
(1976) 08 MP CK 0010

In the Madhya Pradesh High Court

Case No : Civil Revision No. 363 of 1973

Rajrani Saxena and others

APPELLANT

Vs

Yadram Chaurasia and others

RESPONDENT

Date of Decision : 27-08-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5

Citation : (1977) MPLJ 69

Hon'ble Judges : U.N. Bhachawat, J

Bench : Single Bench

Advocate : R.D. Jain, for the Appellant;

Final Decision : Allowed

Judgement

U.N. Bhachawat, J.

This is a revision by the legal representatives of defendant No. 2 against the order of the Fourth Civil Judge, Class II, Gwalior in Civil Suit No. 532-A/72, dated 6-4-1973 whereby he has rejected the I.A. No. 8 filed by defendant No. 2 for permission to file a written statement.

The revision has arisen in the following manner. The plaintiffs-non-applicants Nos. 1 to 4 herein have filed a suit against the non-applicant No. 5 herein (defendant No. 1 in the suit) and against one Kripa Shanker who was defendant No. 2-now dead. The present applicants are his legal representatives. The defendant No. 2 had entered appearance even when the summons of the suit was not served on him through Shri R.D. Jain, Advocate on 2-3-1973 on his behalf stated that day that defendant No. 2 did not want to file written statement, whereupon the trial Court closed the right of defendant No. 2 to file written statement. The relevant part of the order-sheet dated 2-3-1973 is as under:--

On this date, the trial Court also framed a preliminary issue. Thereafter, on 6-4-1973, an application on behalf of defendant No. 2, I.A. No. 8 along with the

written statement was filed for permission to file the written statement on the ground that he did not possess copy of the plaint and he was told by defendant No. 1 that no relief was claimed against him; therefore, he had declined to file the written statement, but later on he knew that there was a relief claimed against him also. The trial Court rejected the application vide the impugned order which is contained in paragraph 4 of the order.

The trial Court has rested its conclusions on two grounds, namely; first, that the contention of defendant No. 2 that for want of a copy of the plaint, he did not know that there was a relief claimed against him also is not genuine inasmuch as there was a common counsel for defendants No. 1 and No. 2 and through that counsel, the defendant No. 2 must have known the contents of the plaint and second, the failure of defendant No. 2 to file written statement was an admission of the claim of the plaintiff and as such permitting defendant No. 2 now to file written statement would be depriving the plaintiffs of a right that accrued to them on account of this admission of defendant No. 2.

At this stage, it would be pertinent to state that except the framing of the preliminary issue relating to the valuation of the suit for the purpose of Court fee, the case has not proceeded further. The decision of this revision involves two questions:--

(i) Whether the effect of the declaration by defendant No. 2 that he did not want to file written statement is that he had admitted the claim of the plaintiffs and the consequence of permitting him to file the written statement would be to allow him to withdraw that admission, the permission is rightly rejected and

(ii) Whether the aforesaid ground for permission is genuine.

I would take up the discussion of the points ad seriatim.

Order 8 of the CPC deals with written statement and set off. There is no provision contained in Order 8 which provides that if defendant on service of notice of suit chooses not to file a written statement, it would be deemed that he admitted the claim of the plaintiff. Order 8, Rule 5 which is the nearest provision on this question reads thus:--

R. 5. Specific denial.--Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

This indicates that the Rule is not intended to apply to a case where the defendant has not put in a written statement. Therefore, as a general rule where the defendant does not file a written statement Court cannot treat it as an admission by the defendant of the claim of the plaintiff. The same is the view

taken by this Court in *Tahsil Co-operative Agricultural Association, Ltd, Balod v. Union of India* 1968 M P L J 325, the relevant observations whereof are:

Provisions of Order 8, Rule 5, Civil Procedure Code, apply where a defendant resists the suit and files a written statement. Where the written statement is not put in, this rule is not attracted.

The other nearest provision dealing with the effect of the failure to file a written statement is Order 8, Rule 10. In the instant case, neither this provision has been brought into play, nor it could be brought into play as the essential facts for attraction of this provision were not present. Order 8, Rule 10, CPC is set out below:--

R. 10. Procedure when party fails to present written statement called for by Court.-- Where any party from whom a written statement is so required fails to present the same within time fixed by the Court, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit." (Italics is by me.)

The expression "from whom a written statement is so required" indicates unequivocally that to arm the Court with the power to visit the defaulting defendant with the consequences provided in the later part of this provision there should be a specific requirement by the Court to the filing of a written statement. A general direction in the summons regarding the filing of written statement does not fall within the purview of Order 8, Rule 10, Civil Procedure Code.

In the instant case even a general direction to file the written statement was not there to defendant No. 2 much less a specific direction as the summons was not served on him. He had entered appearance on coming to know of the institution of the suit. In this setting of the facts, it passes my comprehension that this Rule can be applied to the instant case.

