
(2012) 07 AHC CK 0014
In the Allahabad High Court
Case No : C.M.W.P. No. 33758 of 2012

Pankaj Gangwar and Others

APPELLANT

Vs

Smt. Kalawati and Another

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

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

Citation : (2012) 6 AWC 5635

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Rahul Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Heard learned counsel for the petitioners. In Original Suit No. 180 of 2009, Smt. Gayatri Devi Gangwar, respondent No. 2 was subsequently impleaded. On her impleadment, she filed her written statement, though with some delay. It has been taken on record by the trial court vide order dated 23.1.2012. The said order was challenged by the petitioners who are plaintiff in the suit, in revision but the revision failed on 28.3.2012. Thus they have come in this writ petition contending that the written statement filed after five months of the stipulated time could not have been taken on record.

2. In R.N. Jodi and Brothers and Others Vs. Subhashchandra, , a three Judges Bench of the Supreme Court in interpreting the provisions of Order VIII, Rule I, C.P.C. and the proviso thereto as substituted by Act No. 22 of 2002 w.e.f. 1.7.2002 held that the time limit of 90 days for taking on record the written statement is not mandatory but directory in nature. It does not take away the power of the Court to take on record the written statement filed even beyond period of 90 days. It only casts an obligation upon defendant to file written statement within the time stipulated but that is not an absolute rule. Thus, in short the courts are not precluded from taking on record written statement even if it has been filed beyond the period stipulated.

3. Recently, the Apex Court in C.N. Ramappa Gowda Vs. C.C. Chandregowda (Dead) by L.Rs. and Another, held that non-filing of written statement within time provided should not have penal consequences and the court should proceed cautiously and exercise its discretion in a just and fair manner. The Court also observed that passing of an ex parte decree on failure of filing of written statement within time may be an exercise for expeditious disposal of the suit but ultimately such an exercise only compounds delay in final disposal of the litigation. It, therefore, advised that the better course, in such circumstances is to impose costs for the delay and failure in filing the written statement.

4. Apart from the above, it is settled position that the revisional court should always be slow in reversing the discretion exercised by the trial court in such matters and it leaves very little or no scope for interference by higher/superior court in exercise of extra-ordinary jurisdiction. In view of the aforesaid legal position, I am of the opinion that if the courts below in exercise of their above Judicial discretion have directed to take on record the written statement, though filed beyond time, no injustice has been done, rather it advances the cause of justice and, as such, requires no intervention of this Court in exercise of writ Jurisdiction.

The writ petition, as such, is dismissed.