

*** HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+ CIVIL REVISION PETITION NOs.866, 869, 874 and 913 OF 2023

% 28.04.2023

Rock Wood Steel,
A partnership firm having its Office
at # 6-1-289, Casa Rosa,
Padma Rao Nagar, Secunderabad,
rep.by its Managing Partner,
S.Praveen Kumar s/o. S.S.Goud,
Occu: Business, r/o. H.No.12-11-197/4,
Warasiguda, Secunderabad.

..... Petitioner/
Defendant no.1

Vs.

\$ Govindan Satya Sai,
Aged about 59 years,
Occu: Business, r/o. Flat No.B-1,
Shantinivas Apartments, Mettuguda
Cross Roads, Secunderabad and others.

..... Respondents/
Plaintiffs/
Defendants

!Counsel for the appellant : Sri Sk.Ahmed Shareef

Counsel for the Respondents 1&2: Sri R.A.Achuthanand

<Gist :

>Head Note:

? Cases referred:

(1955) 2 SCR 1 : AIR 1955 SC 425
(1988) 4 SCC 619
1988 (Supp) SCC 780
(1964) 5 SCR 946 : AIR 1964 SC 993
(2012) 2 SCC 196

HIGH COURT FOR THE STATE OF TELANGANA

CIVIL REVISION PETITION NOs.866, 869, 874 and 913 OF 2023

Between :

Rock Wood Steel, A partnership firm having its Office
at # 6-1-289, Casa Rosa,
Padma Rao Nagar, Secunderabad,
rep.by its Managing Partner,
S.Praveen Kumar s/o. S.S.Goud,
Occu: Business, r/o. H.No.12-11-197/4,
Warasiguda, Secunderabad.

..... Petitioner/
Defendant no.1

and

Govindan Satya Sai, Aged about 59 years,
Occu: Business, r/o. Flat No.B-1,
Shantinivas Apartments, Mettuguda
Cross Roads, Secunderabad and others.

..... Respondents/
Plaintiffs/
Defendants

DATE OF JUDGMENT PRONOUNCED : 28.4.2023

HONOURABLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : Yes
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NOS.866, 869, 874 and 913 OF 2023

Date: 28.04.2023

CRP No.866 of 2023:

Between:

Rock Wood Steel,
A partnership firm having its Office
at # 6-1-289, Casa Rosa,
Padma Rao Nagar, Secunderabad,
rep.by its Managing Partner,
S.Praveen Kumar s/o. S.S.Goud,
Occu: Business, r/o. H.No.12-11-197/4,
Warasiguda, Secunderabad.

..... Petitioner/
Defendant no.1

and

Govindan Satya Sai, Aged about 59 years,
Occu: Business, r/o. Flat No.B-1,
Shantinivas Apartments, Mettuguda
Cross Roads, Secunderabad and others.

..... Respondents/
Plaintiffs/
Defendants

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NOS.866, 869, 874 and 913 OF 2023

COMMON ORDER:

Heard learned counsel Sri Sk.Ahmed Shareef for the petitioners in all the revision petitions, the learned counsel Sri R.A.Achuthanand for respondents 1 and 2 in CRP No.866 of 2023, learned counsel Sri Vivek Jain for the respondent no.1 in CRP No.869 and for respondents 1 and 2 in CRP No.913 of 2023 and the learned counsel Sri Dharmesh D.K.Jaiswal for respondent No.1 in CRP No.874 of 2013.

2. The parties herein are referred to as arrayed in the suits.
3. O.S.Nos.83, 81, 112 and 80 of 2015 are filed by the prospective purchasers of individual apartments in Apartment building called as 'Casa Rosa'. The 1st defendant in all the suits is the Developer of the property bearing Municipal No.6-1-289, Road No.5, Padmarao Nagar, Main Road, Secunderabad. The plaintiffs have instituted the above suits praying to grant decree of specific performance of the agreements of sale by directing the defendants to execute registered sale deeds in favour of the plaintiffs in respect of the suit schedule apartments. Though appearance was entered

by the 1st defendant, he did not file the written statements and the 1st defendant was set *ex parte*. Trial was conducted and after hearing the arguments of parties appearing before the trial Court, learned trial Judge reserved the suits for judgments by fixing the date of delivery of judgments as 28.06.2023.

4. First defendant filed I.As. in all the suits under Order IX Rule 7 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') praying the Court to set aside the orders setting him *ex parte* dated 04.12.2018 (O.S.No.83 2015 & O.S.No.81 of 2015), dated 20.06.2018 (O.S.No.112 of 2015) and dated 31.01.2018 (O.S.No.80 of 2015) and permit him to file written statements. On 07.06.2022 trial Court passed orders dismissing the applications. Challenging the same, these Revisions are filed.

