
(2005) 05 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : C.R. No. 32 of 2005

State of H.P. and Others

APPELLANT

Vs

Pankaj Sharma and Others

RESPONDENT

Date of Decision : 06-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 5 Rule 1, Order 8 Rule 1

Citation : AIR 2006 HP 14 : (2006) 3 RCR(Civil) 575 : (2005) 3 ShimLC 167

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Ashutosh Burathoki, A.A.G, for the Appellant; Ashok Sood, for the Respondent

Final Decision : Allowed

Judgement

V.M. Jain, J.—This revision petition has been filed by the defendants against the order dated 25-2-2005 passed by the learned trial Court vide which the defence of defendants 5 (a), 5(b), 5 (e) and 6 was struck off for the reason that written statement, was not filed within time.

2. The facts, which are relevant for the decision of the present revision petition, are that Pankaj Sharma plaintiff had filed a suit for declaration and permanent prohibitory injunction etc. against defendant Nos. 1 to 6. The said suit was filed on 14-10-2004. Vide order dated 15-10-2004, notice in the said suit was ordered to be issued to the defendants for 4-11-2004. On 4-11-2004, the Assistant District Attorney had appeared on behalf of defendants 5 (a), 5(b) and 6 while the learned counsel had appeared on behalf of defendant 5 (c) and no one had appeared on behalf of defendant Nos. 1, 3 and 4 despite service and as such, they were proceeded against ex parte and the case was adjourned to 3-12-2004 for the service of defendant No. 2 who was unserved and the defendants, who were represented by their counsel, were directed to file their written statement on the next date. On 3-12-2004 time was prayed for filing written statement,

which was granted and the case was adjourned to 14-1-2005 for the service of defendant No. 2 and for the written statement by the defendants, who were represented by their counsel. It appears that on 14-1-2005, the trial Court was not holding the Court and the case was adjourned to 25-2-2005 by a separate order (which does not appear to be on the trial Court file). On 25-2-2005, the trial Court noticed that written statement on behalf of defendants 5 (a), 5(b) and 6, which was being adopted by defendant 5(c), had been filed in the Court. However, since the counsel for the plaintiff raised objection to the effect that written statement had been filed after the expiry of 90 days, the learned trial Court vide order dated 25-2-2005 struck off the defence of defendants 5 (a), 5(b), 5(c) and 6 on the ground that written statement had not been tiled within time and adjourned the case to 28 3-2005 for service of defendant No. 2. Aggrieved against the aforesaid order dated 25-2-2005 passed by the trial Court, the aggrieved defendants filed the present revision petition in this Court.

3. Vide order dated 30-3-2005, notice in the present revision petition was ordered to be issued to plaintiff respondent No. 1 only and further proceedings before the trial Court were ordered to remain stayed. Records were also sent for.

4. I have heard the learned counsel for the parties and have gone through the record carefully.

5. The learned counsel appearing for the defendant-petitioners submitted before me t hat. 1 he trial Court had erred in law in striking off the defence of the defendant-petitioners on the ground that written statement had not been filed within time. It was submitted that in fact the Courts were closed for winter vacations from 17- 1-2005 to 1.5-2-2005 and as such (he written statement was filed on the opening date i.e. on 16-2-2005 as would be clear from the endorsement on the written statement and as such the written statement on behalf of the defendant-petitioners had been filed in the Court within 90 days. It was submitted that considering that the written statement had been filed within 90 days {after excluding the time when the Courts remained closed during winter vacations), no case was made out for striking off the defence of the petitioners on the ground that written statement had not been filed within time.

6. On the other hand, the learned counsel appearing for plaintiff-respondent No, 1 submitted before me that no ease was made out for extending the time granted for filing written statement and in any ease, time could not be extended without there being any application on record filed by the defendants seeking extension of time up to 90 days and the time could not be granted beyond 90 days. Reliance was placed on the case of M/s. Mcdowell and Company Ltd. v. M/ s. Wine Link L-1 Licensee 2005 1 SLC 36.

7. After hearing the learned counsel for the parties and perusing the record, in my opinion, the present revision petition must be allowed, order dated 25-2-2005 passed by the trial Court must be set aside and the written statement which was filed by the petitioners before the trial Court on 16-2-2005, has to be

