

(2025) 07 RAJ CK 0626

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 19235 Of 2023

Kamal Kishore Soni

APPELLANT

Vs

Indira Devi

RESPONDENT

Date of Decision : 10-07-2025

Acts Referred:

Evidence Act, 1872 — Section 45

Code of Civil Procedure, 1908 — Section 11, Order 11 Rule 14

Citation : (2025) 07 RAJ CK 0626

Hon'ble Judges : Sandeep Shah, J

Bench : Single Bench

Advocate : Shubhankar Johri, Vishal Sharma

Final Decision : Disposed of

Judgement

Arun Monga, J

1. The petitioner (defendant no.2/1 in the pending suit) seeks quashing of an order dated 14.09.2023 (Annex.6) passed by the learned Additional District Judge No. 5, Jodhpur Metropolitan, in Civil Original Suit No. 73/2018, whereby the Trial Court rejected the petitioner's application under Section 151 of the CPC seeking to take on record the written statement filed by him.

2. Pending Civil Original Suit No.73/2018 is by now deceased - Smt. Indira Devi her LR's, seeking a decree of partition and permanent injunction. Defendant No.1 filed a written statement denying the plaintiffs' claims, asserting that the suit property had already been partitioned.

2.1. Smt. Chand Kanwar, sister of deceased-plaintiff Indira Devi (mother of the petitioner – defendant No.2/1) passed away on 03.06.2003, i.e., prior to the filing of the suit in the year 2018. Accordingly, the petitioner, being her legal representative (LR), was impleaded as defendant No.2/1 in the civil suit, along with his sister, Smt. Rekha, as defendant No.2/2.

2.2. Indira Devi (sister of predeceased Smt. Chand Kanwar) allegedly executed a Will on 04.01.2021.

2.3. The plaintiffs' (respondents herein) evidence was closed vide order dated 15.01.2021. During the pendency of the suit, Indira Devi (defendant no.1) passed away on 02.10.2023.

2.4. Subsequently, Gaurav Soni filed an application under Order 22 Rule 3 CPC, claiming to be a proper and necessary party on the basis of a Will allegedly executed by Indira Devi on 04.01.2021.

2.5. As for the petitioner (defendant No.2/1), he could not earlier file a written statement due to non-service of notice. Upon learning of the suit and noting that no ex parte order had been passed against him, he filed an application under Section 151 CPC requesting the court to take his written statement on record. However, the trial court rejected this application on 14.09.2023. Hence the instant petition.

2.6. In the interregnum, the trial court allowed the application filed by Gaurav Soni under Order 22 Rule 3 CPC on 16.11.2023. Earlier thereto, the plaintiff's evidence had already been closed, however, upon being brought on record the legal heir of plaintiff was allowed to adduce evidence. Consequently, the trial is now at the stage of the plaintiff's evidence.

3. Learned counsel for the petitioner argues that the Trial Court rejected the petitioner's application without properly considering the facts and circumstances of the case. There is/was sufficient cause for delay in filing the written statement, as the notice of the suit was never served upon petitioner, leaving him unaware of the suit's pendency. Despite this crucial fact, the Trial Court declined to taken on record the written statement.

3.1. He would urge that the provision regarding filing the written statement cannot be treated as mandatory and inflexible. The Code of Civil Procedure is procedural and intended to facilitate justice, not to defeat it. Since no ex-parte order was passed against the petitioner, the trial court should have granted further time to file the written statement. It is a settled principle that procedural rules are meant to ensure justice. Denying the petitioner the opportunity to place his defence on record deprives the Court of adjudicating on merits and would result in gross injustice.

3.2. Further, the delay arose solely because the summons were not served and the petitioner was unaware of the suit.

4. Opposing the aforesaid submissions, learned counsel for the respondents argues that proper service of summons had already been effected on the petitioner's wife, and an advocate had also given an undertaking to file the vakalatnama on his behalf. Despite several opportunities, the petitioner failed to file the vakalatnama. He further submits that no ex parte proceedings were initiated because the suit was for partition. Granting another chance to the

petitioner at this stage would unnecessarily delay the trial, thus the petition deserves dismissal.

5. In the aforesaid backdrop, I have heard learned counsel for the parties and have gone through the case record.

6. First and foremost, for ease of reference, English translation of the impugned order dated 14.09.2023 (as provided) is as under:-

"Both parties present. The application filed under Section 151 CPC on behalf of Defendant No. 2/1, Kamalkishore Soni, was argued by both sides.

