

(2018) 10 UK CK 0121

In the Uttarakhand High Court

Case No : Writ Petition No. 2760 (M/S) Of 2014

Charanjeet Singh & Another

APPELLANT

Vs

Kiran & Another

RESPONDENT

Date of Decision : 23-10-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Section 115, Order 8 Rule 1, Order 8 Rule 10
Constitution Of India, 1950 — Article 227

Citation : (2018) 10 UK CK 0121

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Neeraj Garg, Piyush Garg

Final Decision : Dismissed

Judgement

Lok Pal Singh, J

1. Petitioners have challenged the impugned judgment and order dated 24.11.2014, passed by learned District Judge, Dehradun in civil revision no. 130 of 2014, Smt. Kiran vs. Charanjeet Singh & others, whereby learned Revisional Court has set aside the order dated 31.07.2014 passed by learned 2nd Additional Civil Judge (S.D.), Dehradun in original suit no. 481 of 2001, Smt. Kiran vs. Smt. Ranjana (now deceased) and others.

2. Factual matrix of the case is that the plaintiff/respondent no. 1 filed an original suit no.481 of 2001, Smt. Kiran vs. Smt. Rajnana (now deceased) & another for decree of prohibitory injunction against the defendants. Despite the service of summons affected upon the defendant no. 1 Smt. Ranjana, she did not appear and filed the written statement. The learned Trial Court passed an order dated 23.10.2003 that the suit shall proceed ex-parte against her.

3. An application paper no. 37-C-2 was moved by Smt. Ranjana-defendant no. 1 on 20.04.2005 to recall the order dated 23.10.2003. During the pendency of aforesaid application Smt. Ranjana passed away. The legal heirs of Smt.

Ranjana, including the petitioners, they filed a substitution application, which was allowed, the legal heirs (petitioners herein) were brought on record on 30.01.2009.

4. The learned Trial Court by order dated 9.11.2011 allowed the application to recall the order dated 23.10.2003 & fixed 30.11.2011 and permitted the petitioners to file their written statement till 30.11.2011. Despite the time granted by the learned trial court to the petitioners to file their written statement, they did not file the written statement within the stipulated period. Subsequently, the petitioners filed their written statement on 15.07.2013. While filing the written statement prayer was not made to condone the delay & to take that the written statement, be taken on record. On this the plaintiff moved an application that since the written statement has not been filed within stipulated period and prayer has not been made to condone the delay in filing the written statement, the written statement filed by the petitioners be discarded. The petitioners filed their objections to the application and also moved an application paper no. 106-C that there is no delay in filing the written statement and in case Court finds that there is any delay in filing the written statement, such delay may be condoned. The learned Trial Court by order dated 31.07.2014 allowed the application filed by the petitioners paper no. 106-C on the payment of cost Rs. 1,000/- for the reason that the case should be decided on merit. However, neither any sufficient explanation was given in non-filing the written statement within the time granted to them nor the period of delay in filing the written statement was explained, but the learned Trial Court for the reason that the case should be decided on merit, allowed the application and taken on record the written statement.

5. Feeling aggrieved, the plaintiff preferred the civil revision under Section 115 of the CPC as amended by the State of Uttarakhand. The amended provisions of Section 115 of the CPC are extracted hereunder:

"115. Revision-(1) A superior court may revise an order passed in a case decided in an original suit or other proceeding by a subordinate court where no appeal lies against the order and where the subordinate court has-

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A revision application under sub-section (1) , when filed in the High Court, shall contain a certificate on the first page of such application, below the title of the case, to the effect that no revision in the case lies to the district court but lies only to the High Court either because of valuation or because the order sought to be revised was passed by the district court.

(3) The superior court shall not, under this section, vary or reverse any order made except where,-

(i) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made.

(4) A revision shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the superior court.

Explanation I.- In this section,-

(i) the expression "superior court" means-

(a) the district court, where the valuation of a case decided by a court subordinate to it does not exceed five lakh rupees;

(b) the High Court, where the order sought to be revised was passed in a case decided by the district court or where the value of the original suit or other proceedings in a case decided by a court subordinate to the district court exceed five lakh rupees;

(ii) the expression "order" includes an order deciding an issue in any original suit or other proceedings.

Explanation II.- The provisions of this section shall also be applicable to orders passed, before or after the commencement of this section, in original suits or other proceedings instituted before such commencement.

Explanation III.- The provisions of this section shall not be applicable to the revisions already filed in the High Court before the commencement of this section.' .

(Vide Uttaranchal Act 1 of 2006, S. 2, w.e.f. the date to be notified

6. Learned District Judge after perusal of the material available before him and having considered the judgments of Balwant Singh (Dead) vs. Jagdish Singh & ors. , AIR 2010 SC 3043 and Sandeep Thapar vs. SME Technologies Private Limited, AIR 2014 Sc 897, has arrived to the conclusion that the learned Trial Court has illegally and without there being any sufficient cause has allowed the application for taking on record the highly belated written statement. It is further held that no reason whatsoever has been assigned by the learned Trial Court in allowing the application. The learned Revisional Court by impugned order set aside the order dated 24.11.2014 and allowed the revision.

7. Feeling aggrieved, the defendants have preferred the present writ petition under Article 227 of the Constitution of India for seeking a writ of certiorari/quashing for the order dated 24.11.2014.

