

(2003) 09 JH CK 0046
In the Jharkhand High Court
Case No : C.R. No. 466 of 2003

Pitambar Singh Manki @ Pitambar Singh and Another	APPELLANT
Vs	
Makar Singh and Others	RESPONDENT

Date of Decision : 18-09-2003

Acts Referred:

Civil Procedure Code Amendment Act, 2002 — Section 16(1)
Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1

Citation : (2004) 1 JCR 601

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : V. Shivnath and H.K. Mahto, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—Heard. In Title Partition Suit No. 38 of 2001, the summons were served on the defendants 1 and 2 and thereafter both of them appeared together in the suit on 30.8.2002 and filed a petition for granting time to file written statement, which was allowed and they were permitted to file written statement by 9.9.2002. As no written statement was filed, on 13.12.2002 the plaintiffs filed a petition for proceeding the suit under Order VIII, Rule 1 of the Code of Civil Procedure, which was directed to be put up for hearing on 10.1.2003 and the defendants 1 and 2 were given one more indulgence to file written statement in the meantime. Again on 10.1.2003 the defendants 1 and 2 filed petition for granting further time to file written statement, which was kept on record, however, on 23.1.2003 the defendants 1 and 2 were debarred to file written statement under proviso to Order VIII, Rule 1 of the Code. The defendants I and 2 failed to file written statement maximum within 90 days from the date of the service of summons of the suit on them. Admitted position is that the defendants. 1 and 2 appeared in the suit on 30.8.2002 and in spite of indulgences granted by the Court failed to file written statement till 23.1.2003.

2. Mr. V. Shivnath, counsel for the defendants 1 and 2 petitioners herein submitted that in view of Patna amendment to the provisions of Order VIII, Rule 1, even after amendment by virtue of the CPC (Amendment) Act, 2002, which has come into force with effect from 1.7.2002, the trial Court could have granted further time for filing written statement after expiry of 90 days from the date of service of summons on the defendants concerned and they were entitled to other benefits also.

Order VIII, Rule 1 provided as under:

"The defendant shall, on or before the first hearing or within such time as the Court may permit, present a written statement of his defence."

The followings were substituted by Bihar Amendment in Order VIII, Rule 1 :

(1) The defendant may, and if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit present a written statement of his defence, and with such written statement, or if there is no written statement, at the first hearing shall produce in Court all documents in his possession or power on which he bases his defence or any claim for set-off.

(2) Were he relies on any other documents as evidence in support of his defence or claim for set-off, he shall enter such documents in a list to be added or annexed to the written statement, or where there is no written statement, to be presented at the first hearing. If no such list is annexed or presented, the defendant shall be allowed a further period of ten days to file this list of documents.

(3) A document which ought to be entered in the list referred to in Sub-clause (2) but which has not been so entered, shall not, without the leave of the Court, be received in evidence on the defendant's behalf at the hearing of the suit,

(4) Nothing in this rule shall apply to documents produced for cross-examination of plaintiffs witnesses or handed to a witness merely to refresh his memory.

Now by virtue of the CPC (Amendment) Act, 2002 with effect from 1.7.2002 the following have been substituted for Rule 1 of Order VIII "The defendants shall, within 30 days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file written statement within the said period of 30 days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than 90 days from the date of service of summons."

3. Mr. V. Shivnath, counsel for the petitioner submitted that Section 16(1) of the Amendment Act, 2002 provided that any amendment made, or any provision inserted in the Principal Act by a State Legislature or High Court before the commencement of this Act shall, except In so far as such amendment or provisions are consistent with the Principal Act was amended by this Act, stand

repealed and as such the Bihar amendment aforesaid shall not be deemed to have been repealed and the trial Court could have granted relief to the defendants accordingly.

4. In my view, Section 16(1) of the Amendment Act, 2002 clearly provided that except in so far as such amendments or provisions are consistent with the Principal Act as amended by this Act, all other amendments or provisions inserted by the Principal Act by a State Legislature or High Court the commencement of this Act stood repealed and, therefore, the aforesaid Bihar Amendment to Rule 1 of Order VIII made before the commencement of this Act, being not consistent within the Principal Act as amended by this Act, stood repealed.

5. As such there is no substance in the aforesaid submission. I find no reason to interfere with the impugned order dated 23.1.2003. Hence, no show cause notice in limitation matter on I.A. No. 1184 of 2003 at flag "A" filed u/s 5 of the Limitation Act, 1963 to condone the delay caused for filing the present revision application is needed to be issued to opposite parties. This Revision application is dismissed.