
(2011) 11 CAL CK 0075
In the Calcutta High Court
Case No : C.O. 2332 of 2009

Bengal Beverages Private Limited

APPELLANT

Vs

Sri Prasanta Paul and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1
Constitution of India, 1950 — Article 227

Citation : (2011) 11 CAL CK 0075

Hon'ble Judges : Md. Abdul Ghani, J

Bench : Single Bench

Advocate : Subhakar Nag and Ms. Arpita Mallick for the petitioner, for the Appellant; Debojyoti Basu for the Opposite party No.1, for the Respondent

Judgement

Md. Abdul Ghani, J.—The instant application under Article 227 of the Constitution of India is directed against Order No.9 dated 19th June, 2009 passed by learned Civil Judge (Senior Division) at Basirhat in Money Suit No.18 of 2008 refusing to accept the written statement filed on behalf of the petitioner/defendant.

2. Having heard the learned Counsel appearing for the parties concerned and also after going through the materials-on-record, it could be detected that the opposite party by instituting the said Money Suit No.18 of 2008 against the present petitioner prayed for recovery of a sum of Rs.2,88,526.56/- with interest. In the said suit, the petitioner/defendant entered appearance and also filed written statement which was ultimately not accepted by the learned Court below by passing the impugned order.

3. Being aggrieved by and dissatisfied with the impugned order dated 19th June, 2009, the present petitioner/defendant has come up before this Court praying for setting aside the said order and also for acceptance of the written statement already filed from his end.

4. Mr. Nag, learned Counsel appearing for the petitioner while making submission

has drawn this Court's attention to the contents of the Order No.5 dated 3.3.2009, Order No.6 dated 27.3.2009 as also two other orders, namely, Order Nos.7 and 8 dated 27.4.2009 and 25.5.2009 respectively and contends that the learned Court below despite acceptance of the written statement already submitted on behalf of his client ultimately by passing the impugned order declined to accept the said written statement for want of Court's jurisdiction and also for the reasons that the petitioner/defendant did not file the said written statement with the proper explanation for non-submission of the same in time as per provision laid down in Order 8 Rule 1 of the Code of Civil Procedure.

5. It is further submitted on behalf of the petitioner that since the Court below once accepted the written statement, it cannot be said to have not been accepted by the said Court and accordingly the order impugned dated 19.6.2009 would not be sustainable in the eye and estimation of law and the same would be liable to be set aside.

6. On the other hand, Mr. Basu, learned Counsel appearing for the opposite party/plaintiff while making submission refers to the contents of the Order Nos.6,7,8 and 9 dated 27.3.2009, 27.4.2009, 25.5.2009 as also 19.6.2009 and emphatically urges that the defendant/petitioner filed the written statement without explaining any reason concerning the delay as envisaged in Order 8 Rule 1 of the CPC and, as such, the same cannot be said to be acceptable under the law and, accordingly, the order impugned passed by the learned Court below could be said to be quite justifiable and the same needs no interference by any Court of Law.

7. Upon hearing learned Counsel appearing for the respective parties and also after going through the materials-on-record, it could be ascertained that the learned Court below upon allowing as many as three chances after service of notice upon the present petitioner/defendant and others ultimately allowed time till 25.5.2009 for filing the written statement and was pleased to keep the said written statement dated 25.5.2009 with the record. But subsequently the learned Court below upon hearing the learned Counsel of the parties concerned passed the impugned order dated 19.6.2009 whereby and whereunder he refused to accept the said written statement submitted on behalf of the concerned defendants with the observation that the same was filed beyond the prescribed period of limitation as also in violation of the provision under Order 8 Rule 1 of the Code of Civil Procedure.

8. In my considered view, such interpretation of the learned Court below cannot be supported inasmuch as the learned Court below while granting adjournment application for submission of the written statement definitely considered the reasons for seeking time to file the same.

9. It would be manifest from the contents of the Order dated 27.4.2009 that the learned Court below was pleased to grant adjournment for submission of the written statement on the ground of learned Senior Lawyer's engagement on

behalf of the present petitioner/defendant and ultimately on the next day that is on 25.5.2009 the petitioner/defendant filed the written statement.

10. Since the Court below once allowed the petitioner to file the written statement on 25.5.2009, the same cannot be said to have not been accepted by the same Court. In this context, it may be pertinent to point out that the written statement is meant for granting an opportunity to the opposite party for contesting the case for the sake of appropriate adjudication of the controversy involved in the suit and also for avoiding the multiplicity of the suit or proceeding. It is, of course, a settled principle of law that the party upon receiving summons when appears in Court in connection with any particular case, should be allowed an opportunity to contest the case and accordingly the written statement already filed on behalf of the present petitioner cannot be said to have not been filed without assigning any reason as because in all the adjournment petitions seeking time to file written statement reasons whatsoever were definitely set forth.

11. Having regard to the provision of law laid down in Order 8 Rule 1 of the CPC as also giving due consideration to the conduct of the petitioner/defendant in the matter of filing of the written statement as also the nature of the suit, learned Court below instead of refusing to accept the written statement filed on behalf of the petitioner ought to have accepted the same subject to payment of certain reasonable cost by the petitioner/defendant to the opposite party/plaintiff.

12. Therefore, having considered the totality of the circumstances as also the submissions made on behalf of the respective parties, I allow the instant application under Article 227 of the Constitution of India and accept the written statement already filed on behalf of the petitioner/defendant subject to payment of a cost of Rs.2000/-(Two thousand) by the petitioner to the opposite party positively within a period of one week from the date of communication of this Order to the learned Court below. Resultantly, the order impugned dated 19.6.2009 stands set aside.

13. Be it noted that in case of default as to payment of such cost of Rs.2000/-(Two thousand) within the stipulated time, the application shall stand dismissed.

14. The instant application under Article 227 of the Constitution of India is, thus, disposed of.

15. Let xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.