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Court : Jharkhand

Decided On : Jul-31-2015

Appellant : The Chief Engineer and Others

Respondent : Ms Harihar Singh Previously a Partnership Firm Through Its Proprietor Harihar Singh

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (C) No. 3156 of 2013 1. THE CHIEF ENGINEER, WATER RESOURCES DEPARTMENT, GOVERNMENT OF JHARKHAND, HAVING ITS OFFICE AT HEC COLONY, SECTOR II, P.O. DHURWA, P.S. JAGARNATHPUR, DISTRICT RANCHI 2. THE CHIEF ENGINEER, WATER RESOURCES DEPARTMENT, MEDINI NAGAR HAVING ITS OFFICE AT SINCHAI COLONY (BYPASS ROAD), MEDININAGAR (DALTONGANJ), P.O.& P.S. MEDININAGAR, DISTRICT PALAMAU 3 THE EXECUTIVE ENGINEER, WATERWAYS DIVISION, HAVING ITS OFFICE AT KHUNTI TAMAR ROAD, NEAR KUTCHERY, KHUNTI, P.O. & P.S. & DISTRICT KHUNTI ... PETITIONERS VERSUS M/S. HARIHAR SINGH, PREVIOUSLY A PARTNERSHIP FIRM HAVING ITS OFFICE AT BELWATIKAR, MEDINI NAGAR (DALTONGANJ), P.O. & P.S. DALTONGANJ, DISTRICT PALAMAU, NOW THE SAID FIRM HAS BEEN NAMED AS M/S. HARIHAR SINGH CONSTRUCTION PVT. LTD. A PROPRIETORSHIP CONCERN, HAVING ITS OFFICE SITUATED

AT NEW NAGRATOLI, RANCHI, P.O. & P.S. LALPUR, DISTRICT RANCHI THROUGH ITS PROPRIETOR HARIHAR SINGH, SON OF LATE JANG BAHADUR SINGH, BY RELIGION - HINDU, BY OCCUPATION CONTRACTOR, RESIDENT OF NEW NAGRATOLI, RANCHI, P.O. & P.S. LALPUR, DISTRICT RANCHI . RESPONDENT THE STATE OF JHARKHAND THROUGH THE DEPUTY COMMISSIONER, RANCHI . PERFORMA RESPONDENT CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR FOR THE PETITIONERS : MR. V.K. PRASAD, ADV. MR. AMIT KR. VERMA, ADV. FOR THE RESPONDENT : MR. B.P. TETARBE, ADV. st 08/ Dated: 31 July, 2015 Oral Order Per SHREE CHANDRASHEKHAR, J.

Challenging orders passed in Money Suit No.68 of 2010 whereby, the defendant Government of Jharkhand has been 2 debarred from filing written statement, the present writ petition has been filed. 2. Title Suit No.68 of 2010 was instituted on 25.09.2010 for a decree of a sum of Rs.1,83,63,000/ with interest @ 6% per annum. The defendants were served summons on 23.06.2011 and they appeared through, the Government Pleader on 11.07.2011 and the trial court granted time for filing written statement. The time for filing written statement was extended on subsequent dates also however, written statement was not filed and on 30.08.2011 the defendants were debarred from filing written statement. Seeking leave of the court for filing written statement, an application was filed on 28.08.2012, which was dismissed as not pressed. Aggrieved, the petitioners have approached this Court.

3. Heard the learned counsel for the parties.

4. The learned counsel for the petitioners submits that in the suit, the defendants have valuable interest involved. The application dated 28.08.2012 though disclosed the reasons for not filing written statement in time however, the same was not considered by the trial Judge and the application has been dismissed as not pressed. It is submitted that in the absence of the counsel for the defendants, the said application though could have been dismissed for nonprosecution but not as not pressed. It is further submitted that under Order VIII Rule 1 CPC, the time for filing the written statement is a bar for the defendant and it is 3 not a prohibition

for the court not to grant further time for filing written statement. The learned counsel for the petitioners relies on decision in *Kailash v. Nanhku*, reported in (2005) 4 SCC

480.

5. Per contra, the learned counsel for the respondent has submitted that latches on the part of the defendants writ large on the face of the proceeding in Money Suit No.68 of 2010. The defendants though appeared on 11.07.2011 and they were granted several opportunity for filing written statement, they failed to submit their written statement and therefore, the trial court has rightly debarred the defendants from filing written statement. It is further submitted that though the defendants were debarred from filing written statement on 30.08.2011, an application seeking leave of the court for filing written statement was filed one year thereafter. Supporting the impugned orders dated 30.08.2011 and 28.08.2012, the learned counsel for the respondent submits that no exceptional case has been made out by the petitioners and interference with the impugned orders would only delay the proceeding in Money Suit No.68 of 2010, which has been filed for a claim relating to a dispute in the year, 1985.

