courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 13/09/2026

(2005) 01 JH CK 0060

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1292 of 2004

Chintamoni @ Shitali Sonamoni Kisku — APPELLANT

Vs

Lakhi Ram Kisku — RESPONDENT

Date of Decision : 05-01-2005

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1, 148

Citation : (2005) 1 BLJR 555 : (2005) 1 JCR 422

Hon'ble Judges : N.N. Tiwari, J

Bench : Single Bench

Advocate : Shekhar Prasad Sinha, for the Appellant; S.K. Laik, for the Respondent

Judgement

N.N. Tiwari, J.—In this writ application the petitioner has prayed for quashing the order dated 5.11.2003 and 13.12.2004 passed in Title Suit No. 113/2003 by the Munsif-II, Dhanbad, whereby the petitioner, who is the defendant in the Court below, has been debarred from filing the written statement on the ground that the same was filed after lapse of the prescribed period provided under Order VIII, Rule 1, CPC.

2. The petitioner''s case is that on receiving summons of the suit served on him, he appeared through an advocate on 31.7.2003 and prayed for time to file written statement. The petitioner could not be ready with his written statement and as such he took time earlier and also prayed for time by his application dated 5.11.2003. The said application for time was rejected and by order dated 5.11.2003 the learned Munsif debarred the defendant from filing the written statement in view of the provision under Order VIII, Rule 1, CPC. According to the petitioner, between the date of his appearance on 31.7.2003 and the date on which the order debarring him was passed Annual (Durga Puja) vacation intervened and the Civil Courts remained closed from 1.10.2003 to 1.11.2003 and after reopening of the Courts he filed his written statement on 5.11.2003. According to the petitioner if the said period of vacation is excluded, he filed his

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chintamoni-shitali-sonamoni-kisku-…

written statement within the period prescribed under Order VIII Rule 1 C.P.C. and as such the order debarring the petitioner from filing the written statement is improper and contrary to law. The petitioner in that view filed an application dated 24.11.2003 to recall the order dated 5.11.2003 with a further prayer to accept the written statement already filed, but the same has been also rejected by the impugned order dated 13.12.2004.

3. The plaintiff-respondent contested the said application contending that the written statement has not been filed within the period prescribed under Order VIII Rule 1 C.P.C. i.e. within 90 days from the date of appearance of the defendant. According to the respondents once the defendant appeared and period started running the intervening vacation would not stop the same and the said period can not be excluded in calculation. The Court has thus rightly passed the order debarring the petitioner from filing the written statement and there is no infirmity in the said orders dated 5.11.2003 nor there is any illegality in the order dated 13.12.2003.

4. Mr. Shekhar Prasad Sinha, learned counsel appearing on behalf of the petitioner, submitted that the Court below has erroneously included the period of intervening vacation in the Civil Court in calculating the prescribed period and wrongly debarred the petitioner from filing the written statement. According to the learned counsel while computing the period in view of the provisions of Order VIII Rule 1 C.P.C, the period of holidays cannot be included. In other words, the learned counsel submitted that while counting the period from appearance till the filing of the written statement the period of holidays must be excluded. The learned counsel further urged that even if the written statement was filed on 5.11.2003 i.e. on the 95th day, the same could have been accepted by extending the time under the provisions of Section 148 of the Civil Procedure Code. The learned counsel referred to a decision of this Court rendered in the case of Karpuri Devi and Another Vs. Rabindra Pratap Singh and Others, and submitted that this Court has held in the said case that the Court has power to extend at least 30 days'' time u/s 148 C.P.C. in addition to the period prescribed under Order VIII, Rule 1 C.P.C. Learned counsel submitted that this Court in the case of Lalit Chandra Raisurana Vs. Arun Raisurana, has specifically held that when the Court fixes the time for doing something, the Court has normally the power to extend the time and that power is saved by Section 148 of the C.P.C. and where the written statement has not been filed within 90 days of receipt of summons by the defendant, in appropriate case, on showing good cause, the Court can extend the time beyond the period of 90 days with an outer limitation of 30 days.

5. Mr. S.K. Laik, learned counsel appearing on behalf of the respondent, on the other hand, submitted that the provisions of Order VIII, Rule 1 C.P.C. being mandatory and the defendant- petitioner having been failed in filing the written statement within the period prescribed by the Statute, the Court below has rightly passed the impugned orders and no interference. In the said orders of the Court below is warranted Learned counsel for the respondent also relied on the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chintamoni-shitali-sonamoni-kisku-…

decision Karpuri Devi (supra) and submitted that this Court did not interfere with the order debarring the defendant from filing written statement in the said case.

6. After hearing the parties and perusing the records, I find that the petitioner on receiving the summons in the suit appeared on 31.7.2003 and prayed for time to file written statement. Thereafter he made further prayers for time and the case which were granted. In the meantime, Courts were closed on account of annual vacation from 1.10.2003 to 1.11.2003 and after reopening the petitioner filed his written statement on 5.11.2003 but the same was not accepted and by order of the same date he was debarred from filing the written statement and his petition for time was rejected. The petitioner thereafter filed an application dated 24.11.2003 praying recall of the order dated 5.11.2003 but by order dated 13.1.2004 the said application has also been rejected. The main ground, taken by the Court below for debarring the petitioner from filing the written statement and also for rejection of the petition praying recall of the order. Provision of Order VIII Rule 1 C.P.C. which prescribed 90 days as an outer limit of time which can be granted to the defendant for filing his written statement. In the case of Lalit Chandra Raisurana Vs. Arun Raisurana, this Court has held that even where the written statement has not been filed within 90 days from receipt of summons by the defendant in an appropriate case, on his showing good cause, the Court can extend the time beyond the period of 90 days, up to further 30 day. In Karpuri Devi, (supra), also this Court has taken the same view but in the facts and circumstances of the said case, this Court did not interfere with the order of the Court, below by which the defendant was debarred from filing written statement as the same was not filed even within 120 days from his appearance. In the instant case the petitioner had shown good cause for not filing the written statement within the prescribed period. The Court below failed to take into consideration that the Court, remained closed on account of annual vacation from 1.10.2003 to 1.1.2003. The petitioner has reasonable ground to say that the delay after 30.9.2003 was not wilful but due to the annual vacation in the Civil Court, he could not filed the written statement within the prescribed time. The petitioner has also explained earlier delay before the vacation stating about his illness. The said explanation is reasonable and can be said to be good cause, preventing the petitioner from filling the written statement within the period of 90 days. However, the petitioner filed his written statement on 95th day i.e. within a period of 120 days from the date of appearance. This Court in the case of Lalit Chandra Raisurana, (supra), has already held that the Court has power to grant extension of time u/s 148 C.P.C. for further 30 days. No, proper reason has been assigned by the Court below for refusing the said judicial discretion. Any order of a Court of law, not supported by any just reason is unsustainable and can not be upheld. The orders of the Court below dated 5.11.2003 and 13.12.2004 are thus quashed. This application is allowed.

7. Consequently, the written statement filed by the defendant petitioner would be accepted by the Court below, but in the circumstances of the case, on the condition of payment of a cost of Rs. 1,000/- by the defendant petitioner to the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chintamoni-shitali-sonamoni-kisku-…

plaintiff- respondent in the Court below, within a period of one month from the date of receipt of this order. Application allowed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chintamoni-shitali-sonamoni-kisku-…