



their written statement positively by 25.5.2004 and in compliance of the said order the defendants filed their written statement on the same day i.e. 6.5.2004.

4. It appears that while the Court below was passing its order dated 6.5.2004 the plaintiff, who was appearing on that date, did not raise any objection thereto nor he challenged the said order thereafter either before any higher Court or even before that Court by way of prayer for review or recall and it was only much later on 25.5.2004 that the plaintiff filed a petition for rejection of defendants' written statement. This petition of the plaintiff has been allowed by the learned Court below and the written statement filed by the defendants has been rejected by the impugned order.

5. After hearing the learned counsel for the parties and after perusal of the materials on record including the impugned order, it is quite apparent that the trial of the suit has not started nor even the issues have been framed. It is also clear that the defendants have not violated any order of the Court below and when time for filing written statement was extended by the learned Court below on 8.4.2004, they filed their written statement on the date fixed i.e. 6.5.2004. It is also not in dispute that on 6.5.2004 the learned Court below itself further extended the time till 25.5.2004, but the defendants without taking any advantage of the said extension filed their written statement on 6.5.2004 itself.

6. From the record it further transpires that the plaintiff never raised any objection, when the time for filing written statement was being extended by the learned Court below either on 8.4.2004 or on 6.5.2004, nor he even challenged the said orders before any higher Court taking the plea of the amended provision of Order VIII of the Code of Civil Procedure. The plaintiff also did not file any petition in the Court below for review or recall of the said orders on the said ground and merely filed a petition on 25.5.2004 for rejection of the defendants' written statement which was filed within the time granted by the Court itself.

7. In the aforesaid circumstances, there was no occasion for the learned Court below to pass the impugned order and reject the defendants' written statement filed on the basis of the orders of that Court itself, which were neither set aside nor even recalled or reviewed. The learned Court below also did not realise that even the issues have not been framed in the suit and the plaintiff was not going to be put to any loss and moreover it would always be proper in the ends of Justice to decide the suit on the pleadings and evidence of both the parties for full and final adjudication of the issues involved.

8. This civil revision is accordingly allowed, the impugned order is hereby set aside and the learned Court below is directed to accept the written statement of the defendants and proceed with the suit.