

(1972) 07 PAT CK 0008
In the Patna High Court
Case No : Civil Revision No. 707 of 1971

The Bihar State Electricity Board	APPELLANT
Vs	
New Gobindpur Coal Co. Pvt. Ltd. and Others	RESPONDENT

Date of Decision : 20-07-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 8 Rule 1

Citation : AIR 1973 Patna 191

Hon'ble Judges : G.N. Prasad, J

Bench : Single Bench

Advocate : Ganesh Prasad Jaiswal, for the Appellant; S.K. Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Prasad, J.—This application in revision is directed against the order of the learned Third Additional Subordinate Judge of Dhanbad dated the 4th June, 1971, declining to accept the written statement which the petitioner had filed in Title Suit No. 99 of 1969, wherein it was impleaded as defendant No. 1. The relevant facts are as follows: The suit was instituted by the plaintiffs (Opposite Party Nos. 1 and 2) on the 21st July, 1969. On the same day the plaint was admitted and summonses were ordered to be issued to the defendants fixing the 26th August, 1969, for settlement of issues. Further, on the same day, upon a petition of the plaintiffs, the defendants were called upon to show cause why an ad interim injunction be not issued against them, and in the meantime an order of ad interim injunction was passed. The summonses as also the service report of the notices in the injunction matter were received after service and the order of ad interim injunction was confirmed on the 1st August, 1969. Until then the defendants had not appeared, which they did on the 26th August, 1969. On the 26th August, 1969, the Court fixed 26th September, 1969, as the date for filing of the written statement and for settlement of issues. On the 26th September, 1969, at the instance of the defendants, the Court fixed 9th December, 1969, for

filing written statement and for settlement of issues. On the 9th December, 1969, the defendants prayed for time to file written statement, which was extended to the 20th January, 1970, on payment of Rs. 8/- as cost. The time was further extended to the 10th March, 1970, on payment of Rs. 10/- as cost. On the 10th March, 1970, the defendants prayed for further time to file their written statement, and that was allowed until the 22nd April, 1970, on payment of Rs. 12/- as cost. On the 22nd April, 1970, the time for filing the written statement was further extended to the 5th June, 1970, on payment of Rs. 12/- as cost. On the 5th June, 1970, the defendants again applied for time for filing their written statement, upon which the Court passed the following order:

"..... To 9-7-1970 for filing W. S. on payment of Rs. 12/- as cost. Defendants (must) file W. S. on the date fixed failing which the case will be taken up for ex parte hearing on the date fixed."

No written statement, however, was filed by the defendants as directed by order dated the 5th June, 1970, and the defendants prayed for further time to file written statement, whereupon the suit was ordered to be put up on the 26th August, 1970 for settlement of issues. On the 26th August, 1970, the following order was passed:

"Plaintiff files hazri. Defendants pray for time to file W. S. To 25-9-70 for filing W. S. and settlement of issues."

On the 25th September, 1970, at the prayer of the defendants, the date for filing the written statement was extended to the 24th November, 1970 on payment of Rs. 8/- as cost, which date was also fixed for the disposal of the suit. On the 24th November, 1970, the following order was passed:

"Plaintiff files hazri. Defendants again pray for time to file W. S. To 3-12-1970 for filing W. S. on payment of Rs. 10/- as cost as a last chance failing which the suit will be heard ex parte on the date fixed."

On the 3rd December, 1970, the defendants again prayed for time to file written statement, whereupon the 17th December, 1970, was fixed for filing written statement as a last chance failing which the suit will be heard ex parte on the date fixed. No written statement was filed by the defendants even on the 17th December, 1970, but on that day the defendants filed a petition praying that the plaint should be rejected or, in the alternative, further proceeding in the suit should be stayed. The case was, therefore, adjourned to the 28th January, 1971, for hearing. After three more adjournments, the Court fixed the 19th April, 1971, for hearing. On the 19th April, 1971, the plaintiff filed hazri, but the defendants took no step. The Court, however, heard the plaintiff in connection with the petition of the defendants filed on the 17th December, 1970, and ultimately rejected it. It also fixed the 30th April, 1971 for hearing. On the 30th April, 1971, it was represented to the Court that the defendants intended to file a revision in the High Court against the order dated the 19th April, 1971, whereupon the Court fixed the 24th May, 1971, for hearing. There is no

