

17.12.2016

COMMON ORDERS ON I.As.No.IV & VI

The I.A.No.IV is filed by the applicant/plaintiff through her learned counsel ***u/O.8 Rule-1 R/w Sec.151 of CPC***, along with her accompanying affidavit with a prayer that the defendants No.1 to 5 have failed to file written statement within 90 days from the date of service of summons, considering the non-filing of written statement, suit needs to be decreed as prayed.

2. This interim application is opposed by defendant No.1 through her learned counsel, and she has filed objection in detail that she has ample material to contest the suit and ready to file written statement. I.A.No.IV filed by the plaintiff is with malafide intention. Hence prayed to dismiss the I.A. with cost.

3. The I.A.No.VI is filed by the applicant/defendant No.1 along with her accompanying affidavit through her learned counsel contending that the order of this court dated 22-06-2015 that written statement taken not filed need to be set aside and she may be permitted to file her written statement in the interest of justice, equity and good conscience.

4. She has also filed her written statement on 27-07-2015. This I.A. is contested by the plaintiff who has filed objection in detail that the written statement is filed at belated stage and as per law, it should not be allowed to file the written statement beyond 90 days from

O.S.No.196/2014.

the date of service of summons and the reasons shown by the defendant No.1 are false and mis-leading and it is prayed for dismissal of the I.A.No.VI with costs.

5. The learned counsel for the plaintiff has relied upon the following citations of our Hon'ble High Courts:-

I. ILR 2004 KAR 1399

***“A.Sathyapal and Others Vs.
Smt.Yasmin Banu Ansari and Another”.***

**II. AIR 2015 (NOC) 96, (M.P.)
(GWALIOR BENCH)**

***“Bisimilla Bee V.Arjuman Aara & Others.
WP No.8528 of 2012, D/- 11-7-2014”.***

6. I have heard the learned counsel for both the sides and perused the materials available on record.

7. The following points arise for my consideration:

1. *Whether the I.A.No.IV filed by the plaintiff u/O.8 Rule-1 R/w.Sec.151 of CPC is deserves to be allowed?*

2. *Whether the I.A.No.VI filed by the defendant No.1 u/O.8 Rule-1 R/w.Sec.151 of CPC deserves to be allowed?*

3 *What Order?*

8. My findings to above points are as under:

Point No.1 : In the Negative.

Point No.2 : In the Affirmative.

Point No.3 : As per final order for the following;

:-REASONS:-

9. POINTS No. 1 AND 2:- I have proposed to discuss these two points together as they are interconnected with each other and to avoid repetition of facts and material on record.

10. This is a suit filed by the plaintiff against the defendants for the relief of partition and separate possession of her $\frac{1}{2}$ share in the suit schedule properties and future measne profits. As per genealogy, the plaintiff is the wife of one Ramachandra who is no more. The defendant No.1 is wife of late Prakash. The plaintiff has claimed that the defendants No.2 to 6 are tenants of some of the suit properties. The suit properties are self acquired properties of late Prakash Ramachandra Malavade, late Prakash, plaintiff and defendant No.1 were members of joint family. After death of Prakash, the plaintiff and defendant No.1 continued to be the members of the said joint family, plaintiff and defendant No.1 are class-I heirs, the suit properties are in their joint possession and enjoyment.

11. The defendants No.1 to 5 have appeared before the court through their learned counsel, but could not file written statement within stipulated period, later defendant No.6 has appeared before the court and has filed written statement partly admitting the claim of plaintiff. Finally considering the non filing of written

O.S.No.196/2014.

statement, on 22-06-2015, the plaintiff has filed I.A.No.IV. Subsequently I.A.No.VI came to be filed on 27-07-2015.

12. Considering the contents of proposed written statement under I.A.No.VI of defendant No.1, she has challenged all the pleadings of the plaintiff as false, frivolous, and vexatious and suit is not maintainable either in law or on facts. It appears the defendant No.6 is daughter of plaintiff. Unless the plaintiff seeks the relief of declaration of her title to 'B' to 'F' shown properties, suit of the plaintiff is not maintainable and suit is not properly valued and proper court fee is not paid. As regards delay in filing the written statement, it is contended by the defendant No.1, that she could not get the documents in time, since she is a widow and with all difficulties after getting documents, she approached her counsel to file the written statement. Therefore the learned counsel for the defendant No.1 by relying on the following citations of our Hon'ble Supreme court of India and Hon'ble High Court of Karnataka has prayed for rejection of I.A.No.IV and to allow I.A.No.VI.

I. 2009(5) – KCCR – 3346

SUPREME COURT

(Civil Appellate Jurisdiction)

“Sambhaji and Others Vs. Gangabai & Others.”

Wherein their lordships have held as under,

CODE OF CIVIL PROCEDURE, 1908 Rule 8, Rule-1- Acceptance of Written Statement of 90 days-When grounds are indicated by the defendant to accept the Written Statement after 90 days period – Trial Court has jurisdiction to extend the period 90 days- Trial Court dismissed the application writ petition against the order dismissed-Supreme Court Allowed the appeal holding that when close relatives were litigating a liberal approach is called for-Justice delayed may amount justice denied justice hurried may amount justice buried.

