not find favour with the petitioner''s request mainly on the ground that the period of 90 days as contemplated under Order VIII Rule 1 of CPC has elapsed by 22-6-2004 and in spite of the same, no written statement was filed and therefore, the present application is not tenable.

6. After considering the submissions made on either side and the material available on record, the main point which arises for consideration is as to whether the period as prescribed under Order VIII Rule 1 of CPC is mandatory and whether the Court has got any power to extend the same?

7. Having regard to such question, where similar such question was also being taken up in the connected matters, this was posted along with the other cases and later on it got separated.

8. In regard to the scope of Order VIII Rule 1 of CPC, this Court had already taken a view in Centenary Baptish Church Vs. Shyamsunder and Another, and Nachipeddi Ramaswamy Vs. P. Buchi Reddy, to the effect that the same is not mandatory and the Court is not divested of any power to fix further time provided, the Court finds sufficient cause. Similarly in Kailash Vs. Nanhku and Others, the Supreme Court, while considering the very same provision in regard to time, as provided by Order VIII Rule 1 of CPC, held that the same is only directory and does not impose an embargo on the power of the Court to extend the time. However, the extension of time be granted only for exceptional circumstances and reasons to be recorded in writing (by the defendant), howsoever, brief they may be, by the Court on its being satisfied.

9. In view of the aforesaid decisions on the background, the main question no longer remains res Integra and therefore, it has to be held that the Court has got ample power to extend the time schedule.

10. Coming to the facts of the case, it is the case of the petitioner that it is only due to wrong entry made by his counsel in regard to the next date of hearing, the case could not possibly be represented. The reason is attributed to the counsel, instead of 30-8-2004 it was noted as 30-9-2004. Necessarily the petitioner, who is a party to the proceedings, has to depend upon his counsel and there is absolutely no reason to disbelieve the said

version. Further, a party should not be allowed to suffer for any mistakes committed on the part of the counsel. Even otherwise, all the reasons as assigned and especially the fact that the proceedings are still at threshold, the interest of justice would require that an opportunity should be given to the petitioner to file written statement so as to enable him to contest the proceedings on merits.

11. The C.R.P. is allowed and I.A. No. 743 of 2004 in O.S. No. 5506 of 2003 is allowed. The petitioner is permitted to file written statement within a period of one month from to-day. No costs.