
(2003) 09 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5061 of 2003

Sushil Kumar Shah and Others

APPELLANT

Vs

ADJ (Fast Track) No. 2 Camp Beawar and Others

RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1, Order 8 Rule 9

Citation : (2004) 3 RLW 1525 : (2004) 1 WLC 176

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Anoop Dhand, for the Appellant;

Judgement

Shiv Kumar Sharma, J.

1.The plaintiff filed civil suit No. 21/2002 against the defendant petitioners in the court of Additional District Judge Beawar (Ajmer) in the month of March, 2002. On April 8,2002 the suit was registered and defendant petitioners were summoned to appear in the court on December 2, 2002. The defendants petitioners appeared on the date and sought time to file written statement. Learned trial court granted time and fixed August 4, 2003 for filing the written statement. The suit in the meanwhile appeared to have been transferred in the court of Additional District Judge (Fast Track) No. 2, Ajmer Camp Beawar and registered as bearing No. 248/2003 on August 4, 2003. The defendants petitioners intimated the court that they had submitted written statement on July 7, 2003 and the same be taken on record. Learned Additional District Judge (Fast Track) No. 2 Ajmer Camp Beawar vide order dated August 4, 2003 observed that as the written statement was filed beyond the prescribed time limit, the same could not have been brought on record. A direction was therefore issued to remove the written statement out of the record. Impugning the said order the defendants petitioners have now approached this Court under Article 227 of the Constitution.

2. On a close look at the available material I find that the learned court below did not act within the bounds of its jurisdiction. When defendant petitioners put up appearance on December 2, 2002 why the case was posted after eight months i.e. on August 4, 2003 for filing the written statement? Did learned trial court took upon itself to examine whether the amended provisions of Order 8 Rule 1 CPC, that came into force with effect from July 1, 2002, were applicable on pending suits? Did the trial court think for a while that "ACTUS CURIAL NEMINE FACIT INJRIAM" (Act of court would prejudice no man)? Did the court examine the provisions contained in Order 8 Rule 9 C which invest the trial court with the widest possible discretion and enable it to accept a written statement or additional written statement within a period of thirty days from the date of passing the order. As these questions remain unanswered, I am of the opinion that interference under Article 227 of the Constitution is necessary to prevent miscarriage of justice. But at the same time the proceedings under Article 227 cannot be turned into revisional proceedings. Supervisory jurisdiction cannot be converted into revisional jurisdiction. If Article 227 of the Constitution is invoked it is not necessary for the High Court to keep the matter pending for a long time. While exercising supervisory jurisdiction, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but it is not necessary to substitute its own decision in place thereof. (Vide *Surya Dev Rai v. Ramchandra Rai* (1)).

3. For the reasons aforementioned, instead of issuing notice to the opposite parties, I dispose of the writ petition in the following terms:

(i) The order dated August 4, 2003 stands set aside and the case is remitted back to the learned trial court for fresh decision after providing opportunity of hearing to the opposite parties.

(ii) The learned trial court shall make endeavour to answer the questions raised in this order expeditiously.

(iii) A copy of this order be forwarded to the court of Additional District Judge (Fast Track) No. 2 Ajmer, Bikaner.