

(2008) 12 DEL CK 0173

In the Delhi High Court

Case No : Civil Misc. (M) No. 3127 of 2005

Nirmal Sareen and Others

APPELLANT

Vs

Nilam Kumari Kapur and Others

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 22 Rule 3, Order 8 Rule 1, 10

Citation : (2009) 154 PLR 31

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Valmiki Mehta and Deepali Chandhole, for the Appellant; Prem Prakash and Rahul Kumar Singh, Proxy Counsel, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—The petitioners have assailed an order dated 20th August, 2005 passed by learned Additional District Judge dismissing on application of the petitioners for extension of time for filing written statement.

2. The plaintiff (respondents herein) filed a suit for declaration, injunction and specific performance in 1994. After defendants were served, some of the defendants were proceeded ex parte. However, defendant Nos. 1, 2 and 3 put appearance and made an application u/s 10 and Order 2 Rule 2 of the CPC for stay of the suit on the ground that the plaintiffs had filed an earlier suit qua same property and plaintiff was bound to claim all the reliefs at one go while filing earlier suit. This suit was not maintainable under Order 2 Rule 2 CPC. The other ground taken was that since the property involved was the same and issues and the parties were same, this suit should be stayed. However, this application remained pending for years together and was not decided by this Court. The earlier suit was pending before the Court of learned Additional District Judge and in the mean time this Court transferred to itself the suit pending before the Court of ADJ. An order for trial of the two suits together was made.

The plaintiff also made a statement in the Court on 7th April, 1997 that in suit bearing number 202 of 1993 pending before the Court of ADJ, an interim order of injunction against the defendant restraining them from transferring, alienating and parting with possession of the property had already been passed and if the interim injunction was allowed in this case, the plaintiff would withdraw the suit pending before the Court of ADJ. Counsel for the defendant Nos. 2 and 3 were agreeable to this Course to be adopted. However, defendant No. 1 was not available on that day and the matter got posted to next date for his appearance.

3. By an order of this Court, the suit bearing number 202 of 1993 was summoned to this Court; however, the same was not received till 1999. In the meantime, defendant No. 1 had died and an application under Order 22 Rule 3 CPC for bringing on record the LRs of defendant No. 1 was made which was allowed on 7th February, 2000 and thereafter an order for issuing notice to the newly added LRs of the deceased defendant was made. However, since notice could not be served for want of addresses, fresh orders were made for service. Even the amended memo of parties was not filed in the suit by the plaintiff till May, 2002. In October, 2002 again time was sought for filing amended memo of parties which was allowed subject to cost of Rs. 5,000/-. In 2003, the jurisdiction of the Court of Additional District Judge was raised to Rs. 20 lacs. Since this suit was of the value below of Rs. 20 lacs, the same was ordered to be transferred to the District Judge by this Court in December, 2003. After the file was sent to the District Court, it was informed that defendant Nos. 2, 3 and 5 filed the written statements. On 2nd September, 2004 learned ADJ observed that in view of the provisions of Order 8 Rule 1, written statement cannot be taken on record and thereafter the petitioner made an application under Order 8 of CPC for filing written statement which was dismissed vide impugned order by the Court below.

4. The instant case shows a sorry state of affairs as to how the case was proceeded before this Court. The case continued for about 10 years in this Court without bringing the written statement on record either because of statement made by the plaintiff that she will withdrew the suit or because the plaintiff did not file amended memo of parties itself for more than two years and did not furnish the address of LRs of defendant No. 1. The proceedings in this case itself would show that there were exceptional circumstances due to which the written statement was not filed in this case. There is no doubt that written statement should have been filed within a reasonable time, but the defendants in this case had taken the stand that one of the suit was liable to be stayed and filed an application u/s 10 of CPC and under Order 2 Rule 2 CPC which remained pending for last 10 years. If there was no justification for not filing written statement for all these years, no justification can be there for keeping the application u/s 10 CPC pending for all these years. It seems that the plaintiff and defendants both were utterly negligent in pursuing the matter and the Court also did not take any serious note of the case being not proceeded. The provisions of CPC are not only applicable to the parties but are equally applicable on the Courts. Where written statement is not filed within a reasonable time, it becomes the duty of the Court

to proceed further with the case despite non-filing of written statement and record evidence. The plaintiff did not take steps for 10 years when the suit was before this Court to ensure that the case proceeds even without written statement or an application u/s 10 is decided or amended memo of parties is filed.

5. Under these circumstances, I consider that the court below should have condoned the delay in filing of written statement since the moment the case proceeded further before the Court of ADJ, the defendants filed written statements which the Court below should have taken on record, subject to costs. I consider that it is a fit case where time should have been extended.

6. In the result, the petition is allowed. The application of the petitioners for extension of time in filing written statements is allowed subject to cost of Rs. 10,000/- to be borne by each of the petitioner.