

(2002) 07 OHC CK 0057
In the Orissa High Court
Case No : Civil Review No. 42 of 2002

Dhruba Ch. Patnaik

APPELLANT

Vs

Antaryami Patnaik and Another

RESPONDENT

Date of Decision : 01-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 115

Citation : (2002) 94 CLT 148 : (2002) OLR 370 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : B.H. Mohanty, D.P. Mohanty, B. Das, R.K. Nayak, S.C. Mohanty and D.K. Pradhan, for the Appellant; S.S. Das, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—Petitioner in Civil Revision No. 244 of 2001 has filed this review application against the judgment of this Court passed in the aforesaid Civil Revision dismissing the same on 3.4.2002.

2. Sri B. H. Mohanty, learned counsel for petitioner challenged the order basically on two grounds : (1) the written statement on behalf of defendant No. 2 had not been filed at all and copy of the written statement having been placed before the Court at the time of argument the same was taken into consideration which resulted in a wrong decision by this Court and (ii) there being no scope for filing a rejoinder to the written statement, there was no scope for denying the allegation made in the written statement and therefore, this Court committed an error of law in observing that there was no denial of allegations made in the written statement.

3. Before going into merits of the argument advanced by Sri Mohanty for the petitioner, it is necessary to reiterate the facts of the case. The present petitioner is the plaintiff in the suit. His case is that at the time of incorporation of M/s. Hotel Aristocrat Pvt. Ltd. under the Companies Act there were three life time

Directors viz., late S. C. Patnaik, Smt. Reeta Mohanty and defendant No. 1 Antaryami Pattnaik. One of the life time Directors S. C. Pattnaik expired on 20.12.1997 but the constitution of the Board of Directors had not been changed. Since all the Directors belong to one family, for convenience an amicable arrangement was made and defendant No. 1 was chosen to act as the Managing Director of Company to safeguard the interest of the family business; whereas the plaintiff continued to be a share holder holding 15 shares. Further allegation in the plaint is that defendant No. 1 executed a power of attorney in favour of defendant No. 2 which was challenged as null and void and a prayer was made to restrain defendant No. 2 from acting upon the said power of attorney. At the time of hearing of the revision, it was argued on behalf of defendant No. 2 that the written statement had been filed before the trial Court wherein a specific stand has been taken that the plaintiff having sold all his shares, he had no locus standi to file the suit. The said written statement was taken into consideration by this Court while delivering judgment. Sri Mohanty submitted that defendant No. 2 was set ex parte and never filed written statement. In spite of the fact that the written statement had not been filed a copy of the same was placed before this Court which was taken into consideration. In support of such contention learned counsel relied upon a xerox copy of copy application which indicates that as on 9.4.2002 no written statement had been filed on behalf of defendant No. 2. At the time of hearing of the review application, certified copy of written statement was filed. Since a doubt arose as to whether the written statement had been filed prior to hearing of Civil Revision or not records were called for. The records now indicate that the written statement had been filed before the trial Court on behalf of defendant No. 2 on 27th July 2001. The written statement bears the seal of the Court, It also appears from record that on 6.12.2001 a copy of written statement on behalf of defendant No. 2 was served on the learned counsel appearing for plaintiff-petitioner and receipt thereof has been kept on record. Therefore, contention of the learned counsel for petitioner that the written statement had not been filed at the time of the Civil Revision was heard is not correct. However, from the order sheet it appears that the written statement having been filed late had not been accepted during hearing of the revision. On that score, learned counsel for petitioner may be correct in saying that the written statement having not been accepted by the trial Court, this Court should not have taken the same into consideration. It further appears from the record that an objection to the prayer for injunction had been filed by defendant No. 2. In the objection the same stand has been taken by defendant No. 2 as in the written statement. Therefore, in place of written statement even if objection filed by defendant No. 2 is taken into consideration, the result remains the same. I, therefore, do not find any merit on the first ground raised by the learned counsel for petitioner in view of the fact that even in the objection to the prayer for injunction defendant No. 2 has taken the same ground as that of the written statement and even if the said objection is taken into consideration, this Court has to come to the same conclusion as has been done in the Civil Revision.

4. So far as second ground is concerned, learned counsel for petitioner is thoroughly misconceived. At the time of hearing of Civil Revision, Sri Milan Kanungo was the Advocate appearing for petitioner. In course of argument, this Court had put a question to Sri Kanungo as to whether the plaintiff-petitioner has sold his shares or not and there was no reply to such a question. Taking that into consideration, an observation was made by the Court that there is no denial to the ground taken by defendant No. 2 that plaintiff-petitioner had sold his shares. This Court is well aware of the procedure and practice in the subordinate Courts and fails to understand as to how such an impression was created in the mind of the learned counsel for petitioner that the Court was not aware of such procedure. He should have atleast consulted the previous counsel before drafting the review application. However, it is made clear that while dealing with an application for injunction all the views expressed by the Court are only prima facie views subject to proof by either party in trial.

5. Before parting with record, I must observe that though the written statement on behalf of defendant No. 1 was filed on 5.1.2002 and written statement on behalf of defendant No. 2 was filed on 27.7.2001. Annexure-2 to the review application indicates that when the petitioner applied for certified copy of the written statement stated above, it was returned on the ground that the written statement of defendant No. 1 is not available in record, I fail to understand how the office of the learned Civil Judge (S.D.), Jagatsinghpur could reject the application on such ground. The written statements of defendants 1 and 2 are very much available in the record and in fact, certified copy of written statement filed by defendant No. 2 has been placed before this Court at the time of hearing Civil Review, Learned Civil Judge (S.D.), Jagatsinghpur is directed to make an enquiry in this respect and take action against the erring officer as permissible under law and report to this Court. It also appears from the record that there has been tampering with certain documents. Learned Civil Judge may refer to the objection filed by the plaintiff to the petition under Order 9, Rule 9, CPC. of defendant No. 1 dated 8.2.2002. At certain places it appears that interpolations have been made. In the heading in place of defendant No. 1, it appears to have been over written as defendant No. 2. In paragraph 3 of the petition in place of defendant No. 1, it appears to be over written as defendant No. 2. It also appears from the endorsements made on the left side of the petition that though copy is supposed to be attached for counsel appearing for defendant No. 2, it is again written "received copy" by defendant No. 2. This aspect of the interpolation shall be enquired into. Another petition has also been brought to my notice where corrections have been made though petition is an application filed by either defendant No. 1 or defendant No. 2 under Order 9, Rule 7, C.P.C. dated 5.1.2002. It appears that at several places corrections have been made in the said petition. It is alleged that such corrections were not available earlier and have been done after filing of the application. Learned Civil Judge shall also enquire into the same and submit a report to this Court.

6. In view of the reasons stated above, I do not find any merit in this review

application and the same stands dismissed.