

IN THE COURT OF SUB JUDGE, KOCHI - 5

Present :

Sri. Rajesh.R, Sub Judge, Kochi

Monday, the 28th day of September, 2020 /6th Aswina, 1942.

I A No. 508/2019 in O.S. No. 26/2018

Petitioner/Defendant-

C.R.Madhu, 48 years, S/o C.S. Raju, Contractor, r/o Chethikatt House, 20/1109, M.L.A.Road, Deepam Junction, Palluruthy, Kochi-6.

By Adv. A.Anilkumar

Respondent/Plaintiff:-

Sreekumar.T.A, 49 years, S/o T.R.Aravindakshan, Driver, r/o Thareparambil House, Panayappally, Mattancherry, Kochi-2.

By Advs. C.Dilip & R.Pradeep.

This petition filed under Order 8 rule 1 and Section 48 and Section 151 of Code of Civil Procedure.

This petition having come up for hearing before me on 23.09.2020 and the court on 28.09.2020 passed the following :-

ORDER

Petition filed by the defendant of the Original Suit 26/2018 under Order 8 Rule 1 and Section 148 and 151 of Civil Procedure Code for accepting

whose belated written statement.

2. Case of the petitioner can be summarised as follows:

Plaintiff had instituted the suit for rescinding a building contract entered into between the plaintiff and the petitioner/defendant herein for constructing a residential building. Petitioner/defendant contents that infact failure to handover the agreed amount at the stipulated intervals had created problems and ₹.8,26,300/- has been in due towards the petitioner on account of the additional works carried out. The younger brother of the respondent/plaintiff also owes more than ₹.4,00,000/- to the petitioner over the construction of residential building. Due to the financial difficulty there arose lot of problems and the petitioner had lost mental balance and constrained to undergo treatment for mental derangement. In the aforementioned circumstances the petitioner could not file the written statement within the period. Along with written statement, a counter claim seeking realisation of money from the respondent has also been filed. In the event of not accepting the petition irrecoverable loss and injury would be caused.

3. The respondent/plaintiff had filed counter affidavit which can be summarised as follows:

The petitioner/defendant has no right to file any written statement after the expiry of 90 days as mandated in the act relevant. Though the petitioner had on 20.7.2018 and 13.11.2018, submitted before court that written statement and counter claim were already filed, infact it was filed belatedly on 24.5.2019. The contentions of the petitioner lacks bonafideness and the reasons stated in the affidavit for the delay has not been convincing. Due to the negligent conduct of the petitioner already severe loss has been caused and in these circumstances prayed for dismissal of the petition.

4. Heard both side.

5. The points raised for consideration are:

- (1) **Can this petition be allowed and written statement and counter claim be accepted?**
- (2) **Costs if any?**

6. **Point No.1:** In this case suit was instituted on 14.6.2018 for rescission of a contract, executed between the parties herein over the construction of a residential building, and for mandatory injunction, directing the defendant to carry out the balance work within a stipulated time.

7. On 20.7.2018 the defendant had appeared on receiving summons, the case was posted for written statement. Presumably 90 days was over by the

mid September 2018. However, this petition and the written statement with counter claim were filed belatedly on 24.5.2019 i.e. after the lapse of more than eight months.

8. The reason for the delay was “mental imbalance of the petitioner and the treatment taken for mental derangement”. Medical documents supporting the said contention was not filed. How could a person having a deranged mind could legally appoint a counsel? How long the petitioner/defendant remained in treatment was also not stated. It appears that without knowing the gravity of the ground and its legal implications, such a reason has been stated.

9. The mental deranged defendant can conduct a case only through a guardian as contemplated in Order 32 Rule 3. If the petitioner had lost whose sanity that should have been stated clearly. The name of the hospital or the doctor who treated the petitioner are also not found mentioned. It can be seen that in a very vague manner the said reason has been stated.

10. Now the question at hand is whether this court is left with any power or discretion to accept a written statement after the period of 90 days. For getting clarity the classic decision of the Hon’ble Supreme Court made in

Kylash v. Nanhka reported in AIR 2005 (S.C) 244(1) was perused wherein it was held by our apex court that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. This court has relied upon the aforementioned dictum. Which means even after the period of 90 days civil court can accept the written statement provided there should be satisfactory reason. At the same time that discretion can be used only in rare circumstances only. The principle behind this finding is that Order 8 Rule 1 been a procedural one and not part of a substantive law. Further the Hon'ble Supreme Court observed that every litigant should get a fair trial also.

11. When we apply the aforementioned dictum into the given case, the reason or the ground raised in the petition can be found to be a sustainable one but for not detailing the same in a convincing manner with clarity and for the want of supporting medical records it cannot be entertained Law takes liberal attitude towards the cause of the insane person. So the time taken on account of the said disability could have been considered in lenient manner. However, in this case as pointed out by the respondent/plaintiff just for the purpose of putting a ground an aspect having much legal implication was seen mentioned

as a ground in an unsatisfactory manner without the support of necessary medical documents.

12. In the light of the above mentioned discussion, this court is left with no other option but to dismiss the petition. Hence petition stands dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open court on this the 28th day of September, 2020.

Sd/-
RAJESH R
SUB JUDGE

Appendix:Nil

Sd/-
SUB JUDGE

//True copy//

Typed by:vkg/-
Comp by:

I.A.No.508/2019 in O.S 26/18

Dated : 28.9.2020