Advocate Mr. C.P. Soni, on behalf of the applicant Kamalkishore, submitted that he never personally received notice of the suit, nor had he authorized any advocate through a power of attorney. He only recently became aware of the pending suit through his maternal uncle, Murli Manohar. As no ex parte proceedings have yet been initiated against him, it was requested that his written statement be taken on record. Plaintiffs' counsel, Mr. O.P. Boob, strongly opposed the application and argued that it is not maintainable under Section 151 CPC, and therefore prayed for its rejection. Considered. The case file has been perused.

In the present matter, on 25.04.2018, service of summons to the applicant/defendant No. 2/1, Kamalkishore, was deemed sufficient as it was served on his wife. On that same date, Advocate Mr. R.K. Chauhan also gave an undertaking to file vakalatnama on his behalf. Thereafter, repeated opportunities were sought to file the vakalatnama, and finally, the absence of Defendants No. 2/1 and 2/2 was recorded on 09.07.2018. It is true that no ex parte proceedings have been initiated against them, but this was because the present suit pertains to partition. In the present suit, plaintiffs have completed their evidence, and the case is now fixed for defendant's evidence.

The present application has been filed under Section 151 CPC, which is applicable only in the absence of specific provisions. However, in this context, the application lacks legal merit. Therefore, in light of the above facts and circumstances, the application filed under Section 151 CPC on behalf of Defendant No. 2/1, Kamalkishore Soni, is rejected.

Case is listed on 13.10.2023 for defendant's evidence."

7. From a perusal of the impugned order, it appears that the trial court rejected the application under Section 151 CPC on the ground that service of summons on Defendant No.2/1 was deemed sufficient, as it was served on his wife and an undertaking to file vakalatnama was given. Despite multiple opportunities, no vakalatnama was filed, and his absence was recorded.

8. It appears that the learned Trial Court was primarily influenced by the consideration that granting further time to the petitioner (defendant) for filing the written statement would unduly delay the proceedings. While concern for

timely disposal is valid, such delay could have been addressed through imposition of appropriate costs. It is well settled that while "justice delayed is justice denied," it is equally true that "justice hurried is justice buried." Denying a party the opportunity to place their defence on record risks compromising the very foundation of a fair adjudication and may result in erroneous or one-sided findings.

9. Another reason assigned by learned trial court for dismissing the application of the petitioner seeking permission to file written statement is that the same was filed by reciting Section 151 CPC whereas a specific provision contained under Order 8 Rule 1 CPC governs the procedure to seek permission of the court to file written statement belatedly. The applicant omitted to mention Order 8 Rule 1 along with Section 151 CPC and thus the trial court opined that in the absence of a specific provision being there in CPC and yet since not invoked by the applicant, the application filed under Section 151 CPC was not maintainable and rejected the same.

10. Trite it may sound but the procedural is hand made of justice and the substantive justice cannot be subjugated to the procedural requirement. Merely mention of the wrong provision ought not to be viewed so seriously so as to reject the application.

11. Assuming a situation where the applicant by inadvertence omits to mention any provision of the CPC, whatsoever, and simply files it by reciting "application seeking permission to file written statement", even in that case, ordinarily the application ought not to be dismissed on that ground.

12. Not to suggest that the learned counsels filing such applications are exempted from their duty to mention the specific provision, but for their fault in certain cases, the litigant ought to not suffer for no fault of his/her.

13. In the considered view of this Court, and given the facts and grounds pleaded herein, the petitioner deserves a final opportunity to file the written statement. Although such allowance may marginally prolong the trial, the delay can be reasonably compensated by costs. Denial of the right to defend by filing a written statement strikes at the core of natural justice and fair trial principles.

14. Accordingly, the writ petition is allowed. The impugned order dated 14.09.2023 is set aside. The petitioner (defendant) is granted one final and effective opportunity to file the written statement, subject to payment of costs of ₹ 10,000/- to the respondent (plaintiff), to be paid within a period of two weeks from the date of this order. No further extension shall be granted at the behest of the petitioner. However, the Trial Court shall be at liberty to adjourn the matter at its discretion based on administrative or judicial exigencies.

15. Pending applications, if any, stand disposed of.