

(2006) 02 OHC CK 0031

In the Orissa High Court

Case No : WP (C) No's. 13534 of 2003 and 3139 of 2005

Mangelal Jhajharia

APPELLANT

Vs

Govindram Girdhar and Another
 Govindram Girdhar
Vs Mangelal Jhajharia and Another

RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

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

Citation : AIR 2006 Ori 103 : (2006) 102 CLT 185 : (2006) 1 OLR 428

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Advocate : Sanjeev Udgata, P.K. Nayak and J. Hota, in W.P.C. No. 13534 of 2003 and N.C. Pati, S. Mishra, S.K. Bal, A. Das, M.R. Dash and N. Singh, in W.P.C. No. 3139 of 2005, for the Appellant; Sanjeev Udgata, P.K. Nayak and P. Chuli for O.P. No. 1 and R.P. Kar, A.N. Ray, N. Paikray and B.P. Mohanty for O.P.No. 2 in W.P.C. No. 3139 of 2005, for the Respondent

Judgement

N. Prusty, J.—W.P.(C) No. 13534 of 2003 has been filed by the plaintiff challenging the order-dated 24.06.03 passed by the learned Civil Judge (Senior Division), Sambalpur in T.S. No. 71 of 2001 whereby the learned Court below has accepted the written statement filed by the defendant No. 2 beyond the period of 90 days.

2. W.P.(C) No. 3139 of 2005 has been filed by the defendant No. 1 against the order dated 9.12.04 in T.S. No. 71 of 2001 passed by the learned Civil Judge (Senior Division), Sambalpur whereby the written statement filed by the defendant No. 1 was not accepted by the learned Court below since the same has been filed beyond the period of 90 days.

3. As it appears from the above in the self same case, even though both the defendants filed their respective written statements beyond 90 days, the learned Court below has accepted the written statement filed by the defendant No. 2 but declined to accept the written statement filed by the defendant No. 1.

4. Mr. S. Mishra, learned Counsel appearing on behalf of the petitioner/defendant No. 1 in W.P. (C) No. 3139 of 2005 submits that since the learned trial Court has accepted the written statement filed by the defendant No. 2 beyond the period of 90 days and did not accept the written statement filed by defendant No. 1 beyond the said period, the impugned order is completely unjust, illegal and hence is liable to be set aside and written statement filed by the defendant No. 1 ought to be accepted.

5. In support of his contention, learned Counsel for the petitioner-defendant No. 1 relied upon and cited the decision of the Apex Court in the case of Smt. Rani Kusum v. Smt. Kanchan Devi and Ors. reported in 2006 (I) OLR (SC) 8 wherein all the earlier decisions of the Apex Court have been taken care of and it has been held that Order VIM Rule 1 of the C.P. Code is directory. Paragraphs 9, 10, 16 and 19 of the above said decision run as follows :

9. The text of Order VIM, Rule 1 as it stands now reads as under :

I- Written Statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

10. Order VIII, Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the Court and also does not specifically take away the power of the Court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the Court for quick relief and also to the serious inconvenience of the Court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

16. It is also to be noted that though the power of the Court under the proviso appended to Rule 1 of Order VIII is circumscribed by the words - "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The Courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be

directory though worded in the negative form.

19. After elaborating the purpose for introduction of Order VIII Rule 1, this Court in Kailash's Case (*supra*) at paragraph 45 observed that no straightjacket formula can be laid down except that observance of time schedule contemplated by Order VIII, Rule 1 shall be the rule and departure therefrom an exception made for satisfactory reasons only. The conclusions have been summed up in para 46. The relevant portion reads as follows:

(iv) the purpose of providing the time schedule for filing the written statement under Order VIII, Rule 1, C.P.C. is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though the language of the proviso to Rule 1, Order VIII, C.P.C. is couched in negative form, it does specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order VIII, Rule 1 C.P.C. is not completely taken away.

(v) Though Order VIII, Rule 1 C.P.C. is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil cases which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.

6. As such the accepted principle of natural justice is that a litigant should get a fair trial, even though, effort has to be made to expedite the disposal of a civil suit/proceeding, but not to scuttle the same. The object of prescribing a procedure is to expedite the cause of justice, but a party should not ordinarily be denied of the opportunity to participate in the process of dispensation of justice. The ultimate goal of jurisprudence is dispensation of both procedural and substantive justice. A procedural law should not ordinarily be construed as mandatory as it is enacted to help in dispensation of justice. It is now well settled that the provision of Order VIII Rule 1 of the C.P. Code is a part of the procedural law and hence is directory. Ordinarily the time schedule contained in the provision is to be followed as a rule but departure therefrom would be by way

of exception.

7. Considering the submissions made by the learned Counsel for both the parties and after going through the contents of the writ petition i.e. W.P.(C) No. 3139 of 2005, the impugned order dated 9.12.04 passed by the learned Civil Judge (Senior Division), Sambalpur in T.S. No. 71 of 2001 is set aside and the written statement filed by the petitioner/defendant No. 1, is accepted.

8. And as such, the prayer of the petitioner in W.P.(C) No. 13534 of 2003 is rejected, since the same is devoid of any merit.

9. Both the writ applications are accordingly disposed of.

10. At this stage, Mr. Udgata, learned Counsel for the petitioner in W.P.(C) No. 13534 of 2003 submits that the Trial Court be directed for early disposal of the suit since this is a suit of the year 2001.

11. In view of the above, the learned Civil Judge (Senior Division), Sambalpur is directed to expedite the trial of the suit and conclude the same as early as practicable, if the suit is otherwise ready for hearing in its chronological order as well as there is no other impediment for final disposal of the suit.