

(2012) 05 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4649 of 2006

Paras Kumar and Others

APPELLANT

Vs

Addl. District Judge (FT) No. 2, Ajmer Camp, Beawar and Others

RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2012) 2 WLN 595

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Rajendra Prasad, for the Appellant;

Judgement

Bela M. Trivedi, J.—Heard learned counsel for the petitioners. None is present for the respondents though the matter has been called out twice. Earlier on 08.05.2012, the Court had passed the following order:

None is present for the respondents.

Learned counsel for the petitioner is prepared to argue the case, but I do not feel inclined to hear the arguments in the absence of the counsel for the respondents. It is made clear that in case, the learned counsel for the respondents does not appear on the next date of hearing, the writ petition shall be decided after hearing the learned counsel for the petitioner on merits, on the next date of hearing.

List on 14.05.2012.

In view of the said order, the matter is heard today finally in absence of learned counsel for the respondents.

2. By way of present petition, the petitioners (original defendants) have challenged the orders dt. 25.08.2003 and 05.04.2006 passed by the learned Addl. District Judge (Fast Track) No. 2, Ajmer, Camp Beawar (hereinafter referred

to as "the trial Court")

3. The short facts giving rise to the present petition are that initially the respondent No. 2 (original plaintiff) had filed the suit against Shri Tulsi Ram, father of the petitioner No. 1 and respondents No. 3 to 6 and against the petitioner No. 1 (original defendant) for the recovery of Rs. 97,400/-with interest before the trial Court. During the pendency of the suit, the said Tulsi Ram expired and therefore the petitioner No. 2 and respondents No. 3 to 6 were substituted as the legal representatives of said Tulsi Ram. In the said suit, the trial Court issued summons vide order dt. 02.12.2002 requiring the appearance of the defendants on 25.08.2003. The petitioners appearing through their counsel on 25.08.2003 submitted their written statement, however, the Court did not allow the written statement to be taken on record and the written statement was kept out of record. The petitioners thereafter moved an application under Order VII Rule 11 of CPC praying for the rejection of the plaint stating inter alia that the petitioner No. 2 (defendant -1) was mentally disturbed since 1996 itself and was lunatic and therefore was not competent to enter into any agreement as alleged by the plaintiff and therefor the suit was barred under the provisions of Indian Contract Act. The said application was rejected by the trial Court vide order dt. 05.04.2006. Being aggrieved of the said two orders i.e. the order dt. 25.08.2003 and 05.04.2006, the petitioners have invoked extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

4. It has been submitted by learned counsel Mr. Rajendra Prasad for the petitioners that vide impugned order dt. 05.04.2006, the trial Court has observed that it would be the matter of evidence that the defendant No. 1 was lunatic or not. In the same order, it has also been observed that since the written statement of the defendants has been taken out of record, there was no need to frame any issue as to whether the defendant No. 1 was lunatic or not. According to Mr. Prasad, gross injustice would be caused to the petitioners if the written statement of the petitioners is not permitted to be taken on record. He also submitted that the impugned order being illegal deserves to be set aside.

5. At the outset, it is required to be stated that there is a gross delay on the part of the petitioners in challenging the order dt. 25.08.2003 whereby the written statement of the petitioners was taken out of record. However if the order-sheets produced by the petitioners on record are closely read, it appears that the trial Court had issued summons on 02.12.2002 for appearance of the defendants on 25.08.2003. Thereafter, on the said date i.e. 25.08.2003 the learned counsel for the petitioners-defendants had tried to submit the written statement, however, the same having been objected to by the learned counsel for the plaintiff, the trial Court kept the said written statement out of the record, on the ground that the said written statement was not filed within 90 days as contemplated under Order VIII Rule 1 of CPC. In this regard, a very pertinent observations made by the Apex Court in the case of Kailash vs. Nanhku and Others, AIR 2005 SC 2441 are required to be reproduced as under:

The provisions of O.8, R.1 fixing time schedule for filing of written statement are directory and not mandatory. The purpose of providing the time schedule for filing of the written statement under O.VIII, R.1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendants. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to R.1 of O.VIII of the CPC is couched in negative form, it does not specify any penal consequence 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 O.VIII R.1 of the CPC is not completely taken away.

6. In view of the above ratio of judgment laid down by the Apex Court and in view of the fact that the learned counsel for the defendants had already produced written statement on behalf of defendants on the first day of the appearance, the impugned order dt. 25.08.2003 passed by the trial Court appears to be very harsh, more particularly when such an order would deprive the petitioners-defendants from contesting the suit on merits.

7. In that view of the matter, the provisions contained in Order VIII Rule 1 having been held to be directory in nature, the order dt. 25.08.2003 deserves to be set aside with cost which is quantified as Rs. 5,000/-.

8. So far as the impugned order dt. 05.04.2006 is concerned, the Court has rejected the application of the petitioners filed under order VII Rule 11 of CPC. The learned counsel Mr. Prasad has failed to point out as to how such a suit is barred by any law. Under the circumstances, in the opinion of the Court, the trial Court has rightly rejected the said application, and the said order does not call for any interference of this Court.

9. In the aforesaid premises, the impugned order dt. 25.08.2003 is set aside and the written statement filed by the petitioners defendants is permitted to be taken on record on the payment of cost of Rs. 5,000/- which the petitioners shall pay within two weeks from today, and the impugned order dt. 05.04.2006 is confirmed. Petition stands partly allowed.