6. I have carefully considered the rival contentions raised on behalf of the parties and perused the documents on record. The present Money Suit No. 68 of 2010 refers to Title Suit No. 71 of 1986 which was filed against order dated 05.09.1985 withholding payment to M/s Harihar Singh Construction Pvt. Ltd. The dispute pertains to payment with respect to agreement executed in the year, 197475. The plaintiff asserted that it completed work on 06.06.1975 and received payment of Rs. 4,69,419/ whereas, the defendants pleaded that the plaintiff had already withdrawn an excess amount of Rs. 8,18,403.21 in relation to other two agreements. The suit was decreed in favour of the plaintiff and Title Appeal No. 39 of 1986 preferred by the defendants was also dismissed. Thereafter, the respondent herein instituted the present money suit. In the supplementary affidavit dated 28.07.2015, the petitioners have averred that no claim of the respondent is pending rather, certain amount is due from it which has to be recovered from it. It is asserted that for the work under Agreement No. 27 F2/8485 for Rs.

95,57,695.57, the contractor was required to deposit earnest money for which the respondent submitted Passbook No. 1761653 showing deposit of Rs. 2,78,000/-. However, subsequently, it was reported by SubPost Master, Kanke Road, that there was balance of Rs. 278/ only in the said account. Explaining the reasons for not filing written statement in time, it is stated that the case relates to the year, 198485 and the work was spread over several SubDivisions including, Khunti, Simdega, Hazaribagh and Medninagar. For preparing written statement relevant documents were required to be collected and vide letter dated 08.08.2012 the Executing Engineer, Waterways Division, Khunti was appointed as Nodal Officer. Necessary documents were supplied to the 5 Government Pleader through letter dated 28.08.2012 and written statement was prepared and made ready on 08.10.2012.

7. The proceeding in Money Suit No.68 of 2010 would disclose that though the suit was instituted on 25.09.2010, it remained defective for about one year and in the meantime, the matter was listed on as many as 7 occasions and time was granted to the plaintiff to remove the defects. One of the defects was of deficit courtfee. The suit was admitted on 27.05.2011, when summons were issued to the defendants. The defendants appeared through GovernmentPleader on 11.07.2011, and they were granted time for filing written statement. It appears that the suit was transferred from the Court of Subordinate JudgeIX, Ranchi and it was received in the Court of SubJudgeI on 06.08.2011. Thereafter, the matter was listed on different occasions and by order dated 28.08.2012, the defendants were debarred from filing written statement. Except opining that, it appears that the defendants do not want to file written statement, the trial court has not recorded any reason for debarring the defendants from filing the written statement. Thereafter, the suit has been adjourned on various occasions, without any progress. The defendants filed application dated 28.08.2012, seeking leave of the court for filing written statement however, though both parties were absent, the trial court rejected application dated 28.08.2012 as not pressed. Though, the petitioners were negligent in not filing written 6 statement in time, the reasons disclosed by the petitioners/defendants in application dated 28.08.2012 for not filing written statement in time, cannot be brushed aside altogether. The proviso to Order VIII Rule 1 CPC is not mandatory in nature and it is open to the Court to

permit the defendant to file written statement if the circumstances in the case so permit. In an adversarial system no party should ordinarily be denied the opportunity to contest the claim on merits. Therefore, unless compelled by express and specific provision in law, a procedural enactment should not be construed in a mechanical manner. In the present case, observation of the trial judge in impugned order dated 30.08.2011 indicates that the order has been passed in a mechanical manner. Considering the facts and circumstances disclosed in the present case and the reasons for delay in filing written statement disclosed in the writ petition, it is not possible to hold that the petitioners must be denied opportunity to file written statement. Though, there have been serious laches and negligence on their part, there is no doubt that the defendants have valuable interest involved in the money suit. Considering the stake of the defendants and the probable loss to the defendants, the trial court should have granted opportunity to the defendants for filing written statement. As rightly pointed out by the learned counsel for the petitioners, bar under Order VIII Rule 1 CPC does not prohibit the court from granting further time beyond the statutory period for 7 filing written statement. Order dated 30.08.2011 is a cryptic order, which does not disclose valid reasons for debarring the defendants from filing written statement. In *Kailash v. Nanhku*, reported in (2005) 4 SCC 480, the Hon'ble Supreme Court has observed as under:

46. (iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the noncompliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away. 8. There is another reason for permitting the defendants to file written statement. The suit was filed for a claim of Rs. 1,83,63,000/ with interest @ 6% per annum and the defendants could not file written statement even after lapse of 14 months and application seeking leave for filing written statement was filed on 28.08.2012. In fact, the

written statement was prepared and made ready for filing only on 30.08.2012. The proceeding in the suit would have progressed substantially in those 16 months however, the ordersheet in Money Suit No. 68 of 2010, a copy of which has been tendered by the learned counsel for the respondents, discloses that the suit has not substantially progressed and therefore, appropriate order would have been to permit the defendants to file written statement on payment of costs. In a catena of decisions the Hon'ble Supreme Court has indicated that payment of costs, if necessary high amount, but not refusal to take written statement on file would be the appropriate order. (refer Ramesh Chand vs. Punjab National Bank and another AIR 1990 SC 1147). 9. Considering the above facts, I am of the opinion that impugned orders dated 30.08.2011 and 28.08.2012 suffer from serious infirmity in law and accordingly, these orders are hereby set aside. In view of laches on the part of the defendants/petitioners herein, it is ordered that the defendants would be permitted to file written statement within two weeks from the date, a copy of this order is produced before the trial court however, subject to payment of cost of Rs.2 lacs to the plaintiff which shall be paid through demand draft or through any other banking transaction. The writ petition is allowed, in the above terms. (Shree Chandrashekhar, J.) R.K./A.F.R.

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