5. Learned counsel for 1st defendant contended that due to wrong advice and wrong prosecution by the learned counsel engaged by the 1st defendant, 1st defendant could not file the written statements and could not appear during the course of conducting trial. When the 1st defendant came to know that the counsel on record was not contesting the suits and the matters

were at the stage of submission of arguments, immediately applications were filed under Order IX Rule 7 of CPC praying to permit the 1st defendant to file written statements and to participate in the proceedings. According to the learned counsel, though he sought larger reliefs before the trial Court in the individual I.As., filed by the 1st defendant, he is now confining himself for submission of written arguments only and that may be permitted.

6. In support of the contention that the Applications under Order IX Rule 7 of CPC are validly filed and that the trial Court erred in not accepting the pleas raised by the 1st defendant, learned counsel placed reliance on the following decisions:

- i) **Sangram Singh vs. Election Tribunal, Kotah and another**¹;
- ii) **Modula India vs. Kamakshya Singh Deo**²;
- iii) **Om Prakash vs. Amarjit Singh and another**³;
- iv) **Arjun Singh vs. Mohindra Kumar and others**⁴

7. According to the learned counsel, when the applications were filed, arguments were not concluded and, therefore, trial Court

¹ (1955) 2 SCR 1 : AIR 1955 SC 425

² (1988) 4 SCC 619

³ 1988 (Supp) SCC 780

⁴ (1964) 5 SCR 946 : AIR 1964 SC 993

grossly erred in not permitting the 1st defendant to prosecute the suits further.

8. *Per contra*, according to the learned counsel Sri R.A.Achuthanand, the matter is now stands at the stage of rendering judgments after the cases was heard and reserved for judgments and, therefore, Order IX Rule 7 of CPC has no application. He also referred to the provisions in Orders XVIII and XX of CPC to contend that as the matter is at the stage of rendering judgment, it is not permissible to reopen the suits and to permit the 1st defendant to file written statements and that no further proceedings are pending for the 1st defendant to file written arguments. In support of his contention, he placed reliance on the decisions of Hon'ble Supreme Court in **Rasiklal Manikchand Dhariwal and another vs. M.S.S.Food Products**⁵ and **Arjun Singh vs. Mohindra Kumar and others** (supra).

9. According to the learned counsel Sri Vivek Jain, as the Application is not filed within three years, as per Article 137 of the Limitation Act, the applications filed by the 1st defendant are hit by delay and laches.

⁵ (2012) 2 SCC 196

10. Learned counsel Sri Dharmesh D.K.Jaiswal adopted the submissions made by the other learned counsel for plaintiffs.

11. All the learned counsel for plaintiffs submit that suits underwent 20 adjournments for hearing after the 1st defendant was set *ex parte*, 67 adjournments till filing of setting aside applications and 20 adjournments after filing CRPs., and even for hearing, the suits underwent several adjournments. It is also further contended that even though orders were passed on 07.06.2022, Copy Applications were filed only on 21.11.2022 and even though copies were made ready on 12.12.2022, CRPs are filed on 06.03.2023. All this clearly shows that 1st defendant is not diligent in prosecuting the litigations and his claim is not *bona fide*.

12. Order IX Rule 7 of CPC reads as under:

“Order IX. Appearance of parties and consequences of non appearance:

Rules (1) to (6) xxx

Rule 7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.—

Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as

the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.”

13. It is to be noted that 1st defendant was set *ex parte* on 04.12.2018 (O.S.No.83 2015 & O.S.No.81 of 2015), dated 20.06.2018 (O.S.No.112 of 2015) and 31.01.2018 (O.S.No.80 of 2015). Thereafter, cases proceeded further, arguments were concluded and cases are awaiting verdict. From the plain reading of Rule 7, it is clear that if the Court adjourned the suit for hearing after defendant was set *ex parte* and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs, as to costs or otherwise, be heard in answer to the suit as if he had appeared on the date fixed for his appearance. The crucial words used are, Court adjourning the suit for hearing *ex parte* and on the said date of hearing or before the defendant appears and assigns good cause, Court may accord opportunity of hearing. In the instant cases, as noticed above, after he was set *ex parte*, the trial was conducted in the cases and after completion of recording of evidence, Court heard the parties, who appeared before the Court and reserved the cases for judgments. Thus, strictly going by the

words employed in Rule 7, these are not the cases of the suits coming up for hearing *ex parte* when the application was filed.