indication on the record that the contemplated revision against the order of the 19th April, 1971, was filed in the High Court. However, on the 24th May, 1971, the date fixed in the suit for hearing, the plaintiff filed hazri, but the defendants filed a petition praying for time to file written statement. Thereupon the court passed the following order on the 24th May, 1971:

"The defendants seem to be under a notion that a W. S. can be filed as and when they desire. But that is not the legal position. A W. S. has to be filed on or before the first hearing or within such time as the court permits. Several such dates of hearing have passed but the defendants failed to file W. S. On some dates like 5-6-70 and 24-11-70, the court imposed cost also but that too was not paid. So the suit was set down for hearing. It is no longer, therefore, open to defendants to file W. S. The petition for time on that ground is rejected but the suit is adjourned to 4-6-71 for hearing."

On the 4th June, 1971, the plaintiff filed hazri and the defendants filed a written statement. But in view of the order which it had passed on the previous date, namely the 24th May, 1971, the Court declined to accept the written statement filed by the defendants, but adjourned the suit to the 12th June, 1971 for hearing. On the 12th June, 1971, the defendants intimated to the Court that they intended to move the High Court against the order of the 4th June, 1971, and prayed for time to bring stay order. Thereafter on the 6th July, 1971, the present revision application was filed in this Court, which was admitted on the 16th July, 1971 and further proceedings in the Court below were stayed till the disposal of this application.

2. The short point taken by Mr. Ganesh Prasad Jaiswal appearing on behalf of the petitioner is that the trial Court had no jurisdiction to decline to accept the written statement which the defendants had filed on the 4th June, 1971. In support of his contention learned counsel relied upon Rule 1 of Order VIII of the Code of Civil Procedure, which is in the following terms:

"The defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence."

The contention of Mr. Jaiswal is that the petitioner had filed its written statement at or before the first hearing within the meaning of Rule 1 of Order VIII of the CPC and, therefore, the Court had no option but to accept it. To deal with this contention it is necessary to determine the true meaning of the expression "the first hearing" which occurs in Rule 1, because it is manifest that if the 4th June, 1971, was for the first hearing within the meaning of Rule 1, then the defendants were perfectly entitled to file their written statement on that date.

3. The expression "the first hearing" was explained by the Supreme Court in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, . of the report it has been pointed out that the first hearing is either for the settlement of issues or for final hearing. If it is only for the settlement of issues, then the Court

cannot pass an "ex parte" decree on that date because of the proviso to Order 15, Rule 3 (1) On the other hand, if it is for final hearing, an "ex parte" decree can be passed"

4. In a suit where issues have to be determined, it is quite clear from the provisions of Order XIV, Rule 1 that the first hearing of the suit takes place when the Court proceeds to frame and record the issues. At the same time it is clear from Order XIV, Rule 1 that the Court is not required to frame and record issues where at the first hearing of the suit the defendant makes no defence. In the present case, several dates had been fixed for settlement of issues, but no issues could be framed and recorded on account of the fact that the defendants had not filed any written statement and had been repeatedly applying for time for that purpose. Ultimately, on the 24th November, 1970 and again on the 3rd December, 1970, a last chance was given to the defendants to file their written statement, "failing which the suit will be heard ex parte". It will thus appear that the first hearing within the meaning of Order VIII, Rule 1 read with Order XIV, Rule 1, Code of Civil Procedure, was the 17th December, 1970, at the latest. The petitioner having failed to make its defence by the 17th December, 1970, must be deemed to have lost its right of filing its written statement at or before the first hearing of the suit within the meaning of Order XIV, Rule 1. The date fixed for the first hearing of the suit within the meaning of Order XIV, Rule 1 was not extended beyond the 17th December, 1970. Therefore, the Court was not bound to frame and record issues in the suit after the last date fixed for the purpose had expired. As a corollary, it must follow that the Court was not bound to accept the written statement which the defendants had filed on the 4th June, 1971, because if it were to accept the written statement filed at that late stage, then it would necessarily have to frame issues for determination in the suit by setting back the hands of the clock, to borrow an expression used by Bose, J., at page 432 of the Supreme Court decision cited above. It is manifest that the defendants could have no right to set back the hands of the clock in the aforesaid manner.

