

Baidyanath Singh and ors. Vs. Ram Binay Singh and ors.

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Court : Patna

Decided On : Sep-07-2005

Judge : J.N. Bhatt, C.J.

Acts : Code of Civil Procedure (CPC) , 1908 – Sections 115 - Order 8, Rule 1;
Code of Civil Procedure (CPC) (Amendment) Act, 2002

Appeal No. : C.R. No. 1430 of 2004

Appellant : Baidyanath Singh and ors.

Respondent : Ram Binay Singh and ors.

Advocate for Def. : V. Biresh Chakravorty and Ugranath Mallik, Adv.

Advocate for Pet/Ap. : Ashok Kumar Sinha, Adv.

Disposition : Application allowed

Judgement :

J.N. Bhatt, C. J.

1. The question which is directly placed in focus for consideration and adjudication in this Revision Application against the order of the trial Court rejecting an application, in exercise of its jurisdiction, seeking permission to file Written Statement at the instance of the original defendants in Title Suit No. 94 of 2003 after successfully obtaining extension of time for filing Written Statement on

various earlier dates is as to whether 'the jurisdiction or the power of the Court to grant permission to file Written Statement beyond the period of 30 days from the date of summons as also beyond the period of 90 days from the date of summons if the Court has found sufficient cause between the period from 30 days to 90 days is impeded or qualified or circumscribed by the amended provision of Order VIII Rule 1 of the Code of Civil Procedure, 1908 (in short the C.P.C.) which came to be amended by Act No. 22 of 2002 of the Code of Civil Procedure (Amendment) Act 2002 with effect from 1-7-2002 on a justifiable ground to the satisfaction of the Court; in other words whether the said amended provision is mandatory or directory ?

2. In order to appreciate the merits of the sole question placed in focus highlighted hereinbefore, let there be a narration and projection of skeleton material and relevant facts from the record which are not in controversy in this Revision Application :

(1) The service of summons of the Title Suit No. 94 of 2003 was effected, on 6-2-2004.

(2) The defendants appeared for the first time on 15-3-2004, the returnable date of summons, and applied for an adjournment for the purpose of filing the Written Statement.

(3) The trial Court was pleased to grant adjournment and the matter was posted for filing Written Statement, on 1-4-2004.

(4) on the next date again the original defendants applied for an adjournment for the purpose of filing the Written Statement.

(5) The trial Court was pleased to grant time while posting the Suit on the new dated 7-5-2004.

(6) Again on the same date the original defendants applied for time and the same was granted by the trial Court posting the case on 21-5-2004.

(7) The same process was repeated on 7-7-2004 posting the case on 14-7-2004.

(8) Again on 14-7-2004 the same process was repeated and the trial Court granted time till 16-8-2004.

(9) Thus, admittedly the Written Statement was not filed within the period of 90 days and there was a delay of almost three months, eleven days from the period of 90 days.

(10) The trial Court upon consideration of the submissions found the case against the original defendants holding that in view of the amended provision the trial Court has no jurisdiction to accept the Written Statement which was filed beyond the period of 90 days. That is how, the original defendants have, now, rushed to this Court seeking power of jurisdiction in revisional Court against the said order by invocation of the provision of Section 115 of the Code.

3. Learned Counsels for the parties have offered their submissions. The content and colour of the impugned order of the trial Court is examined. The Legislature wisdom in incorporating the amended provision along with the proviso in Order VIII Rule 1 of the C.P.C. is, also, evaluated and examined. The case law and a decision of the Hon'ble Apex Court by a Bench of three Judges which is rendered in the case of *Kailash v. Nanhku*, : AIR 2005 SC2441 and the proposition of law appertaining to the jurisdiction of the Court in permitting the filing of Written Statement beyond the period of 90 days and the spirit and object of the Legislature in incorporating such a provision in the amended Act are, also, taken into consideration.

4 The provision of Order VIII Rule 1 with proviso which came to be amended on 1-7-2002 by an amended Act 22 of 2002 in the C.P.C. has definitely a phraseology and philosophy which reads as herein under :

'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.'

5. Prima facie on the plain perusal of the said provision it may appear that the said amended provision of Order VIII Rule 1 with proviso does not permit the Court to exercise the power to grant permission or to accept the Written Statement beyond the prescribed period. However, when one gets into reality and examines the letter and spirit, the design and desideratum of the amended provision of Order VIII Rule 1 with proviso, meticulously, it cannot be said that the said provision firstly is mandatory. It is directory. The main purport: of the newly amended provision of Order VIII Rule 1 of the C.P.C. has been to see that unscrupulous manipulation by a defendant in lengthening or protracting the litigation in a Court of law should be carved and controlled. However, it does not in any way restrict or restrain a competent Civil Court to exercise jurisdiction to accept the written statement even at the late stage beyond the period prescribed under amended provision of Order VIII Rule I of the C.P.C. provided the party responsible for delay is saddled with costs with a view to discourage such a dilatory tactics of manipulative strategy to increase the length of litigation or the life of a Suit and the traditional system of law 'wherein' justice is very much protracted and lengthened.

6. It is not only that, appropriately a syndrome has emerged which shows a diametrically opposite stand as it says 'If I were the plaintiff I would not stop; and if I were the defendant I will not allow to start and move'. In order to break down this unhealthy syndrome in the system and in the procedural justice, it was absolutely necessary to discourage such a syndrome with a view to see expeditious trial of the case on merits. In this perspective definitely the intent of the Parliament in its wisdom is to see that a party interested in delaying the proceedings in the Court of law for variety of reasons is discouraged and at the same time while doing justice in the larger interest the Court is not powerless even after the amended provision of Order VIII Rule 1 of the C.P.C. in exercising the jurisdiction in permitting filing of written statement and accepting it after saddling the defaulter with heavy or exemplary cost depending upon the merits of the case even after expiry of time limit. This proposition of law which this Court is inclined to take into consideration at this juncture is very much reinforced by interpretation of the said newly added provision of Order VIII Rule I of the C.P.C. along with the proviso and its character

whether it is mandatory or directory and the proposition of law so propounded by the Hon'ble Apex Court in *Kailash v. Nanhku*, : AIR 2005 SC2441 (Supra) together with the special facts emerged from the record of the present case in granting permission to file written statement late and on the ground of which the permission was sought in special exercise of power so desired by the original defendants-petitioners herein. It may be noted at this stage again that the applications seeking extension of time for filing written statement on behalf of the defendants did speak the ground including floods effect on the area in which the Civil Court geographically is situated.

7. In the net result, the impugned order of the trial Court is found to be not in consonance with the aforesaid principle of the amended provision of Order VIII Rule I of the C.P.C. and contrary to the proposition of law propounded in the aforesaid case-law in not correctly appreciating the amended provision of order VIII Rule I with proviso of the C.P.C. that it is not mandatory but is only directory and also that there was sufficient satisfactory ground which was accepted by the trial Court. Therefore, this Court is left with no alternative but to raise its hands in helplessness in approving or affirming the impugned order of the trial Court and also to quash the impugned order by allowing the application of the petitioners-original defendants with cost of Rs. 3,000/- which is directed to be paid in the trial Court within a period of two months from today. The application for permission for filing the written statement under amended order VIII Rule 1 with proviso of the C.P.C., of the defendants-petitioners herein, is allowed and the impugned order of the trial Court dated 20-8-2004 in Title Suit No. 94 of 2003 is quashed with the aforesaid amount of cost.

8. In the result, this Revision Application is allowed.

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