14. Learned counsel for the 1st defendant sought to contend that when he filed applications, the cases were at the stage of arguments and, therefore, merely because later the Court reserved the cases for judgments, cannot be a ground to through out these revisions filed against the orders passed in the applications under Order IX Rule 7 of CPC. I would have appreciated this submission if only the 1st defendant was diligent in knocking the doors of this Court immediately after the orders were passed in the applications filed under Order IX Rule 7 of CPC as by then cases were still at the stage of oral arguments. Whereas 1st defendant took his own sweet time and leisurely filed the Revisions only in March, 2023 and in the mean time, the cases underwent several adjournments for various reasons including for hearing oral submissions and reserved for judgments.

15. The decision of Hon'ble Supreme Court in **Sangram Singh** (supra) also does not come to the aid of the 1st defendant having regard to the chronology events of these cases. Learned counsel

placed reliance on paragraph-27 of the judgment. In the said paragraph, the Court noted the terms used in Rule 7 and observed, *“This cannot be read to mean, as it has been by some learned Judges, that he cannot be allowed to appear at all if he does not show good cause. All it means that he cannot be relegated to the position he would have occupied if he had appeared”*. Admittedly, in the cases on hand, 1st defendant has not appeared on several dates of hearing after he was set *ex parte* trial was conducted and oral arguments were heard.

16. By placing reliance on **Modula India** (supra), learned counsel for 1st defendant sought to contend that having regard to the facts of these cases, Court could have moulded the reliefs and could have permitted the 1st defendant to file written arguments at this stage. He placed reliance on paragraph-22 of the said judgment. In the said paragraph, Hon’ble Supreme Court observed that there is a wide discretion with the Court and it is always open to the Court, where it believes that the plaintiff has been misled, to exercise its discretion to shut out cross-examination or to regulate it in such a manner as to avoid any real prejudice to the interests of the plaintiff. This observation of the Hon’ble Supreme

Court also does not come to the aid of the 1st defendant. As noticed above, cases were not at the stage of recording of evidence, recording of evidence was completed long ago. The matters underwent several adjournments at the stage of hearing and finally they were heard and reserved for judgments. What is sought by the 1st defendant would amount to reopening of the suits for further hearing.

17. In **Om Prakash** (supra), Hon'ble Supreme Court observed as under:

“13. The appeal to the principle in *Sangram Singh v. Election Tribunal, Kotah, Bhurey Lal Bayai* [(1955) 2 SCR 1 : AIR 1955 SC 425 : 10 ELR 293] in the circumstances, is not much of assistance to the appellant. It is true that it would not be necessary for a party to get rid of an order placing him ex parte if the party wishes to participate in the proceedings at any particular stage onwards, provided that he does not seek to be relegated to the position he would have occupied if he had appeared at the earlier hearing or hearings and does not seek to set back the hands of the clock. It means that he must accept all that has gone before and be content to proceed from the stage at which he has come in. [See also: *Arjun Singh v. Mohindra Kumar* [(1964) 5 SCR 946 : AIR 1964 SC 993]]. In the present case, appellant did seek to set the hands of the clock backwards; he wanted the witnesses to be recalled for cross-examination. This, unfortunately, was not permissible having regard to the finality the order of remand had assumed.”

18. From the reading of this paragraph, it is clear that it would not be necessary for a party to get rid of an order placing him *ex parte* if the party wishes to participate in the proceedings at any particular stage of the proceedings and onwards, provided that he does not seek to be relegated to the position he would have occupied if he had appeared at the earlier hearing or hearings and does not seek to set back the hands of the clock. In other words, Hon'ble Supreme Court observed that in a given case, even though 1st defendant was set *ex parte*, he can be permitted to participate in the proceedings from the stage at which he filed application to permit him to prosecute the case. This judgment also does not come to the aid of the 1st defendant inasmuch as by the time applications were filed the cases were at hearing stage and by the time these Revision Petitions are taken up for consideration the matters stand at the stage of rendering judgments after arguments were concluded. Thus, permitting the 1st defendant to participate in the proceedings would necessarily mean that the cases have to be reopened. In an application filed under Order IX Rule 7 of CPC cases reserved for judgments cannot be reopened.

19. In **Arjun Singh** (supra) also, Hon'ble Supreme Court observed that if the defendant appears on such adjourned date and satisfies the Court by showing good cause for his non-appearance on the previous day or days he might have the earlier proceedings recalled and have the suit heard in his presence. On the other hand, even if he failed in showing good cause, he is not penalised in the sense of being permitted to take part in the further proceedings of the suit or whatever might still remain of the trial, only thing is he cannot claim to be relegated to the position that he occupied at the commencement of the trial. Hon'ble Supreme Court further observed that there is no scope for invocation of the inherent powers of the Court to make an order necessary for the ends of justice.

