

Radha Hizra Vs. Chamcham Hizra

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Court : Jharkhand

Decided On : Jun-29-2017

Appellant : Radha Hizra

Respondent : Chamcham Hizra

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (C) No. 5290 of 2006
Radha Hizra, son of Late Gurupita Shanti Choubey Hizra, resident of Matkuria,
P.S. Bankmore, DistrictDhanbad Petitioner Versus Chamcham Hizra, son of Late
Yasoda Hizra, resident of Jamadoba, Pus Bunglow, P.S.Jorapokhar,
DistrictDhanbad ... Respondent CORAM: HON'BLE MR. JUSTICE RAJESH
SHANKAR For the Petitioner : Mr. Sanjay Prasad, Advocate For the Respondent :
Mr. Rajesh Lala, Advocate Mr. Arpit Kumar, Advocate 09/29.06.2017 The present
writ petition has been filed for quashing the order dated 07.08.2006 passed by the
learned Munsif, Dhanbad in Title Suit No. 147 of 1997, whereby the application of
the petitioner for treating its showcause reply to an application under Order XXXIX
Rule 1 and 2 C.P.C. as written statement was rejected and the petitioner was
debarred from filing written statement. 2. The learned counsel for the petitioner
submits that a suit being Title Suit No. 147 of 1997 was filed for a decree that the
plaintiff (respondent herein) and its disciples are entitled to perform the religious
functions in the district and defendants have no right to interfere with the same and
also for permanent injunction restraining the defendants from interfering with the
religious functions done by the plaintiff and its disciples. It is submitted that the

respondent filed an injunction petition for restraining the defendants including the petitioner from performing any religious function in the district of Dhanbad. The petitioner alongwith other defendants appeared and filed showcause to the aforesaid injunction petition denying the right title and interest of the respondent in the suit property. It is further submitted that in the said suit, the defendant no. 2 filed written statement in which the name of the petitioner (defendant 2 no. 3 in the suit) was not mentioned due to inadvertence. In the month of October 2005, the petitioner came to know that the suit is not being represented on its behalf and it has been debarred from filing written statement on 04.09.2003. Thereafter, the petitioner appeared on 23.11.2005 and filed a petition on 06.12.2005 for recalling the order dated 04.09.2003. Subsequently, the petitioner filed another petition on 07.04.2006 for treating its showcause as written statement, but the same was rejected vide impugned order dated 07.08.2006 primarily on the ground that the petitioner did not show sufficient reason as to why it did not file written statement on earlier occasion. It is further submitted that the petitioner has a good case in the suit as defendant no. 3 and, therefore, the learned Munsif may be directed to treat the showcause filed by the petitioner as written statement. Accordingly, the impugned order dated 07.08.2006 may be quashed. In support of his argument, the learned counsel for the petitioner placed reliance on a judgment of the Hon'ble Supreme Court in the case of Kailash Vs. Nanhku & Ors. reported in (2005) 4 SCC 480 and a judgment of this Court rendered in Sikshasamity, a Bengali Linguistic Minority Organization, Jamshedpur & Ors. Vs. Stirtha Karan reported in 2005 (4) JLJR 341. 3. Per contra, the learned counsel for the sole respondent submits that the petitioner had lost its interest in the case due to which the learned court below debarred it from filing written statement vide order dated 04.09.2003 itself. The said order was not challenged by the petitioner. It is further stated that the evidence of both plaintiff and defendants were already closed vide order dated 21.06.2006. Thereafter, the argument on behalf of the plaintiff (the respondent herein) was also concluded and, therefore, now the petitioner (the defendant no. 3 in the suit) should not be allowed to revert back the case to the stage of evidence which the petitioner primarily seeks by way of 3 challenging the order dated 07.08.2006 passed by the learned Munsif, Dhanbad. Otherwise also, the written statement cannot be accepted at such a belated stage in view of the clear

provisions of Order VIII Rule 1 C.P.C. The learned counsel for the respondent puts reliance on a judgment rendered by the Hon'ble Supreme Court in the case of Dr. J.J.

Merchant & Ors. Vs. Shrinath Chaturvedi, reported in (2002) 6 SCC 635. 4. Having heard the learned counsel for the parties and going through the relevant documents available on record, it appears that the learned Munsif debarred the petitioner from filing its written statement vide order dated 04.09.2003 itself. Admittedly, the said order dated 04.09.2003 remained unchallenged by the petitioner. The showcause filed by the petitioner to an application filed by the respondent under Order XXXIX Rule 1 and 2 C.P.C. on 11.11.1997 i.e., much prior to the order dated 04.09.2003 passed by the learned Munsif debarring the petitioner from filing the written statement. In view of the said admitted fact, filing of subsequent petition on 07.04.2006 for treating its showcause as written statement appears to be an attempt to undo the effect of order dated 04.09.2003 passed by the learned Munsif. It is also noticeable that the evidence of both plaintiff and the defendants were already closed on 21.06.2006 itself and the argument on behalf of the plaintiff (respondent herein) was also concluded. Under the aforesaid factual background, the prayer of the petitioner for treating its showcause as written statement made through an application dated 07.04.2006 cannot be legally acceded to. In the case of Sikshasamity (supra), the legal issues relating to the provisions of Order VIII Rule 1 C.P.C. has not been decided. In the said case, the concerned trial court was merely directed to consider the application of the petitioner for acceptance of showcause reply as written statement.

