

(2018) 06 GAU CK 0112
In the Gauhati High Court

Case No : Criminal Revision Petition 293 of 2017

Mina Borah And 2 Ors.

APPELLANT

Vs

Prahash Chandra Bhattacharya

RESPONDENT

Date of Decision : 20-06-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Section 115, 151, Order 8 Rule 1

Citation : (2018) 06 GAU CK 0112

Hon'ble Judges : KALYAN RAI SURANA, J

Bench : Single Bench

Advocate : J P Kachari, G P Bhowmik

Final Decision : Dismissed

Judgement

(1) Heard Mr. L.K. Borah, learned counsel for the petitioners as well as Mr. G.P. Bhowmik, learned Senior counsel assisted by Mr. A. Baishya,

learned counsel for the respondent.

(2) This revision under section 115 read with section 151 CPC is directed against the order dated 20.03.2017, passed by the learned Civil Judge No.3,

Kamrup (M), Guwahati in T.S. No.295/11, thereby rejecting the petition No.5840/16 dated 15.11.2016.

(3) The respondent herein is the plaintiff in T.S. No.295/11. The petitioner No.1 is the divorced wife of the respondent. On 09.09.2011, the respondent

had filed the said suit against the petitioners and 3 other defendants for cancellation of power of attorney and Sale Deed No.6240 dated 01.10.2010

and for permanent injunction to restrain the petitioners herein to occupy the suit property. In para 5, 6 and other paras of this revision, there is a

reference to proforma respondents No.2, 3 and 4. However, as per the cause-title of this revision, no proforma respondents No.2, 3 and 4 are found to

be impleaded.

(4) It is projected that on 05.01.2012, written statement was filed by the petitioner No.1 on behalf of the defendants No.1 to 6. The respondent herein by filing petition No.74/2012 dated 05.01.2012 informed the Court that the summons along with the plaint and copy of documents were served on the defendants No.1 to 3 on 17.09.2011 and upon the defendant No.4 on 20.09.2011, but as the written statement was not filed within the statutory period of 90 days as provided under Order VIII Rule 1 CPC, the respondent had prayed that the written statement filed on 05.01.2012 may not be accepted.

(5) The learned trial Court by order dated 03.04.2012, allowed the prayer of the respondent herein not to accept the written statement filed by the defendants.

(6) The said order dated 03.04.2012 was challenged before this Court by filing CRP No.183/12. This Court by order dated 07.09.2012, directed the petitioner herein to file a petition in the trial Court duly signed by the petitioners-defendants No.1, 2 and 3 and duly supported by an affidavit to the effect that the written statement filed and signed by the petitioner No.1 herein shall be treated as a written statement for petitioners No.1, 2 and 3 herein. It was directed that on receipt of such petition, the same was to be accepted subject to payment of cost of Rs.1000/-. It was projected that the petition shall be filed on or before 03.10.2012 and both the parties were directed to appear in the trial Court on that date.

(7) The learned counsel for the petitioners submits that on 03.10.2012, petition No. 4059/12, supported by an affidavit was filed in terms of the directions issued by this Court for accepting the written statement signed and filed by the petitioner No.1 herein to be the written statement for the petitioners No.1, 2 and 3.

The said petition was stated to be entered in the Court fee register on 03.10.2012.

(9) It is submitted that the record of T.S. No.292/11 was called for by this Court in connection with CRP 183/11, as such, necessary orders were passed in connection with petition No.4059/12 dated 03.10.2012 in a supplementary order sheet and the proceeding in the suit commencing from 11.02.2014. The learned counsel for the petitioners submit that after the records of T. S. 295/2011 was returned by this Court, the records was put up

before the learned trial Court on 11.02.2014. On that day, the learned counsel for the petitioners had only filed his attendance on presumption that the written statement was already accepted for them. However, the learned trial Court by erroneously presuming that no written statement was filed as per order passed in CRP No.183/11, ordered that the suit shall proceed for evidence of the respondent No.1-plaintiff. It is submitted that the office staff of the learned trial Court did not tag the written statement as well as the supplementary order sheet of 03.12.2012 in the record, for which the petitioners were not at fault.

(9) It is submitted that as the said supplementary order sheet dated 03.10.2012 as well as petition No.4059/12 dated 03.10.2012 were not tagged with the record, aggrieved by order dated 21.03.2014, the petitioner filed petition No.5840/17 dated 15.11.2016 before the learned trial Court for modifying/ setting aside the said order. Objection was filed by the respondent and the learned trial Court by order dated 20.03.2017 rejected the petition No.5840/17 with cost of Rs.1000/-.

(10) The learned counsel for the petitioner submits that the entry of petition No.4059/12 in the Court fee register on 03.10.2012 indicated the filing of the said petition before the learned trial Court and, as such, the petitioners cannot be penalized by treating them as if no written statement were filed by the petitioners. Hence, by not accepting their written statement, not only the order dated 07.09.2012 passed by this Court in CRP No.183/12 was negated, but the valuable right of the petitioners to contest the suit was lost. Hence, it is submitted that the impugned order be interfered with.

