
(2016) 03 JH CK 0114
In the Jharkhand High Court
Case No : W.P. (C) No. 3419 of 2005

Mahesh Kumar

APPELLANT

Vs

Manohar Lal

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1

Citation : (2016) 165 AIC 314 : (2016) 4 AIRJharR 134 : (2016) 3 JCR 159

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : M/s. Kumar Vaibhav & Nishant Kumar Roy, Advocates, for the Appellant; Mr. J.N. Upadhyay, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Aparesh Kumar Singh, J.— Heard learned counsel for the parties.

2. Petitioner who is the defendant in Money Suit No. 2 of 2004 instituted in the Court of Sub-Judge-I, Chaibasa for compensation for malicious prosecution has been debarred by the impugned order dated 10th September, 2004 (Annexure-2) from filing his written statement and recall petition has also been rejected by the order dated 27th May, 2005 (Annexure-4) also impugned herein.

3. As is the case of defendant (petitioner herein) the suit was instituted on 31st March, 2004 by the plaintiff (respondent herein) on cause of action said to have arisen on his acquittal in a criminal case bearing Chaibasa G.R.P. Case no. 6 of 2001 lodged by the defendant (petitioner herein) under Sections 395 and 412 of Indian Penal Code. The said criminal prosecution had ended in his acquittal as per the judgment passed by learned trial court vide order dated 13th November, 2003 after full-fledged trial as also averred at para 10 of the plaint. Plaintiff, therefore, prayed for compensation on the grounds of malicious prosecution by the defendant (petitioner herein). On 18th May, 2004 notices were issued upon the defendant which were received on 27th May, 2004. Petitioner sent an

application on 9th June, 2004 which was received on 15th June, 2004 in the file of the court below seeking time to file written statement and showing his inability to appear at the relevant point of time apprehending danger to his life.

4. The impugned order at Annexure-4 reveals the receipt of such application on 15th June, 2004. Petitioner did appear on 10th September, 2004 before the court below and made an application for time to file written statement. Learned trial court considering the fact that statutory period of 90 days had already expired from the date of service of summon on 7th May, 2004 chose to refuse time and rejected the petition dated 10th September, 2004 seeking time for filing written statement. Petitioner thereafter has reportedly filed his written statement on 22nd September, 2004 and pressed his recall petition which has also been declined by the impugned order at Annexure-4, finding no good cause for not adhering to the time schedule fixed under Order VIII Rule 1 C.P.C.

5. In the backdrop of the sequence of facts, petitioner being aggrieved approached this Court in the present writ petition and while issuing notice on 15th July, 2005 further proceedings of Money Suit No. 2 of 2004, pending in the Court of Sub-Judge-I, Chaibasa was stayed. Consequently, the suit has not progressed till date.

6. The sequence of facts noted herein above show that there was about 15 days delay on behalf of the petitioner beyond expiry of 90 days time when he approached the Trial Court with a prayer for adjournment on 10th September, 2004 for filing written statement.

7. Counsel for the petitioner has relied upon a judgment rendered by Apex Court in the case of *Kailash v. Nankhu & Ors* reported in 2005 AIR SCW 2346 on the point that the time schedule provided under Order VIII Rule 1 is directory in nature, but it does not impose an embargo on court's power for extension of time, however, to be granted only in exceptional circumstances.

8. Counsel for the respondents has not disputed the sequence of dates referred to by the petitioner to substantiate his contention that request for filing written statement through application made on 10th September, 2004 was not suffering from any inordinate delay and could not have been granted even on imposition of some cost so that the main matter could have proceeded for trial on merits.

9. In the state of facts noticed herein above, learned trial court only after 14-15 days of the expiry of 90 days period stipulated under Order VIII Rule 1 refused to grant any adjournment to the petitioner for filing written statement. Request to file written statement at that stage in the wake of explanation given by the petitioner ought to have been considered in the interest of justice even on imposition of certain cost for the said purpose. As a result of debarment and challenge being made, the matter has remained undecided till date due to pendency of writ petition. In the opinion of court, interest of justice would be served, if the written statement filed by the petitioner is allowed to be taken on record with a cost of Rs. 2500/- to be paid to the plaintiff.

10. In such circumstances, the impugned orders dated 10th September, 2004 (Annexure-2) and 27th May, 2005 (Annexure-4) are set aside. Accordingly, the writ petition is allowed in the aforesaid manner.

11. Learned Trial Court would proceed in the matter in accordance with law treating the written statement of the defendant petitioner on record.