It would be pertinent to observe here that assuming that the declaration by the defendant No. 2 on 2-3-1973 that he did not want to file a written statement tantamounts to his failure to file a written statement and further assuming that that failure falls within the purview of this provision (Order 8, Rule 10), still the trial Court did not choose to pass a judgment against defendant No. 2, treating the alleged failure as an admission of the claim of the plaintiffs. It only chose to close the right of defendant No. 2 to file the written statement. This closure of the right to file the written statement would not mean that the trial Court has treated it as an admission by defendant No. 2 of the facts stated in the plaint. By virtue of this order, defendant No. 2 was deprived of his right of appearance and participation in further proceedings in the suit. He could not be placed in a position worse than a defendant against whom for not filing a written statement, there would be a direction to proceed ex parte. Even in such a situation, the defaulting defendant can join the proceedings at the stage he appears, See *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, . In the instant case, the case has not proceeded beyond the stage of framing the preliminary

issue and thus defendant No. 2 could cross-examine plaintiffs' witnesses and lead evidence in rebuttal. The only limitation would be that he would not be entitled to lead evidence or cross-examine on facts which may amount to special pleas which he could have raised had he filed a written statement as that would prejudice the plaintiffs as they have no notice of these facts.

The upshot of the foregoing discussion is that in the instant case it was erroneous to hold that by not filing the written statement, the defendant No. 2 had admitted the facts stated in the plaint.

Point No. (ii):--

It would be of significant relevance here to quote Order 8, Rule 1, Civil Procedure Code:

R. 1 Written Statement.--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.

According to this, there is a discretion given to the defendant to file a written statement and it can be exercised at any time before the first hearing or on some date fixed by the Court. The language of this provision is clear and unambiguous to which no other meaning than what I have stated herein above can be assigned. Now, the first hearing of a suit means the date on which the Court goes into the pleadings in order to understand the contentions of the parties, i.e. the date for framing issues. It is true that in the instant case on 2-3-1973, i.e. before the defendant No. 2 filed I.A. No. 8 which is presently under consideration, a preliminary issue was framed and thus this application was made after the date of first hearing and, therefore, the defendant could not as of a right without the permission of the Court file a written statement. Consequently, the question arises whether the discretion exercised by the trial Court in refusing permission to defendant No. 2 to file a written statement is judicious or arbitrary calling for interference by this Court in revision. To reiterate, this is an admitted position that except framing of the preliminary issue, the case has not proceeded any further. The defendant No. 1 has filed a written statement controverting the allegations of the plaintiffs, the question of valuation of the suit for purposes of court-fee is the subject-matter of issue No. 1 which being decided either way except in the event the plaint is rejected for want of payment of deficit court-fee the Court has to proceed with the trial in view of the fact that the plaint allegations have been controverted by defendant No. 1. Thus, in any case, the plaintiffs have to lead evidence to prove their case. In this backdrop, it can well be said that no prejudice as such is going to be caused to the plaintiffs by permitting defendant No. 2 to file a written statement except that they would be required to lead the evidence bearing in mind the pleas of defendant No. 2 also. This is not such a prejudice which would result in manifest injustice to the plaintiffs. At best, it is an additional burden to the plaintiffs which can well be compensated by costs. Cost is such a penacea which heals up every

sore in litigation. It is trite law that laws of procedure are designed to further the ends of justice and the Courts should act and interpret them with that end in view. Justice should not be lost in technicalities. No one should be condemned unheard. He should be given full scope to plead and put his case. of course, where there are clearly defined exceptions, effect has to be given thereto. But, by and large the Court must act bearing in mind that laws of procedure are the handmaid of justice.

This apart, the cause assigned explaining the declaration by defendant No. 2 on 2-3-1973 for not filing any written statement cannot be thrown off as preposterous. The reasonings given by the trial Court for holding it to be ingenuine are based on surmises and conjectures. It is not justifiable to impute the knowledge of counsel to his client. This is undisputed fact that the defendant was not supplied a copy of the plaint before this declaration and the possibility of his having made that declaration on a wrong information cannot be eradicated merely because his counsel was also a counsel for defendant No. 1 who was possessed of a copy of the plaint. There is no material on record to indicate that it was only after due deliberation with his counsel that defendant No. 2 had, under his advice, declared that he did not want to file written statement.

In the light of the foregoing discussion, I am of the view that in the circumstances of this case, the Court acted with material irregularity in rejecting defendant No. 2's application I.A. No. 8.

In the result, the revision petition is allowed. The impugned order on I.A. No. 8 of defendant No. 2 is set aside. That application is allowed subject to payment of costs of Rs. 30 to the plaintiffs. Legal representatives of defendant No. 2 are permitted to file their written statement. The parties are directed to appear before the trial Court on the 7th September, 1976. In view of the fact that the suit is of the year 1972, the trial Court is directed to expeditiously dispose of the case. I make no order as to costs in the circumstances of the case.