

(1986) 06 GAU CK 0016
In the Gauhati High Court
Case No : F.A. No"s. 5 and 6 of 1984

The State of Assam

APPELLANT

Vs

Sri Basanta and Others

RESPONDENT

Date of Decision : 19-06-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 10

Citation : (1986) 06 GAU CK 0016

Hon'ble Judges : T.C. Das, J;K. Lahiri, J

Bench : Division Bench

Advocate : P. Prasad, for the Appellant; J.P. Bhattacharjee, B. Sarma and A.C. Sarma, for the Respondent

Final Decision : Allowed

Judgement

Lahiri, J.—This is an appeal directed against the judgment and decree dated 12-4-83 and 18-3-84 passed by the Assistant District Judge, Tezpur in Money Suit No. 14 of 1980. The appellants question the validity of the impugned order rendered by the Court under Order VIII, Rule 10 of the Civil P.C., for short "the Code". However, the main question in the appeal is whether on the facts and circumstances of the case the court was legally justified in proceeding to pronounce the judgment and decree against the defendants for their inability to file written statement on just and sufficient ground.

2. The relevant facts are that the plaintiffs instituted a suit for recovery of Rs. 2,04,100.00 claiming damage or compensation for malicious prosecution against the State of Assam, defendant No. 1 and four police Officers, defendants 2 to 4 and Smt. Meena Devi Chandak, defendant No. 5. The plaintiffs claim that they had civil litigations against Smt. Meena Devi Chandak and during the continuance of the litigations on 14-8-78 defendant No. 5 lodged an ajahar with the police alleging offence under Sections 147, 447, 506, 323, 427 and 379, I.P.C. The defendants police officers were responsible for the arrest of two out of three plaintiffs and seized some properties in connection with the criminal case. The

other plaintiff however obtained anticipatory bail. Although the allegations were false the officer-in-charge of the police station submitted charge-sheet against the plaintiffs. Later, the plaintiffs were discharged by the Magistrate as there was no material against them. The entire episode, including the arrest of the plaintiffs and seizure of their properties, created sensation in town and in consequence of the arrest the accused were under great mental and physical pain and damaged their reputation. It was alleged that all the police officers colluded with Meena Devi Chandak, defendant No. 5. The State was made party-defendant as the police officers were working for gain under them. On receipt of the summons the State of Assam and the police officers appeared through the Government Advocate and prayed for time to file written statement. Thereafter, it appears that the Government pleader who appeared on behalf of the State and the Police Officers, continuously prayed for time. On some occasions, due to Bundhs or hartals court could not function and adjournments has to be given. The police officers were the then Superintendent of Police, the then Deputy Superintendent of Police and one Inspector of Police. In the course of the proceedings the plaintiffs also failed to take steps to summon defendant No. 5 Smt. Meena Devi Chandak. The prayers for adjournment made by the Government Advocate were on the ground inter alia, that he did not receive necessary instructions from the Government and the Police Officers and that the term of his appointment had expired and new appointment was awaited. However, the main ground was that he did not receive appropriate instruction, paper and documents from the Government and the police officers and accordingly he could not prepare and file the written statement. Considering the merits of the applications the trial Court granted time to the defendants. On 8-4-83 the Government Advocate filed an application praying for further time stating that the State Government and the Police Officers were busy in view of the turbulent law and order situation and on that count the written statement on behalf of the defendants could not be prepared and filed. Learned Judge posted the matter for rendering order on the application 12-4-83. On 12-4-83 records were put up before the learned Judge. However, at first, learned Judge considered the effect of failure of the plaintiffs to take steps to re-summon defendant No. 5, Smt. Meena Devi Chandak. Learned Judge held that the plaintiffs had failed to take steps against defendant No. 5 and her name was struck off under Order 9, Rule 5 of "the Code". In consequence of the said order, passed under Rule 5 of Order 9 "the Code", the suit against defendant No. 5 stood dismissed. Simultaneously, learned Judge took up the application for consideration the application for adjournment and held that the suit was pending since 1981 and several adjournments had been granted to defendants 1 to 4 for filing the written statement. Even last chance had been given to the defendants but they did not file the written statement, and, accordingly rejected the prayer for adjournment and proceeded to pronounce judgment in exercise of his power under Order 8, Rule 10 of "the Code". Thereafter considering the averments contained in the plaint and documents filed learned Judge decreed the suit against all the defendants for 2 lakhs making of them jointly and severally liable and allowed the claim of the

plaintiffs. Learned Judge held that the plaintiffs had established a prima facie case against the defendants who had not contested the claim. In short, learned Judge decreed the suit against all the defendants including Meena Devi Chandak, defendant No. 5. The decree clearly shows that it was a decree against defendant No. 5, Meena Devi Chandak as well. Admittedly, no decree could have been passed against Meena Devi Chandak as the suit against her had been dismissed. It also appears that learned Judge failed to consider the effect of the dismissal of the suit against defendant No. 5, Meena Devi Chandak, a necessary party to the suit and its effect on the merits of the claim of the plaintiffs.

