

(2008) 09 JH CK 0049
In the Jharkhand High Court

Chhatan Pandey and Others

APPELLANT

Vs

Shambhu Nath Shukla and Others

RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:

Citation : (2008) 4 JCR 506

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

R.K. Merathia, J.—Heard.

2. This writ petition has been filed against the order dated 18.3.2006, passed in Title Suit No. 35/1996 by learned Sub-Judge-III, Garhwa, rejecting the petition filed on behalf of the plaintiffs-petitioners dated 1.2.2006 praying to allow the plaintiffs to adduce further evidence.

3. Mr. Tiwari, appearing for the plaintiffs-petitioners, submitted that there were good reasons for not taking steps under Order XVIII, Rule 17A. CPC as per the liberty given by this Court in C.R. No. 383/2001. He further submitted that in the ends of justice, plaintiffs-petitioners should have been allowed to adduce evidence.

4. Mr. Devi Prasad, learned senior counsel appearing for the defendants-respondents, on the other hand submitted that similar petition was earlier rejected: the plaintiffs have been delaying the disposal of the suit; the petition in question was filed at the fag end of the suit, and therefore the Court below has rightly rejected such petition.

5. Plaintiffs-petitioners filed the suit being Title Suit No. 35/1996 for declaration of their right, title interest. According to the plaintiffs-petitioners, one of the "pairvikars" namely Shrikant Pandey was wanted in a criminal case and to avoid his arrest, he did not take steps in the suit on behalf of the plaintiffs-petitioners and as such the evidence of the plaintiffs was closed by order dated 3.1.2001. Then the plaintiffs-petitioners filed a suit for recalling the said order and for

allowing them to adduce evidence, which was rejected on 26.7.2001. Petitioners moved this Court vide C.R. No. 383 of 2001. On 18.9.2001, the following order was passed in the said revision application:

After some argument Mr. N.N. Tiwari, counsel for the petitioners sought permission to withdraw this revision application to enable the plaintiffs to take steps under Order XVIII, Rule 17A of the CPC in the suit itself.

Prayer is allowed. This revision application is dismissed as withdrawn with a direction to the trial Court to pass appropriate orders in accordance with law in this regard.

6. It appears that shortly after the said order was passed, the suit was dismissed having abated. Against which, an appeal was filed and ultimately suit was restored on 17.3.2005. In the meantime, the provisions of Order XVIII, Rule 17A were deleted. In these circumstances Mr. Tiwary is justified in submitting that the plaintiffs-petitioners could not take steps under Order XVIII, Rule 17A, CPC. After the suit was restored, the petition in question was filed on 1.2.2006.

7. The learned Court below has rejected the petitioner's prayer on the ground that in spite of sufficient opportunities, plaintiffs-petitioners had adduced only one evidence and therefore the evidences were closed on 3.1.2001; and that in view of the said order of this Court dated 18.9.2001, plaintiff-petitioners could not be allowed to adduce evidence.

8. It is true that the plaintiffs-petitioners should have pursued the suit more diligently. However, they were given liberty under the said order dated 18.9.2001. But they could not avail such liberty as the suit itself was dismissed. In the facts and circumstances, noticed above, and in the interest of justice, I am inclined to give one chance to the plaintiffs-petitioners to adduce evidence.

9. Accordingly, the impugned order is set aside. The plaintiffs must conclude their evidence within two months from today. The defendants-respondents will be at liberty to adduce evidence in rebuttal within two months thereafter. The parties will cooperate in early disposal of the suit.

10. This order is subject to deposit of cost of Rs. 5,000/- (Five thousand) within six weeks from today, which the defendants-respondents will be allowed to withdraw.

11. With these observations and directions, this writ petition is disposed of.