

(2025) 04 JH CK 1376
In the Jharkhand High Court
Case No : C.M.P. No. 1057 Of 2022

Bhim Karmakar

APPELLANT

Vs

Gouranga Gope

RESPONDENT

Date of Decision : 22-04-2025

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Civil Procedure, 1908 — Order 8 Rule 10
Evidence Act, 1872 — Section 58

Citation : (2025) 04 JH CK 1376

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Chandrajit Mujkherjee, Bibhash Sinha

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard the learned counsel appearing on behalf of the petitioner as well as the learned counsel appearing on behalf of the Opposite party nos.1 to 4.

2. This petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 16.02.2022 passed in Original Suit No.21/2018 whereby the learned court has been pleased to reject the petition filed by the petitioner/plaintiff under Order VIII Rule 10 CPC.

3. The learned counsel for the petitioner submits that the learned court has wrongly passed the said order and he refers the order dated 14.09.2018 and submits that on that day the Vakalatnama has been filed on behalf of the defendant nos.1 to 4 and the matter was posted for 14.12.2018. He further submits by way of referring the order dated 13.2.2019, on that day, the written statement as well as the proposed issue along with the documents have been filed by the defendants which has been taken on record. He submits that thereafter the said petition has been rejected by the order dated 16.2.2022

saying that it is not maintainable as written statement was already accepted by the order dated 13.02.2019. He submits that the same was allowed in absence of any condonation with regard to the delay in filing of the written statement. In view of that, he submits that the said order may kindly be set aside.

4. The learned counsel appearing on behalf of the Opposite party submits that the learned court has already taken on record the written statement and the documents and the issues which clearly suggest that the learned court has allowed the condonation and proceeded further. He submits that in between before 16.02.2022 the proceeding has already been taken place about 4 to 5 times and thereafter the said petition has been filed and he submits that in that view of the matter, the learned court has rightly passed the order. He relied in the case of Hon'ble Supreme Court rendered in the case of Asma Lateef and Another v. Shabbir Ahmad and Others, reported in (2024) 4 SCC 696 wherein at paragraph nos.25, 26, 28 and 29, it has been held as under:

"25. Order 8 Rule 10CPC, used as the primary source of power by the trial court in passing the order dated 5-8-1991 against Samiullah, postulates the procedure that could be adopted when a party fails to present its written statement upon the same being called for by the court. Rule 10 reads as follows:

"10. Procedure when party fails to present written statement called for by Court. —Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

26. We have no hesitation to hold that Rule 10 is permissive in nature, enabling the trial court to exercise, in a given case, either of the two alternatives open to it. Notwithstanding the alternative of proceeding to pronounce a judgment, the court still has an option not to pronounce judgment and to make such order in relation to the suit it considers fit. The verb "shall" in Rule 10 (although substituted for the verb "may" by the Amendment Act, 1976) does not elevate the first alternative to the status of a mandatory provision, so much so that in every case where a party from whom a written statement is invited fails to file it, the court must pronounce the judgment against him. If that were the purport, the second alternative to which "shall" equally applies would be rendered otiose.

28. What emerges from a reading of Balraj Taneja [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] , with which we wholeheartedly concur, is that only on being satisfied that there is no fact which needs to be proved on account of deemed admission, could the court pass a judgment against the defendant who has not filed the written statement; but if the plaint itself suggests involvement of disputed questions of fact, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts. Balraj Taneja [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] also lays down the law that provision of Order 8

Rule 10CPC is by no means mandatory in the sense that a court has no alternative but to pass a judgment in favour of the plaintiff, if the defendant fails or neglects to file his written statement.

29. If indeed, in a given case, the defendant defaults in filing written statement and the first alternative were the only course to be adopted, it would tantamount to a plaintiff being altogether relieved of its obligation to prove his case to the satisfaction of the court. Generally, in order to be entitled to a judgment in his favour, what is required of a plaintiff is to prove his pleaded case by adducing evidence. Rule 10, in fact, has to be read together with Order 8 Rule 5 and the position seems to be clear that a trial court, at its discretion, may require any fact, treated as admitted, to be so proved otherwise than by such admission. Similar is the position with Section 58 of the Evidence Act, 1872. It must be remembered that a plaint in a suit is not akin to a writ petition where not only the facts are to be pleaded but also the evidence in support of the pleaded facts is to be annexed, whereafter, upon exchange of affidavits, such petition can be decided on affidavit evidence. Since facts are required to be pleaded in a plaint and not the evidence, which can be adduced in course of examination of witnesses, mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint, in all cases, may not entitle him to a judgment in his favour unless by adducing evidence he proves his case/claim."

5. It is an admitted position that the defendants have appeared before the learned court and filed Vakalatnama along with written statement, the documents and the issues which have been taken on record and at that time no opposition was made on behalf of the petitioner/ plaintiff and at belated stage the said petition was filed. It is well settled that the Order VIII Rule 10 of the C.P.C is not mandatory and it is directory as it has been held in several judgments as well as in the judgment relied by the learned counsel for the Opposite parties in the case of Asma Lateef and Another v. Shabbir Ahmad and Others (supra) and that option is always available to the court as has been held in the said judgment relied by the learned counsel for the Opposite parties. The Court finds that there is no illegality in the impugned order, and accordingly, this petition is dismissed.