3. However, we leave the matter out of consideration in view of submission made by Mr. B. Sarma, learned counsel for the plaintiff-respondents that the order dismissing the suit against defendant No. 5, Meena Devi was violative of the principles of natural justice as it was rendered without giving the plaintiffs any opportunity at all. We shall consider the submission in due course.

4. The State Government has a complete machinery for instituting and defending suits or actions. They have law officers and law department. Though the State is the largest litigants they are chronic defaulters. They do not take appropriate and proper steps. Admittedly, defendants 1 to 4 had taken several adjournments.

5. At the first blush we were under the impression that it was a dilatory tactics of the defendants to harass the plaintiffs and deny them their rightful claim. However, Mr. Padma Prasad, learned Sr. Govt. Advocate has placed before us the records of the case including the application dated 8-4-83 and pointed out that the business of the court had to be suspended, postponed or could not be taken up due to "bundle", "hartals", etc. We also find that the submission of Mr. P. Prasad, learned Sr. Govt. Advocate, Assam is correct that in the application dated 8-4-83 the Government Pleader appearing on behalf of the defendants 1 to 4 expressed his helplessness and stated that he could not obtain instructions from the defendants as the Government and the police officers were extremely busy in maintaining law and order situation. However, the law and order situation is always required to be maintained by the Government and the police officers. As such, they cannot claim any extra advantage which other litigants are not entitled to. Mr. P. Prasad, learned Senior Government Advocate, Assam has very rightly reminded us that the period in question, namely, 1981 to 1983 was a turbulent period when the law and order situation in Assam was grave and the agitation on the foreigner's issue had been going on for years together. Mr. Prasad, learned Sr. Government Advocate pointed out that even courts could not function at all relevant time. We have perused the records and find it to be correct. In *Dhananjay Das Vs. District Magistrate, Darrang and Another*, even the Supreme Court observed that the situation of Assam was grave in view of the prolonged agitation. Their Lordships observed that "It has taken ugly and serious turn". These observations were in respect of law and order situation in Assam at the relevant time. We are, therefore, of the opinion that the then prevailing situation in Assam was extraordinary and exceptional. It is, therefore, seen that

in view of the exceptional circumstances, namely, volcanic situation in Assam, the State Government and the Police Officers could not take appropriate steps to instruct the Government Pleader and in turn the Government Pleader could not file the written statement. We find that the Government Pleader had exhorted and pleaded to the court to grant time for filing the written statement pointing out the serious law and order situation under which he could not get appropriate instructions and file the written statement.

6. On perusal of the impugned order we do not find any reason stated by the learned Judge in rejecting the application for adjournment and proceeding to act under Order 8, Rule 10 of the Code. Learned Judge considered that in the past the court had granted several adjournments but in the application dated 8-4-83 further time was prayed for on specific ground. It was, therefore, incumbent upon the learned Judge to consider the application on merit. Without disposing the said application on merits he could not have proceeded under Order 8, Rule 10 of the Code. Learned counsel for the respondents has fairly conceded that the application for adjournment filed on behalf of defendants 1 to 4 was not considered by learned Judge on its merit. However, we do not propose to dispose the question on the basis of the submission made by the learned counsel. It appears clear that on behalf of the defendants on certain stated grounds a prayer for adjournment was made. The consequence of refusal to grant adjournments was either to proceed ex parte or to proceed under Order 8, Rule 10 of the Code. The rejection of the prayer for adjournment was fatal to the applicants-defendants. It was, therefore, essential for the learned Judge to consider the application and give reasons for rejecting the prayer. We do not find any reason for rejecting the application. It was a "purported order" and not a "real order". In *M.P. Mittal Vs. State of Haryana and Others*, the Supreme Court ruled that where the High Court exercises jurisdiction under Article 226 of the Constitution and dismisses an application in limine the High Court must set forth a brief statement of reasons for its order instead of disposing it by a single (word) order "Dismissed". It must be remembered that duty to give reasons is the elementary requirement of a judicial process. The Supreme Court has ruled that this elementary requirement must be complied with even by the quasi-judicial authorities vide *Sardar Govindrao and Others Vs. State of Madhya Pradesh*, and *Commissioner of Income Tax, Bombay Vs. Walchand and Co. Private Ltd.*, The Judiciary has a general duty, rather obligation to act "fairly". Indeed, the fairness founded on reasons is the essence of the guarantees epitomised in Article 14 of the Constitution. The parties are entitled to know the reasons for the decision. The observance of the principles of natural justice is implicit in the "rule of law" and the "rule of law" itself commands communication of a "reasoned decision" vide *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, if the courts are permitted to render order without reasons, apart from arbitrariness there will be a potent danger of non-consideration of facts which would encourage mechanical exercise of the power. Duty to give reasons is the safety valve which protects arbitrary deprivation of the right of a litigant. When an order

