

(1986) 03 CAL CK 0016
In the Calcutta High Court
Case No : Civil Rule No. 161 of 1983

Ramesh Chandra Bhattacharyya	Vs	APPELLANT
Corporation of Calcutta and Others		RESPONDENT

Date of Decision : 21-03-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 10

Citation : AIR 1987 Cal 111 : 90 CWN 904

Hon'ble Judges : Monoranjan Mallick, J

Bench : Single Bench

Advocate : Dipak Kumar Sengupta, Snehanu S. Roy and Ratna Bhattacharya, for the Appellant; Arun Prokash Sinha and Alok Kumar Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Monoranjan Mallick, J.—A very short but important question of law has arisen in this Civil Revision, namely, whether the Trial Court has the power to entertain the written statement filed by the defendant, after the Trial Court completed the ex parte hearing of the suit and adjourned the matter for delivery of judgment. The facts which are necessary for deciding this question are stated as follows : --

2. The petitioner as plaintiff instituted a suit being Title Suit No. 1958 of 1980 before the learned Judge IXth Bench in the City Civil Court, Calcutta. The said suit was against the Corporation of Calcutta and others, inter alia, for a declaration that the defendant is entitled to the renewal of building plan from Calcutta Corporation and for permanent injunction restraining the defendants, their agents and servants from interfering with the right of the petitioner to undertake the construction in accordance with renewed sanctioned plan in respect of the premises in suit and for a mandatory injunction to renew the said plan and for other reliefs. Even though the opposite parties were given several opportunities to file the written statement, even after the suit was fixed for ex parte hearing for the first time on December 11, 1980, the defendants did not file the written statement. The time was allowed from time to time till 29th

January, 1982 for filing the written statement as a last chance. On 29th January, 1982 the opposite parties filed another application for time to file the written statement. The learned Judge rejected the said application and fixed 11th March, 1982 for ex parte hearing. Then on 28th April, 1982 the plaintiffs witness 1 was examined in part. On 29th April, 1982 the petitioner filed an application for recalling witness 1 for further examination and the learned Trial Judge fixed 11th June, 1982 for further examination of the plaintiff witness 1. On 11th June, 1982 the defendants filed a petition for time to file a written statement. The learned Trial Judge fixed 12th July, 1982 for hearing that petition after service of the copy of the said application to the petitioner. On July 12, 1982 the learned Trial Judge allowed the defendant to file written statement till 16-7-82. When on 16-7-82 the defendants did not file the written statement and again filed the application for time. His application was rejected and the petitioner's witness 1 was examined further. Thereafter ex parte hearing of the suit was closed on that date and the judgment was reserved on 26th July, 1982 and the learned Trial Judge again fixed July 30, 1982 for delivery of judgment. On July 29, 1982 the opposite parties filed a written statement and the learned Trial Judge fixed on July 30, 1982 for orders. On that day the defendant filed a petition praying for condonation of delay to file written statement and the trial Judge fixed August 29, 1982 for orders in presence of the lawyers of both sides regarding the acceptance of the written statement. The matter was again adjourned till December 10, 1982 and on that date the aforesaid application for acceptance of the written statement was taken up for hearing and the Trial Judge directed that the written statement filed by the defendant will be accepted after service of the copy of the written statement and for that purpose the learned Trial Judge fixed 11-1-83 to serve the copy of the written statement. The petitioner filed an application on December 10, 1982 praying for consideration of the documents filed by him. The learned Trial Judge did not pass any order on the said application. Thereafter on 11-1-1983 the petitioner filed an application for stay of operation of the order No. 27 dated 10-12-82 but the said application was not also disposed of. The petitioner have moved this Court by filing this application u/s 115, Civil P.C., on 28th January, 1983 and obtained this rule. Mr. D. K. Sengupta, the learned Advocate for the petitioner has submitted only one point It is submitted by him that when the learned Judge, City Civil Court, Calcutta, fixed the date for judgment after closing the ex parte hearing of the suit on 16-7-1982 and reserved the delivery of judgment till 26-7-1982 and then till 30-7-83, he did not have any jurisdiction to entertain the written statement and in view of Order XX, Rule I. Civil P.C, his only duty was to deliver the judgment. Therefore, the order dated 10-12-1982 that the written statement filed by the opposite party on 29-7-1982 will be accepted after service of the copy of the written statement on the petitioner plaintiff is clearly illegal and invalid and is liable to be set aside u/s 115, Civil P.C. In support Mr. Sengupta has referred to the Supreme Court decision reported in Arjun Singh Vs. Mohindra Kumar and Others, . Arun Prokash Sarkar appearing for the opposite parties has submitted that the decision of the Supreme Court has interpreted the true implications of