19.1. It is also appropriate to note the observations of Hon'ble Supreme Court. It is said that,

“20. when once the hearing starts, the Code contemplates only two stages in the trial of the suit: (1) where the hearing is adjourned or (2) where the hearing is completed. Where, the hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order XX Rule 1 permits judgment to be delivered after interval after the hearing is completed. It would, therefore, follow that after the stage contemplated by Order IX Rule 7 is passed the next stage

is only the passing of a decree which on the terms of Order IX Rule 6 the Court is competent to pass. And then follows the remedy of the party to have that decree set aside by application under Order IX Rule 13. There is thus no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of Order IX Rule 7. ..”

19.2. Having observed so, Hon’ble Supreme Court opined that the Civil Judge was not competent to entertain the application dated May 31, 1958 purporting to be under Order IX Rule 7 of CPC. From the facts, it is seen that the suit underwent few adjournments on the plea for possible compromise between the parties. It was finally posted to 29.05.1958. While adjourning to 29.05.1958 Court recoded that *“If no compromise was filed the case would be taken up for final hearing”*. On 29.05.1958, the plaintiff was present, but the appellant was absent and the latter's Counsel, who was present reported that they had no instructions to conduct the case. Thereupon, the Court passed an order in Suit 134 of 1956 holding that,

“The plaintiff is present. Defendant is absent. Counsel for the defendants have no instructions. Case proceeds ex parte. Plaintiff examined Mohinder Kumar and closed”.

The order concluded with the words “Judgment reserved”. Later, defendant filed application praying to set aside setting him *ex parte* and he be given an opportunity to contest the suit. It is thus clear that after the judgment is reserved, application under Order IX Rule 7 of CPC cannot be filed.

20. In **Rasiklal Manikchand Dhariwal** (supra), Hon’ble Supreme Court held that once hearing of the suit is concluded and the suit is closed for judgment, Order IX Rule 7 of CPC has no application at all. Hon’ble Supreme Court said that the very language of Order IX Rule 7 makes this clear. This provision presupposes the suit having been adjourned for hearing. It is further observed that adjournment for the purposes of pronouncing judgment is no adjournment of the “hearing of the suit”.

20.1. In the said case, on 17.3.2005, the trial Court closed the evidence of the plaintiff; ordered the suit to proceed *ex parte* as the defendants failed to appear on that date; heard the arguments of the advocate for the plaintiff; and kept the matter for pronouncement of judgment on 28.3.2005. Taking note of these

developments, Hon'ble Supreme Court held that Order IX Rule 7 of CPC has no application at all and application made by the defendants under this provision was rejected by the trial court. In paragraph-54, Hon'ble Supreme Court referred to the observations of the Hon'ble Supreme Court in **Arjun Singh** (supra), extracted above.

21. Having regard to the proposition of law laid down by the Hon'ble Supreme Court in the decisions referred to above, and looking into the facts of these cases, it is clear that after arguments were heard, the trial Court reserved the cases for judgments and fixed 28.06.2023 as the date for pronouncement of the judgments. Since the cases were already reserved for judgments, Order IX Rule 7 of CPC cannot be invoked. Though when the applications were filed, the cases were at the stage of the arguments only, but the 1st defendant was not diligent to immediately prosecute his further remedies. He took about six months to file Copy Applications (21.11.2022). Though Certified Copies were made ready on 12.12.2022, he took more than three months to file these Revisions. These Revisions are filed after more than 9 months of the orders passed by the trial Court. Admittedly, after the orders

were passed in IAs filed by the 1st defendant in the respective suits, further hearings took place and after conclusion of the hearings, the cases were reserved for judgments. Therefore, at this stage, the remedy of Order IX Rule 7 of CPC is not available to the 1st defendant.

22. Further, in the applications filed by the 1st defendant, he prayed to set aside the order setting him *ex parte* and to permit him to contest the suits. By the time the applications were filed, suits were at the stage of hearing after the conclusion of the trial. Accepting the prayer of the 1st defendant would mean relegating him in the suits to the position he would have occupied if he had appeared in the earlier hearing or hearings before commencement of trial. Such course is not available to the 1st defendant. Even otherwise, the 1st defendant was not diligent in prosecuting the litigation and invited adverse orders only by his non-participation in the proceedings in the suits. He has also not taken timely steps to file these Revisions. He has to blame himself for the present state of affairs.

23. The orders against which these Revisions are filed are well considered decisions. I, therefore, do not see any merit in these Revisions. The Civil Revision Petitions are accordingly dismissed. There shall be no order as to costs. Pending miscellaneous applications if any shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 28.04.2023
KKM

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NOS.866, 869, 874 and 913 OF 2023

Date: 28.04.2023

kkm