
(2015) 03 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 8445, 8450/2010, 5130 and 6492/2011

Taj Mohd. And Others

APPELLANT

Vs

Jodhpur Development Authority (JDA)

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 6 Rule 16, Order 7 Rule 11, Order 8 Rule 1, Order 8 Rule 5(2)
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 03 RAJ CK 0020

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Akshay Nagori, for the Appellant; Rajnish Rajpurohit, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—These writ petitions have been filed by the petitioners aggrieved against order dated 09.04.2007 (Annexure-4) and order dated 07.01.2010 (Annexure-6), whereby, the written statement has been taken on record, the application filed by the petitioners under Order VIII, Rule 5(2) CPC has been rejected and the review filed thereafter has also been rejected.

2. The facts in brief may be noticed thus: the petitioners-plaintiffs filed suits for permanent injunction against Urban Improvement Trust, Jodhpur ("UIT") on 29.03.1988, inter alia, seeking restraint against the defendant-respondent from interfering with petitioners' possession on the land in question; the summons were issued and matter was kept for written statement of the defendant on 22.08.1988; on 25.05.1989 application under Order VII, Rule 11 and Order VI, Rule 16 CPC was filed, which was rejected on 30.03.1992; a review against order dated 30.03.1992 was rejected on 03.10.1994; in the meanwhile another application under Order VII, Rule 11 CPC was filed on 22.05.1992, which also came to be rejected by order dated 14.08.2000; review filed against order dated

14.08.2000 was dismissed on 26.11.2002; on 20.01.2005 the petitioners-plaintiffs filed an application under Order VIII, Rule 5(2) CPC with the prayer that as the defendant has not filed written statement, a decree be passed on the basis of averments contained in the plaints; whereafter, without giving a copy of the written statement, the written statement was filed on 28.11.2005 in all the suits, the application was rejected by the trial court and the written statement was taken on record on payment of cost of Rs. 500/- vide Annexure-4 in all the suits.

3. The petitioners filed review petition, which was also rejected on 07.01.2010 (Annexure-6).

4. It is submitted by learned counsel for the petitioners that the trial court was not justified in taking the written statement on record, which was filed after a huge unexplained delay and the illegality was further compounded by rejection of the application seeking review of the order dated 09.04.2007; it was submitted that the trial court has not recorded any reason for condoning the huge delay; the respondent had filed writ petition after decision of the review petition, which was also rejected by this Court on 26.11.2002 and it was observed that the defendant was treating the litigation as a luxury and frivolous and non-maintainable applications were being filed repeatedly.

5. Relying on the decision of Hon"ble Supreme Court in the cases of Aditya Hotels (P) Ltd. Vs. Bombay Swadeshi Stores Ltd. and Others, and Mohammed Yusuf Vs. Faij Mohammad and Others, it was submitted that the order passed by the trial court permitting the defendant to file a written statement and rejecting the application seeking review cannot be sustained and the same deserves to be quashed and set aside.

6. Learned counsel for the respondent submitted that though the suits were filed in the year 1988, applications filed by the respondent-defendant raising substantial issues under Order VII, Rule 11 CPC and the same remained pending and during the pendency of the said applications, the defendant could not have been called upon to file the written statement; it was submitted that the subject matter of the present litigation is a precious land and in case the respondent is deprived from bringing on record the written statement, which has already been filed now long back, the same would result in irreparable injury; it was submitted that the jurisdiction of this Court under Article 227 of the Constitution of India should not be exercised for setting aside an order, wherein, the written statement filed by the defendant has been permitted by the trial court to be taken on record.

7. Reliance was placed on Saleem Bhai and Others Vs. State of Maharashtra and Others, , Manik Singh and Others Vs. Kumawat Panchayat Mandi and Others, and R.N. Jadi and Brothers and Others Vs. Subhashchandra, .