the provisions of Rules 6 and 7 of Order 9 C.P.C. that the Court had discretion to accept the written statement filed by the defendant even if the defendant failed to file the written statement within the time specified by the Court, that Rule 10 of Order 8, Civil P.C. indicates that when the defendant does not file the written statement within the time specified by the Court, the Court has the power either to pronounce the judgment or to make such order in relation to the suit as it thinks fit and when in this particular case though the trial Court after closing the ex parte evidence of the plaintiff-petitioner fixed the date of delivery of judgment, he exercised his discretion to accept the written statement filed by the opposite parties by order dated 10-12-1982, that the impugned order cannot, in these circumstances, be treated as illegal and that when the trial court exercised its discretion to accept the written statement so that there shall be a contested hearing of the suit it is not fit and proper for the High Court to interfere with that discretion by invoking Section 115, Civil P.C.

3. Mr. Sengupta has drawn my attention to a portion of a judgment of the Supreme Court reported in Arjun Singh Vs. Mohindra Kumar and Others, , which reads as follows :

"If the entirety of the hearing of the suit has been completed and the court being competent to pronounce the judgment then and there, adjourns the suit merely for the purpose of pronouncing judgment under Order XX, Rule 1, there is clearly no adjournment of the hearing of the suit for there is nothing more to be heard in the suit. It was precisely this idea that was expressed by the learned Civil Judge when he stated that having regard to the stage which the suit had reached the only proceeding in which the appellant could participate was to hear the judgment pronounced and that on the terms of rules 6 and 7, he would permit him to do that. If, therefore the hearing was completed and the suit was not adjourned for hearing Order IX Rule 7 could have no application and the matter would stand at the stage of Order IX Rule 6 to be followed up by the passing of an ex parte decree making Rule 13, the only provision in Order IX applicable. If this were the correct position, it would automatically follow that the learned Civil Judge would have no jurisdiction to entertain the application dated May 31, 1958 purporting to be under Order IX Rule 7 or pass any order thereon on the merits."

He has submitted that in view of the clear pronouncement of the Supreme Court, after ex parte hearing was concluded on 16-7-1982 the trial court had no jurisdiction to entertain any written statement filed by the opposite party defendants and the only duty which the trial court had after the ex parte hearing was concluded was to deliver the judgment under Order 20 Rule 1, Civil P.C. and consequently the entertainment of the written statement at that stage and its acceptance by the order dated 10-12-1982 is wholly illegal.

4. But a clear perusal of the Supreme Court decision reported in the above indicates that the said decision interprets an order of the Trial Court passed on the application filed by the defendant two days after hearing of the suit was completed and the judgment was reserved. That application was filed by the

defendant purported to be under Order 9 Rule 7, Civil P.C., for permission to contest the suit on merits alleging that on the last date of hearing, when the hearing was closed, he had good cause for non-appearance. The trial court on evidence held that the defendant did not have any good cause and therefore did not allow to put the clock back and only permitted the defendant to participate in the judgment. Thereafter, the trial court delivered the judgment ex parte and the defendant filed an application under Order 9 Rule 13, Civil P.C. for setting aside the ex parte decree passed by the court. The question arose in the Trial Court as to whether the finding of the Trial Court rejecting the application to contest the hearing of the suit by putting the clock back and only permitting the defendant to participate in the judgment with the finding that the defendant had no good cause for non-appearance on the previous date for hearing operates as res judicata or not. The Supreme Court have held that adjudication which court makes under Order 9 and Rule 7 being a summary one does not operate as res judicata so as to affect the hearing on the merits of the application under Order 8, Rule 13, Civil P.C. It has further been observed that when the stage of Rule 7 Order 9 was already over the impugned order cannot be treated as a valid order under Order 9 Rule 7, Civil P.C. In that context the Supreme Court held that if the hearing of the suit had been concluded and the Court adjourned the matter only for the purpose of pronouncing the judgment under Order 20 Rule 1, there was clearly no adjournment of the hearing and there was nothing to be heard in the suit. The Supreme Court have also observed that the impugned order cannot be treated as one u/s 151, Civil P.C. because when the specific remedy was available under Rule 7 of Order 9, Civil P.C. the Court had no inherent power to entertain the application of the defendant after the stage of Rule 7 was over to pass an order on the application of the defendant praying for permitting him to contest the said suit by putting the clock back u/s 151 of the Code. In view of the above findings the Supreme Court have declared that the impugned order would not operate as res judicata and the application under p. 9, Rule 13, Civil P.C., filed by the defendant has to be decided on merits.

