

(1974) 03 PAT CK 0013
In the Patna High Court
Case No : Civil Revision No. 731 of 1973

Kali Pado Sharma

APPELLANT

Vs

Surendra Nath Mahatha and Another

RESPONDENT

Date of Decision : 01-03-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1, Order 8 Rule 9

Citation : AIR 1975 Patna 24

Hon'ble Judges : S.P. Sinha, J

Bench : Single Bench

Advocate : Ram Nandan Sahai Sinha and Lala Sachindra Kumar, for the Appellant; Surendra Narayan Jha and Shardanand Jha, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Sinha, J.—This application by the plaintiff is directed against an order dated the 20th June, 1973, passed in title suit No. 42 of 1971 entertaining the written statement filed by the defendants at the stage when the suit was set for ex parte hearing.

2. The relevant facts are that the suit was filed on the 15th December, 1971, for specific performance of contract. The defendants entered appearance on 8th July, 1972 on which date the court passed an order for the written statement to be filed on 27-7-1972. It appears that the defendants went on praying for time to file the written, statement and ultimately when further time was prayed for, such prayer was rejected by order dated 24-4-1973. On that day it was further ordered that the defendants may contest without written statement. Thereafter on 18-5-1973 the defendants filed written statement but the court observed that "in view of the order dated 24-4-1971 the W. S. is not accepted" On 20-6-1973 the defendants then filed an application for acceptance of the written statement. The court observed that although the written statement had been put in after a great delay, ex parte hearing had not yet begun and, therefore, the written statement was accepted on the condition that the defendant paid Rs.

50/- as cost.

3. The question raised is whether the written statement was to be so entertained. Mr. Sinha appearing for the petitioner says, it could not be firstly because the order entertaining the written statement amounts to reviewing the previous order of refusal by the predecessor-in-office of the court below and that too, after the statutory period for reviewing an order had expired, and, secondly, because the stage till which the written statement could be filed had passed, the suit having been set for hearing in default of the written statement. In support of his first reasoning he has relied on a decision of this Court in Shaikh Nazir Hussain Vs. Mohamad Ejaz Hussain and particularly upon the observation that the exercise of a power by a court to recall an order is limited only to recalling such orders which have not been perfected; and also upon a case reported in Radhanath Pathak and Another Vs. Bihar State Board of Religious Trusts, , and particularly to the observation that after the period of limitation has expired, a court cannot exercise its inherent power u/s 151 of the Code of Civil Procedure. In support of the second reasoning he has cited the decision in the case of The Bihar State Electricity Board Vs. New Gobindpur Coal Co. Pvt. Ltd. and Others, . I will deal with these case laws also at the appropriate place.

4. Appearing on behalf of the opposite party Mr. Jha submitted that the court had ample power to accept the written statement at any time before the suit had been heard ex parte. It is submitted that in the instant case the written statement having been accepted at the stage when the suit had been set for hearing ex parte but hearing had not yet commenced, the acceptance of the written statement was valid and proper.

5. In my opinion, in the context of the facts of the case the contention raised on behalf of the opposite party is valid and must be accepted. Rule 1 of Order VIII of the CPC (hereinafter referred to as "the Code") provides that the defendant can, as of right, file a written statement at or before the first hearing or within such time as the Court may permit. Then there is Rule 9 of Order VIII of the Code, which says:

".....but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same."

The decision cited by Mr. Sinha reported in The Bihar State Electricity Board Vs. New Gobindpur Coal Co. Pvt. Ltd. and Others, , referred to above, is the one which is in the context of the scope of Rule 1 of Order 8 of the Code, that is where the defendant can as of right file his written statement at the stage set out in the said rule. It is, therefore, that his Lordship observed that "under the circumstances, it is impossible to accept the contention of Mr. Jaiswal that the petitioner was entitled to have its written statement accepted by the Court as of right."

The point, which arises in the instant case is whether the acceptance of the written statement by order dated the 20th June, 1973, was one in terms of Rule

1 of Order 8 or Rule 9 of Order 8. Mr. Sinha has submitted and rightly so that if the impugned order was in continuation of the orders in terms of Order 8, Rule 1, the order was bad firstly because it was upsetting an order, which had already been perfected by lapse of time and, secondly because such order could not be reviewed by the successor-in-office of the person who had passed the previous order. The decisions reported in Shaikh Nazir Hussain Vs. Mohamad Ejaz Hussain and Radhanath Pathak and Another Vs. Bihar State Board of Religious Trusts, , referred to above, do support this contention. The question, however, is, as I have already indicated above, whether the impugned order is under Order 8, Rule 1 of the Code. The defendants, in this case, wanted to assert this right when they put in their written statement, even though the court by its order dated 24-4-1973 had already debarred them from exercising that right. Therefore, when the defendants filed their written statement on 18-5-1973, the court again reiterated the same stand and did not accept the written statement. In other words, the orders passed prior to the impugned order were in relation to the defendants' assertion of their right under Order 8, Rule 1. Subsequently, however, the defendants having failed on that front now pleaded before the court for their written statement to be entertained. The court then passed the impugned order entertaining the written statement but putting the defendants to the burden of paying costs. In terms of Rule 9 of Order 8 the court below was competent to entertain the written statements. In one of the decisions reported in Binda Prasad Vs. United Bank of India Ltd. and Others, this Court has observed that Order 8, Rule 9, invests the court with the widest possible discretion and enables it to accept a written statement filed subsequently, even after the settlement of issues, upon such terms as the court thinks fit. In the instant case written statement has been accepted much before that stage. Having regard to the facts of the instant case I must say that the impugned order cannot be said to have been passed, and possibly it could not be either, under Order 8, Rule 1, but has been passed in terms of Rule 9 of the said Order. The contention raised by Mr. Sinha on behalf of the petitioner that the impugned order was a review of the earlier orders is, therefore, not correct. Since it is not an order passed in review, neither of the two reasons assigned by Mr. Sinha for assailing the order holds good.

6. I accordingly, dismiss this petition, but without costs.