

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3076-3078/2017

(@Petition(s) for Special Leave to Appeal (C) No(s).
24979-24981/2016)

NIVEDITA

Appellant(s)

VERSUS

GURULINGAPPA AND ORS.

Respondent(s)

O R D E R

Leave granted.

We have heard the learned counsel appearing for the appellant and perused the Office Report dated 18th February, 2017.

As per the said Office Report, although service of notice is complete on all the respondents yet no one has entered appearance on their behalf so far.

It appears from the facts that two applications viz. I.A. VII and I.A. VIII were filed before the Trial Court, one under Section 151 of the Code of Civil Procedure praying for permission to file written statement in the matters and the other one for correction of the orders passed in the matters filed by the appellant - herein under Section 152 read with Section 151 of the said Code.

It appears that the Trial Court, after hearing the parties, in respect of I.A. No.VII, which asked for extension of time to file written statement, came to the conclusion that since written statement has not been filed and there is no negligence on the part of Defendant Nos. 1 to 3 for non-filing of the written statement in the last hearing dates and since defendant No.1 has also filed counter claim/cross suit, allowed the prayed made therein and the I.A. No. VIII filed by the appellant herein praying to correct the orders was rejected.

Being aggrieved, the appellant preferred a Writ Petition before the High Court and also the Review Petition which were dismissed.

After hearing the learned counsel appearing for the appellant and perusing the material available on record, we find that the High Court did not take into consideration that the Writ Petition was filed under Articles 226 and 227 of the Constitution of India and which fact escaped from the mind of the High Court.

In view of the above, in our considered opinion, the right which may have to be given to the appellant - herein in respect of filing written statement should have been considered by the High Court by allowing the prayer.

We think it would be appropriate for us to direct that the written statement should be allowed to be filed by the appellant - herein to the counter claim which has been filed by defendant Nos. 1 to 3 in the pending partition suit.

Thus, the impugned orders of the High Court are set aside.

We direct the appellant to file the written statement to the counter claim which has been filed by defendant Nos.1 to 3 within a period of two weeks from today.

The appeals are allowed in the afore-stated terms.

.....J
(PINAKI CHANDRA GHOSE)

.....J
(ROHINTON FALI NARIMAN)

NEW DELHI;
20TH FEBRUARY, 2017.

ITEM NO.5

COURT NO.6

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).
24979-24981/2016

(Arising out of impugned final judgment and order dated 02/02/2016
in WP No. 205611/2014 and order dated 25/02/2016 in RRP No.
200007/2016 in WP No. 205612/2014 passed by the High Court of
Karnataka at Kalaburagi)

NIVEDITA

Petitioner(s)

VERSUS

GURULINGAPPA AND ORS.

Respondent(s)

(With interim relief and office report)

Date: 20/02/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s)

Mr. Akshat Shrivastava, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

(VISHAL ANAND)
COURT MASTER

(SNEH LATA SHARMA)
COURT MASTER

(Signed Order is placed on the file)