

(1985) 12 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3351 of 1984

Amrit Lal Behal

APPELLANT

Vs

Punjab State

RESPONDENT

Date of Decision : 18-12-1985

Acts Referred:

Citation : (1986) ILR (P&H) 463 : (1986) PLJ 327 : (1986) RRR 610

Hon'ble Judges : S.P.Goyal, J and G.C.Mital, J

Advocate : Mr. Ravinder Chopra, Advocate., Advocates for appearing Parties

Judgement

G.C. Mital, J.

1. Amrit Lal Behal filed a suit for declaration on 5.3.1984 to challenge the order dated 7.3.1981 passed by the District and Sessions Judge, Ferozepore terminating his services from the post of Ahlmad in a Judicial Court at Zira, District Ferozepore. The first defendant was the Punjab State through Collector, Ferozepore and the second defendant was the District and Sessions Judge, Ferozepore. The suit was entrusted to the Court of Additional Senior SubJudge, Ferozepore, who took up the case on 7.3.1984. On that date, he issued notice to the defendants for 19.3.1984. On 19.3.1984 none appeared on behalf of defendant No. 1 and ex parte proceedings were ordered. On behalf of defendant No. 2, an official of the Court appeared and the case was adjourned for 30.4.1984 for the filing of written statement. On 30.4.1984, the case was adjourned to 15.5.1984 for filing of the written statement. It was again adjourned for 22.5.1984 and then for 23.7.1984 for the same purpose. On 23.7.1984, the plaintiff filed an application that since more than 2 months have passed, no further adjournment can be given under Order 27, Rule 5 of the Code of Civil Procedure for filing of the written statement and the suit should be decided forthwith under Order 8, Rule 10 of the C.P.C. This application was filed after the case was adjourned for 6.8.1984, for filing of the written statement. On 6.8.1984, the written statement was not filed and to consider the objection of the plaintiff that further adjournment could not be granted for the filing of the

written statement, the matter was adjourned for 7.8.1984. On 7.8.1984, the written statement was filed in Court on behalf of both the defendants. The objection of the plaintiff was finally decided by the trial Court vide order dated 12.12.1984. It was concluded that so far as the District and Sessions Judge was concerned, Order 27, Rule 7 of the C.P.C. was applicable wherein no such limit of two months was fixed. As regards the State of Punjab it held that the Government Pleader had put in appearance for the first time on 13.6.1984 and the written statement filed on 7.8.1984 was well within the prescribed limit of two months. Consequently, the plaintiff's prayer was rejected. The plaintiff filed the present revision against the aforesaid order. At the motion hearing, it was felt that the matters under Order 27, Rule 5 of the C.P.C. are likely to arise in large number of cases, therefore, it was ordered that the matter be decided by a Division Bench for authoritative decision. That is how the case is before us.

2. The main defendant in the suit is the District and Sessions Judge, Ferozepore, because it is his order which is being impugned in the suit. It is not disputed before us that the District and Sessions Judge, Ferozepore, is the appointing and punishing authority. It is because of Order 27, Rule 5A of the C.P.C. that a suitor is enjoined to join the Government as a party to a suit where a suit is instituted against a public officer for relief in respect of any act alleged to have been done by him in his official capacity. Because of this rule, the State Government was also added as a defendant.

3. So far as the District and Sessions Judge is concerned Rule 5 of Order 27 of the C.P.C. would not be applicable and instead Rule 7 would be applicable. In this rule there is no limit of time and the Court has been given the discretion to extend the time for so long as it appears necessary in the case. Therefore, the written statement filed on behalf of this defendant on 7.8.1984 cannot be objected to. In this behalf, the decision of the Court below is correct.

4. As already noticed, the main defendant is the District and Sessions Judge, Ferozepore, although it was necessary for the plaintiff to join the State Government as a party to the suit because of Rule 5A of Order 27 of the C.P.C., which has been inserted by C.P.C. (Amendment) Act, 1976. The Government joined the District and Sessions Judge, in filing common written statement, therefore, on the peculiar facts of this case it would hardly matter whether the written statement is taken on behalf of District and Sessions Judge alone or on behalf of both the defendants because their defence is common.

5. Rule 4 of Order 27 of the Code provides that the Government Pleader in any Court shall be the agent of the Government for the purposes of receiving process against the Government issued by such Court. Wherever process is issued to the Government Pleader on behalf of the Government, Rule 5 provides for fixation of reasonable time for the Government Pleader to communicate with the Government through proper channel and for getting instructions to appear and answer. Once reasonable time is fixed and the Government Pleader appears then Court has discretion to extend the time from time to time. The time so extended

from time to time is not to exceed two months in the aggregate and while computing two months the initial date fixed by the Court or till such time the Government Pleader, does not appear, that is not to be included while computing two months aggregate period which the Court has the discretion to grant while extending the time. Therefore, it will be wrong to say that initial time given by the Court has to be calculated in the extended aggregate period of two months. In this case the State Government had not been given reasonable time for appearance and, therefore, when the Government Pleader appeared on 13th June 1984, from that date the extended time has to be calculated, which could not exceed two months in aggregate. Within two months of 13th June, 1984 the written statement was filed and the Court below was right in placing the written statement on record and rejecting the objection of the plaintiff.

6. For the reasons recorded above, this revision is dismissed but with no order as to costs.