

(2012) 09 GUJ CK 0087

In the Gujarat High Court

Case No : Special Civil Application No. 12992 of 2012

Keshabhai Kamabhai and Others

APPELLANT

Vs

Kanuben and Others

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 2, Order 8 Rule 1
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 09 GUJ CK 0087

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : Ravindra Shah, for the Appellant;

Final Decision : Dismissed

Judgement

Anant S. Dave

1 Petitioners, original defendants, have filed this petition under Articles 226 and 227 of the Constitution of India seeking a writ of certiorari

quashing and setting aside the order dated 23.6.2011 passed by the learned Principal Civil Judge, Viramgam, below Exh. 53, in Regular Civil Suit

No. 110 of 2000 and it is further prayed that the petitioners be permitted to file written statement in the suit filed in 2000, being Regular Civil Suit

No. 110 of 2000. A bare perusal of the order dated 23.6.2011 passed by the trial court would reveal that, initially, the issues were framed in

Regular Civil Suit No. 110 of 2000 on 31.12.2004 and the affidavit of the plaintiffs with necessary exhibit was also filed as early as on 6.10.2005.

Earlier, when the defence was closed, application Exh. 36 was moved and, by order dated 13.9.2010, the Court deemed it fit to open the defence

by ordering payment of cost of Rs. 500/- which was also not paid in due course

and, thereafter, the Court was left with no alternative but to close evidence on 23.11.2010. A belated purshis was filed to reopen defence which came to be rejected by recording all the relevant facts.

2. The above order is assailed by the learned counsel for the petitioners, original defendants, on the ground that the above order of the trial court is

contrary to provisions of Order 8 Rule 1 and Order 18 Rule 2 of the Code of Civil Procedure, 1908 and the trial court ought to have exercised its

discretion in favour of the defendants permitting them to file a written statement. By not exercising the jurisdiction vested in the Civil Court, a grave

injustice is caused to the defendants and the defendants would not be in a position to defend the proceedings and a decree would be passed

against the defendants who are not well versed with legal procedure. It is, therefore, submitted that, when the order impugned passed by the trial

court is against the principles akin to equity, justice and good conscience, the order impugned deserves to be quashed and set aside. In support of

the arguments, the learned counsel for the petitioners has relied upon the judgments reported in AIR 2001 SC 1440, Balwant Singh Bhagwan

Singh and Another Vs. Raj Singh Baldev Kishen, , AIR 1994 BOM 353, Manik Singh and Others Vs. Kumawat Panchayat Mandi and Others, .

3. Having heard the learned counsel for the petitioners and on perusal of the record and the order impugned, it is not in dispute that the suit was

filed as early as on 2.12.2000 in which the issues were framed on 27.4.2011. For a pretty long ten years, no written statement was filed in spite of

the fact that the defendants were represented by a lawyer and on 13.9.2010, the Court had given an opportunity to the defence to file a written

statement upon payment of cost of Rs. 500/- only which was also not availed, and a belated application was preferred to reopen evidence, which

came to be rejected by the order impugned by recording reasons that since stage of cross examination was already over and the plaintiffs had filed

purshis for closing of evidence. In the above circumstances, the discretion exercised by the Court below based on sound judicial principles does

not require any interference by this Court in exercise of power under Articles 226 and 227 of the Constitution of India.

4. None of the decisions relied upon by the learned counsel for the petitioners has any bearing to the facts and circumstances of the present case.

In the case of State of Maharashtra, Maimuna Begam, reported in AIR 1994 Bombay 353, the plaintiff filed suit as indigent person on 19.3.1980

in the Court of the Civil Judge, Senior Division, Bhandara, and the defendants already filed written statement and traversed the averments made in

the plaint and, later on, at the stage of evidence, defence evidence was closed. In the case of Balwant Singh vs. Firm Raj Singh, reported in AIR

1969 Punjab and Haryana 197, it was failure on the part of the plaintiffs to pay process fee for speedy service and the facts of the aforesaid case

are different. Considering the above, no case is made out. This petition is rejected summarily with no order as to costs.