

(2024) 01 OHC CK 0019

In the Orissa High Court

Case No : CMP No. 606 Of 2023

Sahadev Swain Vs Kapila Khuntia And Others ?

Date of Decision : 04-01-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 8 Rule 1, Order 8 Rule 9

Citation : (2024) 01 OHC CK 0019

Hon'ble Judges : K.R. Mohapatra, J

Bench : Single Bench

Advocate : S.S.K. Nayak, Bibhuti Ranjan Mohanty

Final Decision : Disposed Of

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 17th April, 2023 (Annexure-3/1) passed by learned Civil Judge, Bhubaneswar in C.S. No.1219 of 2022 is under challenge in this CMP, whereby the written statement filed by the Defendants-Opposite Parties has been accepted subject to payment of cost of Rs.500/-.
3. Mr. Nayak, learned counsel for the Petitioner submits that the suit has been filed by the Plaintiff-Petitioner for permanent prohibitory and mandatory injunction. The Defendants appeared on 21st June, 2022. As they did not file their written statement in spite of several adjournments, they were debarred from filing written statement vide order dated 26th October, 2022. On 3rd December, 2022, the Defendants filed written statement along with a petition to accept the same. Learned trial Court discussing the rival contentions of the parties and that no ground is made out to accept the written statement, rejected the petition on 17th March, 2023 (Annexure-3). Subsequently, the Defendants filed another application on 5th April, 2023 under Order VIII Rule 9 CPC with the self-same prayer. Learned trial Court holding that the petition was filed on different technical ground than the previous one, allowed the same subject to payment of cost of Rs.500/- and directed the Defendants to file their written

statement by 2nd May, 2023 and to pay the cost.

4. It is his submission that once the Defendants were debarred from filing the written statement and their subsequent petition for acceptance of written statement was rejected, a petition under Order VIII Rule 9 CPC would not be maintainable, as the principles of res-judicata is applicable to different stages of the same proceeding. It is further submitted that when two consecutive orders not to accept the pleadings of the Defendants are staring at them, a subsequent order accepting the written statement is nothing but abuse of process of Court and is liable to be set aside.

5. Mr. Mohanty, learned counsel for the Opposite Parties vehemently objects to the same. It is his submission that a substantial right will be lost, if the written statement of the Defendants is not accepted. Earlier petition under Order VIII Rule 1 CPC was rejected and thus, a subsequent petition under Order VIII Rule 9 CPC can be entertained for acceptance of the written statement. The Court has the discretion to direct the parties to file pleadings, if the same is necessary for proper adjudication of the case. It is his submission that while adjudicating the matter, learned trial Court has also relied upon the case of Bharat Karla –v- Rajkishan Chhabra, reported in 2022 (I) OLR SC 1099. While allowing the petition under Order VIII Rule 9 CPC, learned trial Court has also taken note of rejection of earlier application under Order VIII Rule 1 CPC. When for a substantial cause the written statement has been accepted, it should not be lightly interfered with.

6. Mr. Mohanty, learned counsel for the Opposite Party relied upon the case of Sanjay Kumar Dey –v- Basanti Dey @ Jena and others, reported in 2022 (II) CLR 1068, wherein this Court has held as under:

“6. This Court in Smt. Sarbati Devi Goinka (supra) relying upon the decision of the Hon’ble Supreme Court in the case of M/s R. N. Jadi and Brothers and others (supra) held as under:

4. As per the provision of Order 8, Rule 1 of the Civil Procedure Code the Defendant shall file the written statement within 30 days from the date of service of summons to him and the said period can be extended by the court for the reasons to be recorded in writing but such time can be extended for a period of 90 days from the date of service of summons. This Amendment came into force with effect from 1.7.2002. The stipulation of 90 days for filing the written statement from the date of service of summons is not an iron tight jacket and the jurisdiction of the court either to accept the written statement is not discretionary. The said provision does not take away the power of the Court to accept the written statement though filed beyond the time as provided. The provision contained in Order 8, Rule 1 of the Code is procedural. It is not a, part of the substantive law and the intention of the provision to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the Plaintiffs and the Petitioners approaching the court

for quick relief and also to the serious inconvenience of the Court faced with frequent prayers for adjournments.....

All the rules of procedure are the hand maid of justice. The language employed by the draftsman of processual law may be liberal or stringent but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. Reference in this regard may be made to the decision reported in 2007 (II) OLR (SC) 498 (M/s. R.N.Jadi and Brothers and others v. Subhashchandra)."

Of course, the ratio decided in Arjun Singh (supra) has not been taken into consideration either by the Hon'ble Supreme Court in M/s. R. N. Jadi and Brothers (supra) or in Smt. Sarbati Devi Goinka (supra). But, it cannot be brushed aside that setting aside ex-parte order and/or acceptance of written statement is procedural law. And the Court, while dealing with such petition(s), is expected to exercise its discretion judicially keeping in mind the facts and circumstances of each case. In Arjun Singh (supra) also Hon'ble Supreme Court did not put an absolute legal bar in setting aside ex-parte order after commencement of hearing of the suit."

He, therefore, submits that even after commencement of trial, a written statement can be accepted. He, therefore, prays for dismissal of the CMP.

7. Considering the rival contentions of the parties and on perusal of the record including the case law relied upon by learned counsel for the Opposite Parties, this Court find that due to non-filing of the written statement in spite of direction of the Court, the Defendants were debarred from filing the written statement vide order dated 26th October, 2022. Subsequent application filed by the Defendants for acceptance of the written statement was also dismissed vide order dated 17th March, 2023 under Annexure-3. Those two orders were never recalled and are still in force. By that time, P.W.1 was examined and was also cross-examined at length by the Defendants. Without challenging the same, the subsequent application under Order VIII Rule 9 CPC was filed for acceptance of the written statement. Learned trial Court although took note of the same, but failed to appreciate that principles of res-judicata is also applicable to different stages of the same proceeding. When the Defendants were precluded from filing their written statement, a petition to accept subsequent pleading cannot be entertained. In other words, such an application is misconceived. There is no material on record to show that there was any legal impediment on the part of the Defendants to challenge the aforesaid two orders in not accepting their written statement. Thus, entertaining an application under Order VIII Rule 9 CPC is an abuse of process of Court.

8. In view of the above, the impugned order under Annexure-3/1 is not sustainable and is accordingly set aside.

9. The CMP is accordingly disposed of.

Urgent certified copy of this order be granted on proper application.

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