

ORDER ON APPLICATION FILED U/S.151 CPC

The respondent No.2 has filed I.A.NO.II under section 151 of C.P.C. praying to permit him to file objections to the main petition and to permit him to contest the matter.

(2) In the memo of facts, filed in support of I.A.NO.II, the learned counsel for the respondent No.1 stated tht the petitioner has filed this claim petition claiming compensation on account of death of her brother but on the last date of hearing on 12.09.2022 this respondent was supposed to file objections but the respondent No.1 has not given information and the documents to file objections in time. Meanwhile the case was called and objections of respondent No.1 taken as not filed and the matter was posted for evidence. If this respondent is not permitted to file objections then he will be put to untold loss and hardship, which cannot be compensated in terms of money. Hence, on these grounds, the respondent No.1 prayed to allow this application.

(1) The learned counsel for the petitioner filed objections by contending that application filed by the

respondent No.1 is not maintainable in the eye of law. The respondent No.1 has intentionally and deliberately has not filed written statement to the main petition in order to delay the matter. The respondent No.1 has not filed affidavit in support of this application. This court has given sufficient opportunity to the respondent No.1 to file objections. The respondent No.1 did not turn up to file the same. When the petitioner's side evidence is closed and case posted for arguments, at this belated stage, the respondent No.1 has come up with such false application praying to file objections to the main petition only to drag on the matter and to harass the petitioner. The respondent No.1 has not filed written statement within the prescribed time under the law. Hence, on these grounds, the learned counsel for the petitioner prayed to reject the application with compensatory costs.

(2) I have heard the arguments on the side of the learned counsel for the petitioner and the learned counsel for the respondent No.1.

(3) The learned counsel for the petitioner relied on the decision of Hon'ble High Court of Karnataka reported in 2016[2] Kar L.R. 852 Justice Micheal F. Saldhana Retd Vs Sri M.P. Norohna[Melwyn Prakash Noronha] and others, [2] decision of Hon'ble High Court of Punjab and Haryana at Chandigarh in 2007 ACJ 222- The Oriental Insurance Co Ltd., Vs Sanjay Kumar and others.

(4) The following points would arise for my consideration:-

[1] Whether there is sufficient grounds made out by the respondent No.1 to allow this application filed U/s.151 of C.P.C. and to permit him to file objections to the main petition?

[2] What order?

(5) My findings to the above points are as below:-

Point No.1:- In the affirmative

***Point No.2:- As per the final order below,
for the following***

REASONS

(6) **Point No.1:-**This is a petition filed by the petitioner U/s.163-A of M.V. Act claiming compensation of

Rs.15,00,000/- on account of death of her brother in the road traffic accident occurred on 10.4.2021. It is the contention of the petitioner is that deceased was driver of vehicle bearing No.MH-09/CU-6897 owned by the respondent No.1 which met with accident. The respondent No.2 is the insurer of vehicle of respondent No.1. In this case, the respondent No.2 remained ex-parte. Even though the respondent No.1 entered appearance by engaging his counsel on 22.8.2022, thereafter did not file objections. Hence, objection was taken as nil as per the order dated 12.9.2022. Thereafter, the evidence on the side of petitioner was recorded who examined as P.W.1 and documents Ex.P.1 to 15 are marked. When the case was posted for arguments, the respondent No.1 come up with I.A.No.II and filed objections to the main petition.

(7) Since this is a summary trial, this Tribunal has given short hearing dates and this Tribunal was pleased to post the case for objections of respondent No.1 on 22.08.2022 soon after appearance of respondent No.1 and case was posted for objections on 3.9.2022. thereafter the

case was posted for objections on 12.09.2022, on which date both side remained absent and objections of respondent No.1 taken as nil. Thereafter, the case was posted for evidence on 20.9.2022. On that day, the petitioner came to be examined as P.W.1 and documents Ex.P.1 to 15 were marked. Prayer of the counsel for the respondent No.1 was rejected and cross-examination of P.W.1 is taken as nil and the petitioner closed her side evidence and case was posted for arguments. Thus on perusal of order sheet, it would goes to show that within 30 days, this case was posted for arguments. The provision under order VIII Rule 1 of C.P.C. enables to the defendant to file written statement within 30 days from the date of service of summons which can be extended another 60 days. It is now settled position of law that 90 days for filing written statement is not a mandatory provision but a directory provision. But in the decision cited by the learned counsel for the petitioner which is reported in 2007 ACJ 222 of Hon'ble High Court of Punjab and Haryana at Chandigarh held that provisions of order VIII Rule 1 does

not specifically taken away the power of court to take written statement beyond 90 days. I have gone through the decision cited by the learned counsel for the petitioner which is reported in 2016[2] Kar L.R. 852 wherein it is held that cost may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depends on the facts and circumstances of a given case.

(8) In the present case, as I have already stated, 30 days was not completed after appearance of respondent No.1, by that time, the case was already posted for arguments. No doubt there is delay and negligence on the part of the respondent No.1 in defending the case. The respondent No.1 and counsel remained absent on 12.09.2022. Hence, this court has taken objections of respondent No.1 as nil. Thereafter, immediately on the next date i.e. on 20.9.2022, the petitioner examined herself as P.W.1 and documents came to be marked on her side and case posted for arguments as respondent No.1 not filed any objections to the main petition. Immediately on the next

date on 22.09.2022 the respondent No.1 moved this application and filed objections to the main petition. There is some delay in filing the objections which can be condoned by imposing costs. There is sufficient grounds made out by the respondent No.1 to allow I.A.NO.II and permit him to file objections to the main petition. Hence, in the above facts and circumstances this Tribunal answered point No.1 in the affirmative.

(9) **Point No.2:-** In the result, this Tribunal proceeds to pass the following

ORDER

I.A.NO.II filed by the respondent No.1

***U/s.151 of C.P.C. is hereby allowed imposing
cost of Rs.750/- payable to the petitioner.***

[order passed and pronounced in the open court today]

**[Mohan Prabhu]
IV Addl District Judge and
MACT-V, Belagavi**