ordered to be taken on record. As referred to above, vide order dated 15-10-2004, notice in the suit was ordered to be issued to the defendants for 4-11-2004. As per the trial Court record, defendant Nos. 5 (b) and G were served on 29-10-2004 in suit as well as in the injunction application under Order 39, Rules 1 and 2, CPC, while defendant Nos. 5 (a) and 5 (c) had not been served with the summons either in the suit or in the injunction application. However, the learned counsel had put in appearance on behalf of defendants 5(a) to 5(c) and 6 on 4-11-2004. Thus, in respect of defendant Nos. 5 (b) and 6 the date of service shall be taken as 29-10-2004 while in respect of defendants 5 (a) and 5(c) the date of service can be presumed 4-11-2004, the date on which these defendants had put in appearance through their counsel. On 4-11-2004, it was adjourned to 3-12-2004 for written statement and since written statement was not filed on that date, the case was adjourned to 14-1-2005 for filing written statement. As referred to above, admittedly, the trial Court was not holding the Court on 14-1-2005 and vide separate order (which is not available on trial Court record), the case had been adjourned to 25-2-2005, as would be clear from the following lines in the impugned order dated 25-2-2005 in which it is stated that "on the said date, the presiding officer was on leave and vide separate order those cases are fixed for today." It is not disputed before me that the Civil Courts remained closed for winter vacations from 17-1-2005 to 15-2-2005 and that the written statement had been filed by the petitioners on 16-2-2005 i.e. on the re-opening day after winter vacations. If 29-10-2004 and 4-11-2004 are taken as the dates of service of the petitioners, in my opinion the written statement which was filed on 16-2-2005, would be clearly within 90 days of the date of service, since the period during which the Courts remained closed for winter vacations i.e. 17-1-2005 to 15-2-2005 has to be excluded.

8. Once it is found that the petitioners had filed the written statement within 90 days from the date of service, in my opinion, no case was made out for the trial Court to have struck off the defence of the petitioners vide order dated 25-2-2005 even when petitioners had already filed the written statement in the Court on the opening day i.e. 16-2-2005, as is clear from the endorsement on the written statement filed on behalf of the petitioners.

9. So far as the non-filing of the written statement on 14-1-2005 is concerned, in my opinion, the petitioners could not have filed the written statement in the Court on that day since the Presiding Officer was admittedly not holding the Court on the said date. Thus, the petitioners cannot be blamed for not having filed the written statement on 14-1-2005. However, even if the Presiding Officer was not holding the Court on 14-1-2005, the petitioners were required to file the written statement within 90 days of the date of service as required under Order 8, Rule 1 and Order 5, Rule 1, CPC. Keeping in view the aforesaid provisions, the petitioners had filed the written statement in the trial Court on the opening day of the Courts, i.e. on 16-2-2005 and in this manner, the petitioners had filed the written statement within the stipulated period of 90 days (after excluding time during which the Courts remained closed for winter vacations). In this view of

the matter, in my opinion, it was a fit case where the trial Court ought to have taken the written statement of the petitioners on record and not to have passed the impugned order striking off the defence of the petitioners on account of non-filing of the written statement within the stipulated period.

10. So far as non-filing of application by the petitioners for extension of time in filing written statement is concerned, suffice it to say that there is no such requirement that any such application must be filed by the defendant(s) even when an oral prayer is made for grant of time to file written statement and the said prayer is for grant of time within 90 days of the date of service. In my opinion, such a prayer could be made even orally and placing reliance on such a prayer, the Court would be competent to grant adjournment to defendant(s) for filing written statement. However, when the Presiding Officer is not holding the Court, no such prayer, oral or in writing, could be made. The trial Court is competent to grant time up to 90 days from the date of service for filing written statement, as provided under Order 8, Rule 1, C.P.C. and not beyond that, So far as the authority M/s. Medowell and Company Ltd., (2005 (1) Shim LC 36 (supra), relied upon by the learned counsel for the respondent is concerned, in my opinion, the same would have no application to the facts of the present case. In the reported case, extension of time was sought beyond 90 days of the date of service, for filing written statement and the said request was declined holding that there is no provision under which time could be extended beyond 90 days for filing the written statement. However, as referred to above, the facts of the present case are entirely different, inasmuch as in the present case the petitioners had filed the written statement within 90 days from the date of service, after excluding the time during which the Courts were closed for winter vacations. So far as the provisions of Chapter-1- Part-B. Vol. 1 of the Punjab High Court Rules and Orders, as applicable to the Himachal Pradesh, as referred by the trial Court, are concerned, in my opinion, the same would have no relevance for considering the question in issue in this case.

11. for the reasons recorded above, the present revision petition is allowed, order dated 25-2-2005 passed by the trial Court is set aside and it is directed that the written statement already filed by the petitioners on 16-2-2005 before the trial Court shall be treated as the written statement filed on behalf of the petitioners in accordance with law and the order of the trial Court that the defence of defendant Nos. 5(a), 5(b), 5(c) and 6 shall stand struck off shall stand set aside. However, there shall be no order as to costs.

12. Since further proceedings before the trial Court were stayed by this Court the parties through counsel are directed to appear before the trial Court on 31-5-2005 for further proceedings in accordance with law. The trial Court file along with a copy of this order shall be sent to the trial Court forthwith for further proceedings in accordance with law.