
(2005) 06 PAT CK 0016
In the Patna High Court
Case No : Civil Revision No. 718 of 2004

Md. Kashim and Others

APPELLANT

Vs

Md. Jalil and Others

RESPONDENT

Date of Decision : 22-06-2005

Acts Referred:

Citation : (2005) 06 PAT CK 0016

Judgement

S.N. Hussain, J.—Heard learned counsel for the petitioners and learned counsel for opposite party No. 1.

2. The petitioners are intervenors-defendants of Title Suit No. 123/2002, which was filed by the opposite party 1st set for declaration of title and other ancillary reliefs.

3. The petitioners are aggrieved by order dated 2.4.2004, by which the learned Munsif, Madhepura rejected their petition for recall of order dated 12.3.2004 rejecting the written statement already filed by the intervenors-defendants (petitioners).

4. The short fact of this case is that initially the plaintiffs-opposite party Ist set filed the suit impleading only the State of Bihar and its authorities but later when the petitioners filed intervention petition, they were added as intervenors-defendants vide order of the Court below dated 20.2.2003. It is amply clear from the impugned order that adjournments were granted by the Court below for filing written statement and finally on 12.6.2003 the learned Court below allowed the intervenors-defendants to file the written statement by the next date, which was fixed as 4.7.2003. It is not in dispute that written statement of the intervenors-, defendants was filed in the Court on 4.7.2003 itself and the Court below did not reject the same. However, the original defendants, namely, the State of Bihar filed a petition for allowing some time to file its written statement but the same was rejected and accordingly the State of Bihar was debarred from filling its written statement.

5. It also transpires that after about eight months from the date of the said order the learned Court below rejected the petitioner's written statement by order dated 12.3.2004, whereafter the petitioners filed a petition dated 2.4.2004 for recalling the order dated 12.3.2004, but the said petition was rejected by the impugned order dated 2.4.2004. Learned counsel for the petitioners further submits that the learned Court below rejected their petition only on the ground that 90 days had lapsed without considering the fact that the written statement was filed within the time granted by the Court itself.

6. On the other hand, learned counsel for the opposite party No. 1 vehemently opposes the contention of the learned counsel for the petitioners and submits that since the petitioners had been impleaded on 20.2.2003 on their own intervention petition, it was incumbent upon them to file their written statement within 30 days from that date. He further submits that in any view of the matter the learned Court below was not competent to accept the written statement of the intervenors-defendants beyond the period of 90 days as per the provisions of Order VIII, Rule 1 of the CPC (hereinafter referred to as "the Code" for the sake of brevity). He further contends that in the said circumstances the impugned order of the learned Court below was quite legal and justified.

7. After hearing the learned counsel for the petitioners and learned counsel for the opposite party, it is not in dispute that the Court had itself granted adjournments for filing written statement and the intervenors-defendants filed their written statement within the time granted by the Court itself. So far the provision of Order VIII, Rule 1 of the Code is concerned, it has already been held by the Hon'ble Apex Court in the case of Kailash Vs. Nanhku and Others, that the said provision is directory and not mandatory in nature. Hence such procedural provisions, even if peremptory in nature, are in essence for dilatory litigants to put themselves in order for avoiding unnecessary delay. Such provisions, however, cannot completely estop the Court from taking note of events and circumstances which happened within the said period. This view also finds support from a decision of this Court in the case of Smt. Sunita Devi and Others Vs. Abdhesh Kumar Sinha alias Kamleshwari Pd. Sinha and Others . Moreover in the instant case the intervenors-defendants did not file their written statement earlier as the Court itself was granting adjournment and filed their written statement within the period allowed by the Court itself. Hence, the intervenors-defendants cannot be held solely responsible for the delay in filing of the written statement.

8. In the aforesaid circumstances, I set aside the impugned order and direct the learned Court below to accept the written statement filed by the intervenors-defendants (petitioners) on 4.7.2003 and proceed with the suit expeditiously without any further delay.

This civil revision is allowed with the aforesaid directions.