8. I have considered the rival submissions made by learned counsel for the parties.

9. From the facts narrated hereinbefore, it is more than apparent that the written statement was filed by the defendant after a passage of over 17 years from the filing of the suits by the plaintiffs; the suits were filed on 29.03.1988 and the written statement has been filed on 28.11.2005; the provisions of Order VIII, Rule 1 CPC in the meanwhile underwent amendment and the same provided for filing of written statement within 30 days from the date of service of summons on the defendant; the plea raised by the defendant, which appears to have been accepted by the trial court, has been the pendency of applications under Order VII, Rule 11 CPC and other applications, which prompted the defendant not to file written statement.

10. Hon"ble Supreme Court in the case of Saleem Bhai (supra) while considering an order passed by the trial court directing the defendant to file the written statement during the pendency of the application under Order VII, Rule 11 CPC observed as under:-

"9. ...a direction to file the written statement without deciding the application u/O. 7 R. 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the Court as well as procedural irregularity. The High Court, however, did not advert to these aspects.

10. We are, therefore, of the view that for the afore-mentioned reasons, the common order under challenge is liable to be set aside and we, accordingly, do so. We remit the cases to the trial Court for deciding the application u/O. 7 R. 11 CPC on the basis of the averments in the plaint, after affording an opportunity of being heard to the parties in accordance with law."

11. From the above, it is apparent that during the pendency of the application under Order VII, Rule 11 CPC, the written statement could not be insisted by the trial court. The applications under Order VII, Rule 11 CPC were decided by orders dated 25.05.1989 and 14.08.2000 and review petitions, arising out of the said orders, were rejected on 03.10.1994 and 26.11.2002, respectively. Whereafter, it appears that another application filed by the defendant under Order XII, Rule 6 CPC also remained pending.

12. Dealing with the provisions of Order VIII, Rule 1 CPC Hon"ble Supreme Court in the case of M/s. R.N. Jadi and Brothers (supra) observed that the time limit fixed under the provisions of Order VIII, Rule 1 CPC does not take away power of Court to accept the written statement filed beyond time.

13. Further, this Court in the case of Manik Singh (supra) observed that if a written statement is taken on record, the plaintiffs cannot have any prejudice and, at the most, they will not have advantage of mere default of the defendants, who also have no personal interest in any of the property.

14. In the present case also the defendant is public authority i.e. the UIT and in view of inherent apathy of officers the general public interest is likely to suffer for

lack of written statement.

15. Hon"ble Supreme Court in the case of M/s. Aditya Hotels (supra) came to the conclusion that no reasons were recorded by the trial court while permitting to take the written statement on record and, therefore, remanded back the matter to the trial court.

16. In the present case, the trial court while taking the written statement on record has after taking into consideration the various dates as already noticed hereinbefore observed as under:-

17. It cannot be said that the trial court has not recorded any reason while taking the written statement on record and, therefore, the judgment in the case of M/s. Aditya Hotels (supra) has no application to the facts of the present case.

18. Similarly, in the case of Mohd. Yusuf (supra), the trial court refused to grant time for filing the written statement and the revisional court upheld the same, however, the writ Court without recording any reasons set aside the same, which was not approved by Hon"ble Supreme Court.

19. As noticed hereinbefore, the trial court has recorded sufficient reasons for exercising its jurisdiction in a particular manner and, therefore, it cannot be said that the order passed by the trial court suffers from any illegality so as to require interference of this Court.

20. Hon"ble Supreme Court in the case of Jai Singh and Others Vs. Municipal Corporation of Delhi and Another, held and observed in relation to exercise of jurisdiction under Article 227 of the Constitution of India as under:-

"15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well-recognised principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognized constraints. It can not be exercised like a "bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave

dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

16. The High Court cannot lightly or liberally act as an appellate court and reappreciate the evidence. Generally, it can not substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi-judicial tribunals. The power to reappreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice."

21. In the present case, the petitioners have failed to make out any case of grave dereliction of duty or flagrant abuse of fundamental principles of law and justice by the trial court, further, the exercise of power under Article 227 of the Constitution of India in the present case to deprive the respondent from bringing on record its written statement would instead of ensuring that there is no miscarriage of justice would in fact result in miscarriage of justice.

22. Consequently, no case for interference in the orders passed by the trial court is made out. The writ petitions are dismissed. However, it is directed that looking to the chequered history of the present litigation, the trial court will proceed with the matter as expeditiously as possible.