5. However, in the present case, the learned Munsif vide 4 impugned order dated 07.08.2006, after carefully considering the factual and legal aspect of the suit proceeding, has rejected the application of the petitioner for treating its showcause as written statement. Thus, the order passed by the learned Single Judge of this Court in the case of Sikshasamity (supra) shall have no application in the facts of the present case. 6. The Hon'ble Apex Court in the case of Dr. J.J.

Merchant (supra) while laying down the purpose and scope of Order VIII Rule 1 C.P.C. has held thus, 14. For this purpose, even Parliament has amended Order 8

Rule 1 of the Code of Civil Procedure, which reads thus: 1. Written statement.-The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons. (emphasis supplied) 15. Upon hearing the concerned counsel and upon perusal of both the judgments referred to hereinabove, which pertain to extension of time for the purpose of filing written statement, we are of the opinion that the view expressed by the three Judge Bench of this Court in Dr. J.J. Merchant (supra) should prevail.

17. In view of the aforesaid provisions, the Commission can certainly refer to Order 7 Rule 14 which provides that where a plaintiff sues upon a document or relies upon a document in his possession or power in support of his claim, he shall enter such document in a list, and shall produce it in the court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof to be filed with the plaint. It appears that this mandatory requirement is not followed and thereafter, there is complaint of delay in disposal. Similarly, in case of written statement under Order 5 8 Rule 1A, the defendant is required to produce the documents relied upon by him when written submission is presented. The Commission can always insist on production of all documents relied upon by the parties along with the complaint and the defence version.

7. The Honble Supreme Court in the case of New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd. reported in (2015) 16 SCC 20, while noticing the law laid down in the case of Dr. J.J. Merchant (Supra) with regard to the time limit prescribed for filing the written statement by the defendants held that the view taken in the case of Dr. J.J. Merchant (supra) shall prevail over the judgment rendered by the Hon'ble Apex Court in the case of Kailash Vs. Nanhku & Ors. (Supra). The relevant paragraphs of the judgment rendered in the case of New India Assurance Co. Ltd. (supra), are quoted as under: 13. The question arose in J.J. Merchant whether the Forum can grant time beyond 45 days to the opposite party for filing its version. After considering the aforestated section in the

light of the object with which the Act has been enacted, a threeJudge Bench of this Court came to the conclusion that in no case period beyond 45 days can be granted to the opposite party for filing its version of the case. 14. Without discussing the aforesaid threeJudge Bench judgment in detail, we now turn to another judgment which has been referred to by the referring Bench. The other judgment which has been referred to is Kailash, which pertains to Election law. The issue involved in the said case was whether timelimit of 90 days, as prescribed by the proviso to Rule 1 of Order 8 of the Civil Procedure Code, is mandatory or directory in nature. The said issue had arisen in an election matter where the written statement was not filed by the candidate concerned within the period prescribed under the relevant Election law and the issue was whether in the election trial, delay caused in filing the written statement could have been condoned. After considering the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 and several other judgments pertaining to grant of time or additional time for filing written statement or reply, in the interest of justice, this Court came to the conclusion that the provisions of Order 8 Rule 1 CPC are not mandatory but directory in nature and therefore, in the interest of justice, further time for filing reply can be granted, if the circumstances are such that require grant of further time for filing the reply. 23. Upon hearing the counsel concerned and upon perusal of both the judgments referred to hereinabove, which pertain to extension of time for the purpose of filing written statement, we are of the opinion that the view expressed by the threeJudge Bench of this Court in J.J. Merchant should prevail. 25. We are, therefore, of the view that the judgment delivered in J.J. Merchant holds the field and therefore, we reiterate the view that the District Forum can grant a further period of 15 days to the opposite party for filing his version or reply and not beyond that. 26. There is one more reason to follow the law laid down in J.J.

Merchant. J.J.

Merchant was decided in 2002, whereas Kailash was decided in 2005. As per law laid down by this Court, while deciding Kailash, this Court ought to have respected the view expressed in J.J. Merchant as the judgment delivered in J.J.

Merchant was earlier in point of time. The aforestated legal position cannot be ignored by us and therefore, we are of the opinion that the view expressed in J.J. Merchant should be followed. 28. In view of the aforestated clear legal position depicted by a fiveJudge Bench, the subject is no more res integra. Not only this threeJudge Bench, but even a Bench of coordinate strength of this Court, which had decided the case of Kailash, was bound by the view taken by a threeJudge Bench in J.J. Merchant.

8. In view of the aforesaid discussions and the judicial pronouncements, particularly relying upon the judgments rendered by the Hon'ble Supreme Court in the case of Dr. J.J.

Merchant (supra) and New India Assurance Co. Ltd. (supra), I see no reason to interfere with the impugned order dated 7 07.08.2006 passed by the learned Munsif in Title Suit No. 147 of 1997. 9. The present writ petition being devoid of merit is accordingly dismissed. The interim order dated 09.01.2007 stands vacated. (Rajesh Shankar, J.) High Court of Jharkhand, Ranchi Dated: 29th June, 2017 Manish/A.F.R.

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