II. AIR 2007 SUPREME COURT 2571

(From: Karnataka)

“M/s.R.N.Jadi and Brothers & Ors. Vs. Subhashchandra”.

Wherein their lordships have held as under,

(A) Civil P.C. (5 of 1908), O.8, R.1- Written statement – Time limit fixed- Does not take, away power of Court, to accept W.S. filed beyond time.

III. AIR 2006 SUPREME COURT 396

(From: Bombay)

“Shaikh Salim Haji Abdul Khayumsab Vs. Kumar & Ors”.

IV. ILR 2005 KAR 4889

(SUPREME COURT)

(From: Patna)

“Smt.Rani Kusum Vs.Smt.Kanchana Devi and Others”.

V. (2015) 2 KCCR 1966

KARNATAKA HIGH COURT

(SINGLE BENCH)

"Premavathi Vs. S.V.Jayama and Others."

VI. 2010 (5) KCCR 3591

KARNATAKA HIGH COURT

**"S.Chay Devi and Another Vs.
H.Manjuramaswamy and Others".**

VII. AIR 2006 KARNATAKA 37

***"Vasanth Satyanarayana Hegde, Vs. The
Managing Director, Karnataka Neeravari
Nigama Ltd., and Anr".***

VIII. ILR 2004 KAR 2759

***"Mohammed Anwar since deceased by LRs.
and Others. Vs Sabir and Others".***

IX. 2015 AIAR (Civil) 522

SUPREME COURT OF INDIA

**"Gujarat Maritime Board Vs.
G.C.Pandya"**

***A. Civil Procedure Code, 1908, Or. VIII,
Rule- 10-Provisions of – Sweap of- When no
written statement by the defendant-No
question of framing issues in the suit
would arise-On failure of the defendant to
file written statement-Civil Court has the
jurisdiction to proceed under Or.VIII Rule
10 of CPC and judgment can be pronounced
under thereunder-However, the orders are
not required to be passed in a mechanical
manner in exercise of the powers contained
in the above mentioned provisions of law.***

X. 2014 SAR (Civil) 487
SUPREME COURT

“Maya Devi Vs.Lalta Prasad”.

A. Civil Procedure Code, 1908, Order VIII, Rule-10 and Order IX – Non filing of written statement-Effect of-Order VIII, Rule 10 coming into operation and the factum of defendant having been set ex-parte- No automatic decree to be passed in the result thereof-Both under Order VIII Rule 10 and Order IX of Civil Procedure Code, the Court is nevertheless duty-bound to diligently ensure that the plaint stands proved and the prayers therein are worthy of being granted.

XI. 2013 (4) SCC 396
SUPREME COURT OF INDIA
(Division Bench)

“Shantilal Gulabchand Mutha Vs.Tata Engineering and Locomotive Company Ltd., and Another”.

Wherein his lordship has held as under;

Civil Procedure Code, 1908, Order 8 Rule 10 – Written Statement – Non Filing of – Relief under Order 8, Rule 10 CPC is discretionary, and Court has to be more cautious while exercising such power where defendant fails to file the written statement – Even in such circumstances, the Court must be satisfied that that there is no fact which need to be proved in spite of deemed admission by the defendant – Decree under Order 8, Rule 10 CPC should

O.S.No.196/2014.

not be passed unless the averments made in plaint are established.

13. On perusal of entire materials on record, it appears that the defendant No.1 has appeared before this court through her learned counsel on 20-02-2015. But she filed written statement on 27-07-2015. Admittedly with due respect to citations relied by the plaintiff, the defendant No.1 ought to have filed her written statement within 90 days from the date of her appearance, since summons were not served upon her. But there is delay of more than two months. Since the defendant No.1 has made out reasonable grounds and shown sufficient cause which prevented her from filing the written statement within stipulated period, the citations relied upon by the plaintiff are not made applicable. On the other hand, this court is of the view that the citations relied upon by the defendant No.1 are certainly made applicable and if the I.A.No.IV is rejected and I.A.No.VI is allowed, the plaintiff will not be put to any kind of inconvenience and hardship. If the I.A.No.IV is not rejected and I.A.No.VI is not allowed, defendant No.1 will be put to greater hardship, inconvenience and suffer injustice. The grievance of plaintiff can be compensated with cost. Hence I.A.No.IV needs to be rejected and I.A.No.VI needs to be allowed. Hence I answer **Point No.1** in the **“Negative”** and **Point No.2** in the **“Affirmative”**.

O.S.No.196/2014.

14. POINT No.3: In view of my above discussion and findings, I proceed to pass the following:

ORDER

I.A. No.IV filed by the plaintiff u/O.8 Rule-1 r/w.Sec.151 of CPC is rejected. No order as to costs.

I.A. No.VI filed by the defendant No.1 u/O.8 Rule-1 r/w.Sec.151 of CPC is hereby allowed.

Subject to payment of cost of ₹500/-, the written statement of defendant No.1 is taken on record.

For payment of cost.

**Prl.Senior Civil Judge and CJM.,
Haveri.**

O.S.No.196/2014.