5. In this particular case the facts are entirely different. It is true that as defendants did not file any written statement even if they were given enough opportunities the learned Judge fixed the suit for ex parte hearing and recorded the evidence of witness 1 of the plaintiff and closed the plaintiffs evidence on 16-7-1982 and fixed 26-7-82 for judgment. As he could not deliver the judgment on 26-7-82, he again fixed the suit for delivery of judgment on 30-7-82. On 29th July 1982 the defendant filed the written statement and the learned Trial Court placed the question of acceptance of the written statement on 30-7-82. The defendants filed a petition for accepting the written statement after condoning the delay on 30-7-82. He fixed 20th August, 1982 for orders in presence of the lawyers of both sides. Then again he adjourned the matter till December 10, 1982. Since 30-7-82 no fresh date of delivery for judgment was fixed. The petitioner plaintiff also filed a petition on 10-12-82 praying for accepting some documents. That petition of the petitioner indicates that he wanted to prove

certain documents in support of his case. That necessarily required further hearing.

Even if the written statement were not accepted ex parte hearing of the suit could not be held to have been finally concluded. So when Trial Judge accepted the written statement, hearing of the suit could not be treated to have been finally concluded as the petitioner wanted to lead further evidence even after filing of the written statement. The learned Trial Court did not pass any order on that petition because he decided to accept the written statement. When the learned Trial Judge decided on 29-7-82 to consider the acceptance of written statement and fixed 30-7-82 for orders, the petitioner did not move the trial Court to pronounce the ex parte judgment ignoring the written statement. He did not move this Court against the impugned order dated 29-7-82 or 30-7-82. He appears to have been participating in the hearing of the application filed by the defendants praying for condoning the delay in filing the written statement filed on 29-7-82. Under such circumstances it cannot be held that the impugned order dated 10-12-1982 is illegal and without jurisdiction.

6. Moreover, under Rule 10 of Order 8 a Trial Court has the jurisdiction either to pronounce the judgment against the defendant, when he failed to file the written statement within the time fixed by the court or to pass such order as it thinks fit and proper. The Delhi High Court in *Sada Ram Vs. Delhi Development Authority*, takes the view that even after rejecting the defendant's application praying for time to file the written statement, the court has the power at any subsequent stage to grant the defendant time to file written statement and even if the ex parte hearing was started by the court, such an opportunity could be given. The Division Bench of Madhya Pradesh High Court in *Mathew Elenjical and Another Vs. The Nagpur Roman Catholic Diocesan Corpn. (P) Ltd.*, has also interpreted Rule 10 of Order 8 to the effect that it has conferred jurisdiction on the court to grant further time to file written statement and the court cannot take the view that it has no power to give the defendant any further opportunity to file written statement when the defendant fails to file written statement within the time fixed by the Court.

7. On perusing the Rule 10 of Order 8 carefully, I have no doubt in my mind that Rule 10 gives discretion to the Trial Court to permit the defendant to file written statement at any stage prior to the pronouncing of judgment. Under Rule 10 the court can either pronounce judgment against the defendant for his failure to file written statement or pass any order as it thinks fit. When such a discretion is given the court can very well exercise its discretion even at the stage when the ex parte hearing was concluded and the court had fixed a date for delivery of judgment. I am unable to accept the contention of the learned Advocate of the petitioner, that the impugned order dated 10th December, 1982 is illegal and invalid. In my view the Trial Court had the jurisdiction under Order 8, Rule 10, Civil P.C. to accept the written statement even at that stage. When the learned Trial Court exercised its jurisdiction and decided to accept the written statement

so that there could be contested hearing of the suit, I am not inclined to interfere with that order u/s 115, Civil P.C. In the result, the application u/s 115, Civil P.C. is dismissed and the Rule is discharged. There will be no order as to costs.

8. Let the records of the trial court be sent down as expeditiously as possible.