

(1983) 12 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Revision Petition No. 247 of 1982

State of Rajasthan

APPELLANT

Vs

Gopal Modi

RESPONDENT

Date of Decision : 05-12-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1983) WLN 707

Hon'ble Judges : D.L. Mehta, J

Bench : Single Bench

Judgement

D.L. Mehta, J.—Miserable conditions of the affairs of the State have been highlighted by the parties before the Court. It was pointed out by the learned Counsel for the non-petitioner that the petitioner State was directed to file the written statement in the year 1979 but it was failed to file the written statement. On 8.2.1980, it was directed by the Court that the State shall not be allowed to file the written statement. The State has also number of innings in getting the orders passed against it for its defaults. All orders were set aside on one ground or the other in the payment of costs. On 7.9.1981, an opportunity was given to the State to file the written statement 15.10.1981. However, the fate of the tax payer was bound to suffer for not fault of his and State had the pleasure in not complying with the orders of the Court. It seems that neither the Officer Incharge nor the Advocate was interested in presenting the case of the State and the fate of the State was put in the hands who were not considering that the case of the State should be pleaded well. This is nothing now. It is the every day affairs and the Court is taking a note of it that the State cause in suffering for its own fault and the tax payer is being re lalised for not fault of his Every time, the costs of adjournment has been paid to the non-petitioner and the tax payer is sufferer. If the State wants to improve the image then it should take disciplinary action against the Officer Incharge and should also take note of the fact that its counsel are not attending the work in the right earnest. In this respect, no direction can be given the fate of prior tax payer is in the hart"s of the State and

how fate is to be looked into depends on the State. Mr. B.P. Gupta, learned Counsel for the respondent has invited my attention to *Sushila Jain v. Rajasthan Financial Corporation Jaipur* 1979 MLN 620 wherein this Court held that the trial court was justified in forfeiting the defendant's right to present a written statement of her defence. He has further invited my attention to *Bindeshwari Kamkar v. Radha* AIR 1979 Pat. 79 wherein the defendant did not file the written statement within the time permitted by the Court and the Court, therefore, said that no further time would be granted and fixed the case for bearing; while doing so, the court further said that the defendant would be entitled to take part in the proceedings of the suit even in the absence of the written statement. It was held that the order did not suffer from any illegality.

2. We can find number of cases in which the question of the submission of the written statement has been considered not only by this Court but various High Courts and the Supreme Court also. It is well settled that the Court has power to forfeit the right in the matter of submission of the written statement. Mr. Purohit, learned Deputy Govt. Advocate submits that the case was fixed on October 29, 1981. On that day, on behalf of the State, it was submitted that the costs have not been paid and time was prayed for filing the written statement. On November 21, 1981, again an application was submitted that time be granted for the submission of the written statement. It took more than about three years to prepare the written statement. However, on November 29, 1981, the written statement was submitted. The written statement was submitted on November 29, 1981 because the Court had passed the order that the defendant would forfeit the right in the matter of submission of the written statement. Learned Deputy Govt. Advocate has invited my attention to *Kali Pado Sharma Vs. Surendra Nath Mahatha and Another*, wherein, it was observed as under:

In my opinion, in the context of the facts of the case, the contention raised on behalf of the opposite party is valid and must be accepted. Rule 1 of Order VIII of the Code of Civil Procedure (here-in-after referred to as "the Code") provides that the defendant can, as of right, file a written statement at or before the first hearing or within such time as the Court may permit. Then, there is Rule 9 of the Order VIII of the Code, which says:

but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of presenting the same.

The decision cited by Mr. Sinha reported in *The Bihar State Electricity Board Vs. New Gobindpur Coal Co. Pvt. Ltd. and Others*, referred to above is the one which is in the context of the scope of Rule 1 of Order 8 of the Code that is, where the defendant can as of right file his written statement at the stage set out in the said rule. It is therefore, that his Lordships observed that "under the circumstances, it is impossible to accept the contention of Mr. Jaiswal that the petitioner was entitled to have its written statement accepted by the Court as of right."

