

State of West Bengal Vs. Bimal Kumar Sinha Sahas Roy and anr.

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Court : Kolkata

Decided On : Jan-19-1979

Reported in : AIR1979Cal399

Judge : Sudhindra Mohan Guha, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 115 - Order 27, Rule 5

Appeal No. : C.R. No. 3857 of 1972

Appellant : State of West Bengal

Respondent : Bimal Kumar Sinha Sahas Roy and anr.

Advocate for Def. : Madan Mohan Saha, Adv.

Advocate for Pet/Ap. : Amar Banerjee and ;Tapan Kr. Sengupta, Adv.

Disposition : Application allowed

Judgement :

ORDER

Sudhindra Mohan Guha, J.

1. The present Rule was issued against the order dated 11-8-72 passed by Sri S. N, Bhattacharya, the learned Additional District Judge, Second Court, Midnapore in Misc. Appeal No. 177 of 1971 upholding the order of dismissal of a

Miscellaneous Case passed under Order 9, Rule 13, C.P.C., by the learned Munsif of Jhargram.

2. The State of West Bengal, the defendant in Title Suit No. 303 of 1970 of the Court of Munsif of Jhargram filed an application for setting aside the ex parte decree in that suit on 23-3-1971 under Order 9, Rule 13 of the Civil P. C. The learned Munsif appears to have taken the suit for ex parte hearing after rejecting an application for time for the purpose of putting in written statement to contest the suit.

3. The case of the State of West Bengal was that a large number of suits were being filed throughout the District that year and due to that such a situation arose that it had been difficult for petitioner to cope with. It was the further case of the State that it had to collect facts and other materials from its various sister departments and that the Government pleader was under a terrible pressure of work and for all these facts and circumstances the written statement could not be made ready when the suit was taken up for hearing ex parte.

4. The learned Munsif on evidence found that the petitioner defendant had no sufficient ground for non-appearance, when the suit was taken up for hearing ex parte. The aforesaid order, as stated earlier was affirmed in appeal by the learned Additional District Judge.

5. The learned Advocate for the petitioner contends that the learned Courts below erred in interpreting Order 27, Rule 5 of the Civil P. C. inasmuch as in ignoring the latter part of the rule which lays down that the time for issue of instructions to the Government pleader to appear and answer on behalf of the Government should also be taken into account for fixing the day for the Government to answer to the plaint. Next it is contended that the ex parte order stands condemned from the very fact that the document on the basis of which the ex parte decree was obtained appeared to be suspicious in nature. The learned Munsif points out in the ex parte order that from the certified copy of the 'B' option form (Ext. 3) the entries in column No. 7 Ka and 7 Kha which were meant for plot numbers and the corresponding areas, which an intermediary intended to retain under Section 6(1)(c) were overwritten without any initial by the Officer authorised to issue

certified copies. It is argued that interpolations in the circumstances could be presumed,

6. The learned advocate for the opposite party argues that the present application for Revision is not maintainable as there was a concurrent finding on facts by both the Courts. But the Court can surely make interference such concurrent findings are based on wrong interpretation of law. Under Order 27 Rule 5 of the Civil P. C., the Court to allow a 'reasonable time' for necessary communication with the Government through the proper channel and for issue of instructions to the Government pleader to appear and answer on behalf of the Government, and court extend the time at its discretion. The learned Court below fell in error in holding that the State cannot avail of such benefit after appearance. But, I would hold that the present application for Revision is maintainable and there was sufficient ground for not filing the written statement to answer the plaint. It may be mentioned that the words 'the time so extended shall not exceed two months in the aggregate' were inserted by Amendment Act of 1976. So, this portion will not be applicable to the present case as the impugned order was passed on 23-3-1971,

7. In the result, this application will succeed but the Rule will be made absolute on deposit of Rs. 100 by the petitioner in the Court below within four weeks from the date of receipt of the record by the said Court, in default the Rule shall stand discharged.

8. There would be no order as to costs.