5. The question then arises whether the defendants had filed their written statement at or before the first hearing of the suit in the second sense, namely the date fixed for final hearing. Reverting to the order sheet of the Court, there can be no doubt that the first date which was fixed for the final hearing of the suit which, in the circumstances, could only be heard ex parte, was either the 3rd December, 1970, or the 17th December, 1970. Further adjournments of the suit thereafter were obviously under the provision, of Rule 1 of Order XVII of the Code, Sub-rule (2) of which makes it abundantly clear that such adjournments are made "for the further hearing of the suit" implying thereby that the first hearing of the suit is deemed to have taken place on the date on which the Court fixes a subsequent day for the further hearing of the suit. It is manifest that the adjourned date of hearing thus fixed by the Court is not the first hearing within the meaning of Order VIII, Rule 1. Had it been the intention of the law that the date to which a suit is adjourned for hearing under Order XVII, Rule 1 would be

the date of the first hearing for the purposes of Order VIII, Rule 1 also, then it would have been provided in the latter rule that the defendant may file his written statement at or before the first hearing or the day fixed for the further hearing under Order XVII, Rule 1. It seems to me, therefore, that the right of the defendants to file a written statement at or before the first hearing can only be exercised until the date which is fixed for the first time for the final hearing of the suit, and does not extend beyond that stage up to the adjourned date of the hearing, which in terms of Order XVII, Rule 1 is really a date for the further hearing of the suit. In law, therefore, the position is that each successive date, to which the suit was adjourned for hearing after the 3rd or the 17th December, 1970, was a date for the further hearing of the suit. It follows that the written statement which the defendants had filed on the 4th June, 1971, was not filed at or before the first hearing within the meaning of Rule 1 of Order VIII of the Code. 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.

6. It is, however, necessary to deal With three reported decisions upon which Mr. Jaiswal has relied. One is the decision of Munikanniah. J., sitting singly in *C. Chendraiah v. Tata Seetarammaiah*, AIR 1961 Andh Pra 102. There the written statement filed by defendant No. 5 on the 2nd March, 1957, was not accepted on the ground that it had been filed beyond the time fixed by the Court for the filing of written statements. Observing that defendant No. 5 had forfeited his right of filing the written statement, the learned Munsif fixed another date (26-3-1967) for framing issues. Thereafter defendant No. 5 applied for recall of the order of non-acceptance of his written statement. The Munsif rejected the application holding that he was prohibited from accepting the written statement after the forfeiture of the defendant's right to file the written statement. Munikanniah, J., held that the view taken by the learned Munsif could not be supported having regard to the fact that the issues in the suit were yet to be framed and, therefore, the order of forfeiture of the defendant's right to file a written statement was unwarranted and unauthorised. It will be noticed that in the Andhra Pradesh case the written statement had been filed before the Court had fixed a date for the framing of issues and even before any date of hearing had been fixed. Quite clearly, therefore, the written statement had been filed on or before the first hearing of the suit as envisaged in Rule I of Order VIII. The situation in the instant case is entirely different. Here the written statement had been filed long after the date fixed for the framing of issues, if any, and several months after the date fixed for the final hearing of the suit had elapsed. It is, therefore, impossible to apply the principle of the Andhra Pradesh case to the facts and circumstances of the present case.

