

(2017) 01 JH CK 0150
In the Jharkhand High Court
Case No : 218 of 2015

Bajnath Prasad Snehi College of Education, Jainagar,
Koderma

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 9](#)
[Order 9](#), [Order 9](#), [Order 17](#)

Citation : (2017) 01 JH CK 0150

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : V. P. Singh, A. K. Das Rashmi Kumar, Pooja Kumari

Judgement

1. Heard learned counsel for the petitioner. Learned Court of Additional Civil Judge (Jr. Div-XIII), Jamshedpur in Title Suit No. 73 of 2008 by the impugned order dated 17.11.2014, Annexure-5, rejected the petition of the petitioner herein dated 07.08.2014 for recall of its order fixing the suit for final argument and allow cross-examination of the witnesses of the plaintiff, who were discharged without any cross-examination. Defendant-petitioner has also sought to adduce evidence in support of his case.

2. As the sequence of facts noticed from the records and the impugned order show that plaintiff had instituted a suit for declaration that his date of birth in the School Leaving Certificate dated 13.09.1940 is correct and valid and the same is binding upon the parties. It also sought declaration that his date of birth is manipulated by the official of the defendant company as 27.01.1936 and they have annexed the forged and manipulated one. Plaintiff-petitioner sought consequential benefits on the basis of the such declaration of his School Leaving Certificate.

3. On notice, defendant appeared and filed their written statement, Annexure-2. Defendant took a plea of maintainability of the suit, which, however, was rejected

on 03.05.2011. Issues were framed by the learned Trial Court on 12.03.2010. Thereafter proceeding continued on the examination of the plaintiff witnesses. Three witnesses were adduced by the plaintiff and were discharged without being cross-examined on the part of the defendant. On 23.07.2013, plaintiff's evidence was closed and the case was fixed for defendant's evidence. On the next five dates, no steps were taken by the defendant and defendant's evidence was closed on 10.01.2014. The case was fixed for final argument. Thereafter on 04.08.2014, a time petition was filed on behalf of the defendant seeking adjournment of the proceeding of the case. The instant petition seeking recall was filed thereafter on 07.08.2014. As has been brought to the notice of the Court, the case is fixed for final argument on 11.01.2017.

4. Learned Senior counsel for the petitioner submits that due to transfer of the case from one Court to another Court, defendant lost track of the suit, which could not be attended for a number of dates. The plaintiff also took almost two years time to examine only three witnesses. In terms of order XVII of the Civil Procedure Code, in such an eventuality when either of the parties fail to appear on the date fixed, the Court may proceed in terms of the provisions contained under Order IX of the CPC. The defendant have a good case and would suffer if they are not allowed opportunity to cross-examine the witness of the plaintiff. The suit may be decided ex-parte without the defendant getting an opportunity to adduce their own witnesses as well. It is submitted that plaintiff had superannuated in 1996 itself and thereafter filed the case under the Bihar now Jharkhand Shops & Establishments Act, 1953, which did not succeed. The challenge thereafter in the writ jurisdiction also failed. He also lost in the LPA. Petitioner, therefore, will suffer irreparable loss and injury if they are not allowed to defend them properly.

5. I have considered the submissions of the counsel for the petitioner in the light of the aforesaid material facts pleaded. Perusal of the evidence of the records and the impugned order, however, do not show any sufficient cause on the part of the defendant-petitioner herein for not prosecuting/defending itself in the suit before the Court below for almost more than two years. As it appears from the application seeking recall at Annexure-3 and the rejoinder filed by the plaintiff, Annexure-4 also, after framing of the issues on 12.03.2010, affidavited examination in chief of the PW-I was served to the defendant on 08.07.2010. On 29.11.2010 defendant filed a petition for time for cross-examination of PW-I, which was allowed. On the next date 22.12.2010 again PW-I was not cross examined. On 22.12.2010, a petition on the question of maintainability was filed by the defendant, which was rejected on 03.05.2011 after hearing both the parties. Again suit was fixed for cross-examination of PW-I on 25.05.2011, but no steps were taken for his cross-examination. The defendant choose to seek time to challenge the order dated 03.05.2011 rejecting the petition on the maintainability of the suit, which was allowed. However, thereafter again on 10.08.2011, 09.09.2011 and 19.10.2011, the defendant did not produce any order of this Court before the learned Court below. Subsequently, a prayer was

also made for time to file an appeal before this Court against the order dated 03.05.2011, which was rejected. However, no steps were taken for crossexamination of the plaintiff's witnesses. Again on 22.02.2012, both the parties filed attendance through their lawyers and on 05.04.2012 no steps were taken on the part of the defendant. Again on 04.05.2012, lawyers attendance was filed by both parties and the next date was fixed on 05.06.2012. While defendant failed to take any steps thereafter, on 15.09.2012, an affidavited examination in chief of PW-2 was filed, who was finally discharged on 11.06.2013. PW-3 was also discharged thereafter without any cross-examination. Plaintiff's witnesses were closed on 23.07.2013 and the suit was fixed for evidence of defendant on 20.08.2013. Since no steps were taken for cross-examination of the defendant's witnesses also thereafter for five dates, their evidence was also closed on 10.01.2014, fixing the case for final argument. It, therefore, appears that laches on the part of defendant were not on one or two occasions but consistently over a period of almost more than two years in failing to cross-examine plaintiff witness or adduce their own witnesses. The suit is of 2008 and is running on the board of learned Trial Court for final argument after evidence of defendant was closed on 10.01.2014.

6. In the aforesaid state of facts, learned Trial Court found no sufficient cause on the part of defendant to explain the reason for its laches and default in taking steps in prosecuting/defending the case. The learned Trial Court has committed no error of jurisdiction while passing the impugned order. Therefore, this Court finds no reason to interfere in the matter.

7. Needless to say, the learned Trial Court would proceed and conclude the suit in accordance with law after giving due opportunity to the parties to make their final submissions in the matter. It also goes without saying that any judgment of the Court of law, which otherwise is admissible in evidence be permitted to be relied on by the parties during the course of final argument.

8. The writ petition is accordingly, dismissed.