8. Learned counsel for the petitioners would submit that the provisions of Rule 1 of Order 8 CPC are procedural in nature. It is further contended that the provisions of Rule 1 of Order 8 CPC are for advancement of justice and should be

considered in hand made justice. He would further submit that the amended provisions of Rule 1 Order 8 CPC are applicable to the case. He further admitted the fact that the Trial Court has not recorded the reasons in allowing the application filed by the petitioners on the cost of Rs. 1,000/-. He would further submit that the Revisional Court has committed illegality in allowing the revision in its entirety; door of justice should not be closed for the petitioners. He would further submit that the revisional court should have remanded the matter to the learned Trial Court to decide the matter afresh or in the alternative should have enhanced the cost. Learned counsel for the petitioners has placed reliance on the following judgments Zolba vs. Keshao and Others reported in (2008) 11 SCC 769, Surya Dev Rai vs. Ram Chander Rai and Others, reported in (2003) 6 SCC 675, Smt. Anju Tyagi & Anr. Vs. Civil Judge (S.D.), Roorkee & Ors., reported in (2011) 2 UAD 656.

9. Per contra, learned counsel for the respondent would submit that since the original defendant Smt. Ranjana did not file her written statement within the time prescribed, despite sufficient service of summons affected upon her, subsequently, the court proceeded ex-parte against her. Thereafter, she moved an application to recall the ex-parte order dated 23.10.2003. When the legal heirs (petitioners herein) were brought on record the aforesaid application was allowed on 09.11.2011 and the petitioners were again granted time to file the written statement by 30.11.2011. It is further submitted that despite the sufficient opportunity again granted to them, the petitioners did not file the written statement within a stipulated period, however, they chose to file their written statement on 15.07.2013 after a lapse of one year seven months and fifteen days. Learned counsel for the respondents would submit that no explanation or sufficient cause has given in the application for condonation of delay in filing the written statement.

10. Learned counsel for the respondent has placed reliance upon a recent judgment of Hon'ble Apex Court in the case of Prahlad Shankarrao Tajale & Ors. Vs. State of Maharashtra Its Secretary (Revenue) & Anr., reported in 2018 (2) Supreme 487, paragraph No. 16 of the judgment is extracted hereunder:

"16. This case reminds us of the apt observations made by the learned Judge of this Court, Vivian Bose J., in Sangram Singh vs. Election Tribunal Kotah & Anr., AIR 1955 SC 425. His Lordship, speaking for the Bench, in his distinctive style of writing with subtle power of expression reminded the Courts as to how the code of procedure should be construed in the context of rights of the parties to the lis, which affects their lives and properties. His Lordship reminded that procedural laws should not be construed like a penal provision to punish the parties as far as possible. The following is the classic passage, which is always followed for doing substantial justice to the parties to the lis:

"A code of procedure must be regarded as such. It is procedure something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a

construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

11. The learned counsel for the respondents has placed reliance upon another judgment of Hon'ble Apex Court in the case of ATCOM Technologies Limited vs. Y.A. Chunawala and Company and Others reported on (2018) 6 SCC 639, wherein the object of Rule 1 of Order 8 of CPC has been discussed. The relevant paragraph nos. 20, 21 & 22 are extracted hereunder:

"20. This provision has come up for interpretation before this Court in number of cases. No doubt, the words 'shall not be later than ninety days' do not take away the power of the Court to accept written statement beyond that time and it is also held that the nature of the provision is procedural and it is not a part of substantive law. At the same time, this Court has also mandated that time can be extended only in exceptionally hard cases.

We would like to reproduce the following discussion from the case of Salem Advocate Bar Association, Tamil Nadu v. Union of India, (2005) 6 SCC 344:

"21. ...There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time- limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1."

21. In such a situation, onus upon the defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within thirty days. When that is a requirement, could it be a ground to condone delay of more than 5 years even when it is calculated from the year 2009, only because of the reason that Writ of Summons were not served till 2009?

22. We fail to persuade ourselves with this kind of reasoning given by the High Court in condoning the delay, thereby disregarding the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 and the spirit behind it. This reason

of the High Court that delay was condoned 'by balancing the rights and equities' is far-fetched and, in the process, abnormal delay in filing the written statement is condoned without addressing the relevant factor, viz. whether the respondents had furnished proper and satisfactory explanation for such a delay. The approach of the High Court is clearly erroneous in law and cannot be countenanced. No doubt, the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 are procedural in nature and, therefore, hand maid of justice. However, that would not mean that the defendant has right to take as much time as he wants in filing the written statement, without giving convincing and cogent reasons for delay and the High Court has to condone it mechanically.

12. Having heard the learned counsel for the parties and perusing the material available on record, this Court is of the opinion that the learned Trial Court had illegally allowed the application filed by the petitioners without assigning any reason. The Hon'ble Apex Court in the case of State of Uttaranchal and another vs. Sunil Kumar Vaish and others reported in 2011 (8) SCC 670, has held that a judicial decisions must in principle be reasoned and the quality of judicial decisions depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency.

13. Learned Revisional Court has recorded the findings that there is no explanation at all by the petitioners for condonation of delay in filing the written statement and the application filed by the defendant has illegally been allowed. In view of this Court since no explanation has been given by the petitioners for delay in filing the written statement, the application ought not to have been allowed by the learned Trial Court in cryptic manner, without assigning any reason. The petitioners cannot take the benefit of their inaction, laches and there own wrong in non-filing the written statement within the reasonable time. I found no illegality, perversity and jurisdictional error in the impugned judgment and order. The writ petition is liable to be dismissed. The same is dismissed.

14. Having considered the fact that the original suit was filed in the year 2001, the learned Trial Court shall make an endeavour to decide the suit expeditiously and shall avoid unnecessary adjournment in the case.

15. No order as to costs.