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SooperKanoon Citation : sooperkanoon.com/518836

Court : Jharkhand

Decided On : Jul-02-2004

Reported in : [2004(3)JCR579(Jhr)]

Judge : P.K. Balasubramanyan, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 148 - Order 7, Rule 14 - Order 8, Rule 1

Appeal No. : WP (C) No. 2765 of 2004

Appellant : Karpuri Devi and anr.

Respondent : Rabindra Pratap Singh and ors.

Advocate for Def. : Anjani Kumar Singh, Adv. for Respondent Nos. 1 and 2

Advocate for Pet/Ap. : D.K. Prasad,; Rabindra Prasad and; Manoj Kumar, Advs

Disposition : Petition dismissed

Judgement :

P.K. Balasubramanyan, C.J.

1. Heard counsel for the petitioners and Mr. Anjani Kumar Singh, learned counsel, who entered appearance on behalf of respondents 1 and 2, who were the plaintiffs in the suit. Since, the other respondents are only co-defendants with the

petitioners, I do not think it necessary to issue notices to them in this writ petition. I am, therefore, disposing of this matter finally after hearing counsel for the petitioners and counsel for respondents 1 and 2.

2. In a suit for specific performance filed by the plaintiffs, the respondents herein, the petitioners, entered appearance on 31.7.2003. They did not file a written statement within thirty days thereof and not even within the ninety days fixed. Therefore, by the order dated 19.11.2003 the Court debarred them from filing a written statement and decided to proceed with the suit. Thereafter, on 15.12.2003 the defendants purported to file a written statement along with a petition for accepting the same. But it is seen that they did not even seek a modification or review of the order dated 19.11.2003 earlier passed by the trial Court. On the basis of the earlier order and in the light of the decision of this Court in Pitambar Singh and Ors. v. Makar Singh and Ors., 2003 (4) JLJR 427 : 2004 (1) JCR 601 (Jhr), and taking note of the provisions of Order VIII, Rule 1 of the Code of Civil Procedure and the amendment brought to it and the intention behind the amendment, the trial Court found that the defendants cannot be permitted to file the written statement and thereby their prayer was rejected. This proceeding challenges that order.

3. Going by provisions of Order VIII, Rule 1 of the Code of Civil Procedure, it cannot be said that the trial Court was in error in refusing to accept the written statement. The trial Court was also justified in following the decision of this Court in Pitambar Singh and Ors. v. Makar Singh and Ors., 2004 (1) JCR 601 (Jhr): 2003 (4) JLJR 427. It may be noted that the power of the Court to extend the time for doing anything fixed by the Code or by an order of Court, has also been curtailed by the proviso to Section 148 of the Code of Civil Procedure by restricting the period of extension to one month. Even by that time, the written statement had not been filed by the defendants. In such a situation, the trial Court cannot be faulted for refusing to allow the prayer of the defendants.

4. This Court is troubled by another aspect. The suit is for specific performance. Obviously, without a written statement, the defendants would not be in a position to defend the suit properly. It is not as if the defendants have attempted to file a

written statement after the issues were settled or after the trial has commenced. No doubt, they were not very diligent in the context of the relevant provisions of the Code and had taken their own time to file the written statement, but had filed the same before the suit reached the evidence stage. In the light of the intention expressed by Parliament, the Court even if it is inclined to exercise its discretion and grant some additional time to a defendant to file a written statement, it could not do so, since the object sought to be achieved by the amendment is to avoid delay in disposal of suits filed in Court. Though, up to myself I would be inclined to show some leniency and allow the defendants to file a written statement by putting them on terms, I find that it will not be proper in the light of the relevant provisions of the Code and the decision of this Court which has been followed by the trial Court and on the facts of this case, in the light of the earlier order passed by the trial Court on 19.11.2003 barring the defendants from filing a written statement, which they have not sought to get reviewed or recalled. I also find that the Karnataka High Court on a consideration of the relevant aspects has held that at best the Court can extend the time for filing a written statement only by a period of thirty days in the light of the amendment brought about in Section 148 of the Code. In the present case, the written statement sought was to be filed even beyond 30 days of the expiry of the period fixed. In this situation, though with some hesitation, I decline to interfere with the order of the Court below. I dismiss this proceeding.

5. It is seen that the Courts are not insisting on plaintiff's fulfilling the requirement of Order VII, Rule 14 of the Code of Civil Procedure by producing the original documents in their possession along with the plaint. The Courts will insist on production of the original documents by plaintiffs- along with the plaint and take note of the fact that production of Photostat copies would not amount to compliance with Order VII, Rule 14 of the Code of Civil Procedure.