(11) Per contra, the learned Senior counsel for the respondent submits that the statement made by the learned counsel for the petitioners do not inspire any confidence because the record of T.S. No.295/11 was never requisitioned by this Court in connection with CRP No.183/12. However, by order dated 03.04.2012, only the trial Court proceeding was suspended. Although, the said CRP 183/12 was allowed by this Court by order dated 07.09.2012, no steps were taken by the petitioners for the commencement of trial. Therefore, on 11.02.2014, on an application made by the respondent before the learned trial Court, a Court notice was issued on the learned counsel for the petitioners to appear on 21.03.2014. Hence, it is submitted that the facts presented in this revision was not correct.

(12) It is further submitted that on 21.03.2014, the learned trial Court had recorded that both sides had filed their attendance (hazira) and that the petitioners herein did not take steps as per the order dated 07.09.2012 in CRP No.183/12 and, as such, the suit was fixed for the evidence of PWs. By referring to the various dates, which was fixed in the suit, the learned Senior Counsel for the respondent submits that in about 3 years time from 21.03.2014 to 20.03.2017 as many as 28 dates were fixed by the learned trial Court. But, on none of these dates, the learned counsel for the petitioners had never raised the points taken herein about the appearance before the learned trial Court on 03.10.2012.

(13) It is further submitted that the entries in the Court fee registrar does not indicate that such petition was actually moved before the learned trial Court. It is also submitted that the allegation of order dated 03.12.2012 being passed in supplementary order sheet is not at all believable as because the record of T.S. No.295/11 had never left the trial Court premises, having not been called for by this Court in CRP 183/2012. It is, therefore, submitted that a false, fabricated and concocted story was being set up.

(14) Considered the submissions made by the learned Senior counsels/counsel for both sides. In order to appreciate the submissions made by the learned counsel for the petitioner, the Registry was asked to send the records of CRP 183/2012. Perused the said record. It contains no judicial order to call for LCR of TS No.295/2011. There is also no office note to call for the suit records. There is also no copy of requisition of records available in the file. Therefore, the allegations that the records of TS No.295/2011 was sent to this Court appears to be a misconceived and false plea. Hence, it is equally not believable that in the absence of records of suit, a supplementary order sheet was prepared. On a pointed question, the learned Senior counsel for the respondent has submitted that he has instructions to say that the copy of petition No.4059/12 dated 03.10.2012 was never served either on the respondent or upon his counsel appearing in the trial Court. Hence, as the petitioners have not approached this Court with clean hands, the petitioners are not found to be entitled to any equitable relief.

(15) It is also seen that on the dates spread over from 21.03.2014 to prior to 15.11.2016, the petitioners never cared to inform the learned trial Court that petition No.4059/12 was filed on 03.10.2012. Only on 15.11.2016, by filing

petition No.5840/16, prayer was made to recall the order dated 21.03.2014.

(16) Moreover, there is still a big legal flaw in petition No.4059/12 dated 03.10.2012, because the said petition was neither signed, verified or filed by all the petitioners No.2 and 3. Moreover, the said petition is also not supported by an affidavit by the petitioners No.2 and 3. Therefore, the petition No.4059/12 is not as per order dated 07.09.2012 passed by this Court in CRP 183/2012, wherein it was ordered that all the petitioners would file a petition duly signed by defendants No.1, 2 and 3 supported by an affidavit that the written statement signed and filed by defendant No.1, Smt Mina Borah, shall be treated as a written statement for defendants No.1, 2 and 3, i.e. petitioners. Moreover, in CRP 183/12, there was a direction to pay a cost of Rs.1,000/- (Rupees One thousand only), but in petition No.4059/12, there is no statement about the deposit of such costs either to the respondent No.1 or to the Sheristadar or Bench Assistant of the Court. Thus, there is no compliance of the order of this Court in CRP 183/12.

(17) Therefore, this Court does not find any jurisdictional error in the impugned order, as because the records of T.S. No.295/2011 is not found to have been called for or otherwise requisitioned by this Court in CRP No.183/2012, as such, the plea of supplementary order sheet being prepared on petition No.4059/12 dated 03.12.2012 also fails miserably. As a result, this revision fails and it stands dismissed.

Interim order stands vacated.

(18) On account of the delay caused in the trial of T.S. 295/2011, this Court is inclined to impose a cost of Rs.2000/- on the petitioners-defendants No.1, 2 and 3, which is to be deposited before the learned trial Court on the next date fixed.

(19) The appearing parties i.e. the petitioners and the respondent, who are duly represented by their learned counsel are directed to appear before the learned trial Court on 29.06.2018, without any notice of appearance, and by producing a certified copy of this order, they shall seek further instructions from the said learned Court.

(20) As the suit is of the year 2011, hearing be expedited.

(21) Registry may consign the record of CRP No.183/2012 back to the record room.