
(2016) 03 GAU CK 0052
In the Gauhati High Court
Case No : CRP No. 445 of 2014

Shri Jiten Kalita

APPELLANT

Vs

Smt. Dipali Lahkar & 3 others

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1

Citation : (2016) 4 GauLJ 746 : (2016) 5 GauLR 93 : (2016) 3 GauLT 247

Hon'ble Judges : N. Chaudhury, J.

Bench : Single Bench

Advocate : Mr. S. Banik, Advocate, for the Appellant; Mr. S. Dutta, Sr. Advocate, Mr. C. Sharma, Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Chaudhury, J. (Oral) - Heard Mr. S. Banik, learned counsel for the petitioner and Mr. S. Dutta, learned senior counsel assisted by Mr. C. Sharma, learned counsel, appearing for the opposite parties.

2. In this application under Article 227 of the Constitution of India the petitioner has challenged the order dated 30.09.2014 passed by learned Munsiff No.2, Sonitpur at Tezpur, rejecting the application of the petitioner filed on 01.07.2013. By that application the petitioner had made a prayer before the learned trial Court to accept the written statement by condoning delay of 67 days.

3. The opposite parties herein as plaintiffs instituted Title Suit No.4/2013 in the Court of learned Munsiff No.2 at Tezpur praying for recovery of khas possession by evicting the present petitioner. The petitioner is a tenant under the opposite parties and claimed to run business in the suit rooms. Admittedly, within the statutory period of 90 days the defendant, who is the petitioner herein, did not file the written statement and ultimately on 01.07.2013 he appears to have submitted the written statement accompanied by an application. The application was numbered as Petition No.3527/13. In that application in paragraph 3 the

defendant has stated that he could not file the written statement in time as he had been suffering from severe backache with urinary tract infection and was under constant medical care. It is stated in the same paragraph that he was completely under medical attention from 20.04.2013 to 28.06.2013 and during this period he was not in a position to lead normal life for which the attending doctor had advised him to take complete bed rest. He also submitted a medical certificate in support of his statements.

4. The plaintiffs submitted written objection and claimed that the defendant was neither suffering from severe backache nor was he suffering from urinary tract infection but was performing his daily activities normally. The story alleged in paragraph 3 of the application was stated to be incorrect. The learned Court accordingly asked the parties to prove their respective cases by leading evidence whereupon the petitioner examined two witnesses including himself. Considering the evidence led and on perusal of the medical certificate the learned Court was of the view that the medical certificate annexed to the application was doubtful. This opinion was arrived at on the basis that the petitioner while in the witness box could not name the doctor under whom he was receiving medical treatment. The learned Court also held that the name of the doctor mentioned in the medical certificate was not legible. With these findings the learned Court was of the view that probability of the petitioner's suffering from urinary tract infection was bleak.

5. Having heard the learned counsel for the parties and on perusal of the materials placed on record it is to be seen as to whether the petitioner has succeeded to make out a prima facie case warranting exercise of supervisory jurisdiction of this Court. The petitioner has stated in paragraph 3 of the application in so many words that he was suffering from urinary tract infection and backache. Having come to the witness box he might have made a statement to that effect and the plaintiffs having cross-examined the witness must have put various questions to him. From perusal of the impugned order it does not show that the learned Court considered the oral evidence led by PW 1 in so far as his ailments are concerned. After all it is the PW 1 who was suffering from some complications and unless and until his oral evidence in regard to his ailments was duly cross-examined by the opposite party, it would be unfair to disbelieve the PW 1. Had there been effective cross-examination of PW 1 and PW 2 in so far as the ailments of PW 1 is concerned, in that event the learned Munsiff must have made observation in his order which is otherwise a reasonable order. Since there is no mention about the oral evidence of PW 1 and there are averments in paragraph 3 of the application that he was suffering from urinary tract infection, a probability of his suffering from such complications always remains. This is because the defendant on the 67th day had not only filed the application for condonation of delay but also submitted the written statement. Had he been interested in delaying the disposal of the suit he would not have filed the written statement and would have filed the application praying for time alone.

6. The basic purpose for incorporation of proviso under Order 8, Rule 1 of the amended Code of Civil Procedure is only to compel a not to willing defendant to file written statement. In pre-amended CPC the defendant had opportunity to go on taking time at his suit will to delay disposal of a suit. Such actions of defendants became so common that legislature in its wisdom deemed it fit to appropriately amend the proviso to curb such tendency of a not to willing defendant. Amendment of Order 8, Rule 1 including the proviso is aimed at curbing such menace. At the same time, while considering as to whether the aforesaid provision is directory or mandatory the Hon"ble Supreme Court held in catena of cases that in an adversarial litigation it is always advisable to give scope to both sides to place their respective cases. This is because ultimately the anxiety of the Court is to find out the truth.

7. Here in this case if the defendant has already filed the written statement though after a delay of 67 days, the basic purpose for which Order 8, Rule 1 was amended in 2002 can be said to have been achieved. Incorporation of Order 8, Rule 1 with proviso was not aimed at punishing the defendant but to compel him to file the written statement. Here in this case in view of what has been stated above, more so in view of the averments made in the application and claim made in the oral evidence about his ailment, it appears that there is probability of the defendant being sick during the aforesaid period as alleged by him in the aforesaid application.

8. Considering the entirety of the circumstances, this Court feels that the defendant is entitled to be given a scope to contest the case on the basis of the written statement filed by him. Accordingly, the revision petition stands allowed. The learned Court shall accept the written statement filed along with the application dated 01.07.2013. However, the defendant shall deposit a cost of Rs.2500/- (Rupees Two Thousand Five Hundred) with the learned trial Court and on such deposit being made the plaintiffs shall be entitled to withdraw the same.

9. The parties shall appear before the learned trial Court on 7th of April, 2016 to obtain necessary orders.