2(a) The point, which arises in the instant case is whether the acceptance of the written statement by order dated the 20th June, 1973 was one in terms of Rule 1 of Order 8 or Rule 9 of Order 8. Mr. Sinha has submitted and rightly so, that if the impugned order was in the continuation of the orders in terms of Order 8, Rule 1, the order was bad, firstly because, it was upsetting an order, which had already been perfected by lapse of time and secondly because such order could not be reviewed by the successor in-officer of the person who had passed the previous order. The decision reported in AIR 1972 Pat. 204 and Radhanath Pathak and Another Vs. Bihar State Board of Religious Trusts, referred to above, do support this contention. The question however, is as I have already indicated above, whether the impugned order is under Order 8, Rule 1 of the Code. The defendants, in this case, wanted to assert this right when they put in their written statement, even though the Court by its order dated 24.4.1973 had already debarred them from exercising that right. Therefore, when the defendants filed their written statement on 18.5.1973, the Court again reiterated the same stand and did not accept the written statement, in other words, the orders passed prior to the impugned order were in relation to the defendants' assertion of their right under Order 8, Rule 1. Subsequently, however, the defendants having failed on that front now pleaded before the Court for their written statement to be entertained. The Court then passed the impugned order entertaining the written statement but putting the defendants to the burden of paying costs. In terms of Rule 9 of Order 8, the Court below was competent to entertain the written statements. In one of the decisions, reported in Binda Prasad Vs. United Bank of India Ltd. and Others, this Court has observed that Order 8, Rule 9, invests the Court with the widest possible discretion and enables it to accept a written statement filed subsequently, even after the settlement of issues, upon such terms as the court thinks fit. In the instant case, written statement has been accepted such before that stage. Having regard to the facts of the instant case, I must say that the impugned order cannot be said to have been passed, and possibly, it could not be either, under Order 8, Rule 1, but has been passed in terms of Rule 9 of the said Order. The contention raised by Mr. Sinha on behalf of the petitioner that the impugned order was a review of the earlier orders is, therefore, not correct. Since it is not an order passed in review, neither of the two reasons assigned by Mr. Sinha for assailing the order holds good.

I have given consideration though in the matter. This is a case in which, normally the State should not be permitted to file the written statement. A delay of three years, number of times passing of the ex parte orders against the State and as early as in the year 1980, the order was passed that the State will forfeit the right in the matter of submission of the written statement however goes to show that the State has forfeited the right and the Court should not exercise ordinarily the equity in favour of the State. The matter does not rest at that.

3. On February 8, 1980, the Court has recorded that the State and its Officers are not taking interest in the matter and are negligent and so, the right in the

matter of submission of the written statement is forfeited and the case was fixed for evidence. However, on the next date, an application was submitted on behalf of the State and the case liagered on for one reason or the other and the Court directed on September 17, 1981 that on payment of costs of Rs. 50/- the defendant-petitioner will have the right to file the written statement by Oct. 15, 1981. There is a limit of the negligence on the part of the officers of the State and the persons who were conducting the case The State should have come to the Court after taking a disciplinary action against the persons who were responsible for such a gross negligence If the State takes necessary action, it would improve its image in the public The people will feel that the State Cases are contested in the nonracially way There is a feeling that the cases of the State always suffers for want of prosecution But one cannot help. Upto November 30, 1981, the Court has not passed fresh order that the right of the petitioner in the matter of submission of the written statement is forfeited. Mr. Purohit submits that the written statement was submitted on November 29,1981 and the Court was not justified in passing the order on Novembar 30, 1981 about the waiver of the right of the defendant in the matter of submission of the written statement I agree with the submission made by Mr. Purohit that the Court was not justified in returning the written statement already submitted and thereafter, passing order that the right of the defendant to submit the written statement stands forfeited. The written statement was already submitted a day earlier of the passing of the order dated November 30, 1981, Mr. Gupta submits that the date for the submission of the written statement was fired upto October 15, 1981 and, thereafter, the defendant had no right to file the written statement. He submits that by implication, the order dated October 15, 1981 should be considered that the right of the defendant has been waived or has been forfeited. Mr. Gupta submits that the matter does not relate to the exercise of the jurisdiction and the Court had rightly exercised the jurisdiction vested in it. He further submits that even an erroneous error apparent on the point of law and facts should not be disturbed while exercising the revisional jurisdiction u/s 115 CPC. I agree with the submission made by Mr. Gupta that the Court should not interfere unless the case falls under any of the clauses of Section 115 CPC. In the instant case, the Court has exercised the jurisdiction not vested in it by returning the written statement, which was ruled on November 29, 1981 and the order was passed on November 30, 1981 that the written statement be returned and the right of the defendant is forfeited in the matter of submission of the written statement. The order dated October 15, 1981 is there but it has been mentioned there that necessary orders shall be passed on November 29, 1981. On November 29, 1981, again case was listed and thereafter on November 30, 1981 this final order in the matter of forfeiture of the right of the submission of the written statement was made. I understand that the State Govt. and its officers were very negligent and the persons who were conducting the care were equally responsible in the matter. The State had taken three years in filing the written statement and the delay should not be condoned lightly.

4. The revision petition is accepted on the condition that the State Govt. shall pay Rs. 500/- as costs including Rs. 50/- already awarded by the lower court within a period of six weeks. In case the State Govt. fails to pay the amount of Rs. 500/- to the non-petitioner within six weeks from today, then the State will forfeit its right to submit the written statement. The order dated November 30, 1931 of the Additional Civil Judge, Bharatpur is set aside.