7. Reliance was next placed upon the decision of Raj Kishore Prasad, J., sitting singly in *Binda Prasad Vs. United Bank of India Ltd. and Others*, . In that case there were three defendants, two of whom had filed their written statement before the issues were settled. Until then defendant No. 3 had neither appeared

nor filed any written statement. More than two years later, five special witnesses were examined and cross-examined on behalf of defendants 1 and 2. After the examination of the last special witness, the trial Court fixed the 18th August, 1960, for hearing of the suit. On the 18th August, 1960, defendant No. 3 appeared and filed his written statement. On the 20th August, 1960, he also filed a petition showing cause for his previous non-appearance and for late filing of his written statement and praying for its acceptance. The trial Court, however, rejected the written statement of defendant No. 3. The argument addressed to Raj Kishore Prasad, J., was that the reasons given by the trial Court for rejecting the written statement were not sound and, therefore, the petitioner might be put to terms and his written statement accepted. His Lordship noticed that the suit involved a claim of over a lac of rupees and that it would be unnecessary waste of time and money and also harassment to both the parties, if after the suit was decided in the absence of defendant No. 3 without his written statement, and, after the decision in the suit the appellate Court were to take the view that it was necessary that the written statement of defendant No. 3 should have been admitted and he should have been given an opportunity to contest the suit, because that would entail a remand for a fresh decision after accepting the written statement of defendant No. 3 and giving him an opportunity to defend the suit. "Considered from all these aspects" said his Lordship "I think that it would serve the ends of justice, and it would also be in the interest of both the parties, in order to afford them a real opportunity of fighting out their case fairly and squarely to permit the written statement of defendant No. 3 to be accepted so that all the issues involved in the suit and all questions of fact and law arising between the parties, may be decided by the Court below in presence of all the parties concerned once for all Costs in the present case will be adequate compensation". It will be noticed that the decision of Raj Kishore Prasad, J., did not proceed upon the first part of Rule 1 of Order VIII under which the defendant is entitled to file his written statement "at or before the first bearing". His Lordship dealt with the case under the second part of Rule 1 which contemplates that the defendant may file his written statement "within such time as the Court may permit". The instant case is not a case of that kind because Mr. Jaiswal made it clear at the very beginning of his arguments before me that the petitioner was not asking for any extension of time for filing its written statement. It only stood upon its right to file its written statement at or before the first hearing of the suit. The decision of Raj Kishore Prasad, J., therefore, can be of no avail to the petitioner.

8. finally Mr. Jaiswal has relied upon the decision of Misra, J., (as he then was) in *Bhadai Sao v. Bihar Hindu Religious Trust Board*, 1967 BLJR 975. There the written statement filed by the defendants was not entertained on the ground that they had been given abundant opportunity to file their written statement, but they did not avail of that opportunity. Misra, J., pointed out that although the trial Court had fixed various dates for the filing of the written statement, yet "neither a date for settlement of issues nor for final hearing was legally fixed or could

have been fixed because the summons was not served on all the parties and, there-fere, what the learned Additional District Judge said as the date of hearing could, in the eye of law, not amount to a date of hearing, as contemplated under Order 8, Rule 1". That distinguishes the reported case from the instant case. Here not only the summonses had been served on all the parties, but also a date had been fixed for the settlement of the issues, and what is more is that a date had been fixed for the final hearing of the suit long before the 4th June, 1971, when the defendants had filed their written statement without showing any cause for not filing it earlier or asking for any extension of time for the purpose, thinking, as the learned Additional Subordinate judge observed in his order of the 24th May, 1971, that the defendants were at a liberty to file their written statement as and when they desired. The decision of Misra, J., therefore, has no application to the facts and circumstances of the present case.

9. For the foregoing reasons I am unable to accept the contention of Mr. Jaiswal that the trial Court had no jurisdiction to decline to accept the written statement which the defendants had filed on the 4th June, 1971. No other point having been raised, this application fails and is, accordingly, dismissed with costs payable to opposite party Nos. 1 and 2. Hearing fee Rupees 32/-.