is reviewable by the High Court it is the obligation of the court to state the reasons for rendering the judicial order. As such, the impugned order of rejection of the application without giving reasons was bad. We are constrained to hold that as the learned Judge did not find any reason for rejecting the application, therefore, could not set out the same in the order sheet. Was the Court justified not to grant adjournment if the facts stated therein were correct? If in fact the averments contained in the petition were true they were sufficient grounds for granting adjournment on such terms as the Court deemed fit and proper, including payment of heavy adjournment costs against the defendants. If due to the circumstances beyond the control of the defendants, they failed to file the written statement the inability did not merit punishment. In view of the exceptional and extraordinary circumstances prevalent at the relevant time it could not be said that the defendants sought for adjournment with some ulterior motive. We are constrained to hold that at all relevant time the State Government and the police officers were extremely busy in the law and order and public order situations, and, therefore, they had sufficient cause for not filing the written statement and praying for adjournment. Under the facts and circumstances, we are constrained to hold that learned Judge was not justified in refusing the prayer for adjournment as the defendants had sufficient cause to ask for time. We express our doubt as to whether learned Judge was legally justified in proceeding under Order 8, Rule 10 of "the Code". Admittedly, one of the principal defendants was not served with the summons, namely, defendant No. 5, Meena Devi Chandak. Under these circumstances, learned Judge could not proceed to deliver judgment and pass decree under Order 8, Rule 10. As such, to make his path clear to dispose the suit without much exercise, learned Judge held that for the default of the plaintiffs to re-summon defendant No. 5 her name should be struck off. Learned Judge ordered for striking out the name of defendant No. 5 and the suit stood dismissed against her. Strangely enough, learned Judge in the course of the judgment passed a decree jointly and severally against defendant No. 5 as well. The decree also shows that defendant No. 5 was also made liable jointly and severally for payment of the decretal amount. As such, by one stroke of pen learned Judge dismissed the suit against the main defendant, a necessary party to the suit and by the same stroke decreed the suit against her. In fact, it is doubtful as to whether any liability could be fastened on defendants 1 to 4 in view of dismissal of the suit against defendant No. 5. As such, we are constrained to hold that to short-circuit the matter learned Judge dismissed the suit against defendant No. 5 purporting to act under Order 9, Rule 5 of "the Code" and then proceeded to deliver the judgment and render order against the defendants including defendants Nos. 1 to 4 without considering the merits of their application seeking adjournment.

7. Mr. B. Sarma, learned counsel for the respondents-plaintiffs has very rightly submitted that in order to render a judgment and decree against defendants 1 to 4 learned Judge wrongly struck off the name of defendant No. 5 in total breach of the principles of natural justice. We find that learned counsel is absolutely

justified in his submission as the date was not for consideration of the effect of not taking steps by the plaintiffs against defendant No. 5. As such, the order was rendered without hearing the plaintiffs. This part of the order is bad and liable to be set aside. We are of the opinion that learned Judge could not have proceeded against defendants 1 to 4 under Order 8, Rule 10 of "the Code" if the suit pended against defendant No. 5.

8. In any view of the matter we are of the firm opinion that the impugned judgment and order rendered under Order 8, Rule 10 of "the Code" was uncalled for as the defendants 1 to 4 had sufficient cause for asking further time.

9. For the foregoing reasons we set aside the impugned order dated 12-4-83 and remit the suit to the trial Court. We also set aside the order rendered by the learned Judge, dismissing the suit against defendant No. 5. The Plaintiffs shall take steps to re-summon defendant No. 5 within one month from the date of receipt of the records by the learned Judge. Defendants 1 to 4 shall file the written statement within 2 months from the date of receipt of the records which learned Judge shall accept. In view of the delay caused to the plaintiffs, the sufferance they have undergone, we hold that they are entitled to costs. However, we find that by virtue of the reversal of the order the plaintiffs gained something substantial, inasmuch as the order of the learned Judge passed under Order 9, Rule 5 of "the Code" dismissing the suit of defendant No. 5 has been set aside. Situated thus and considering all relevant facts and circumstances of the case, we award a cost of Rs. 500/- payable by defendant No. 1 to the plaintiffs. The cost shall have to be deposited in Court before the filing of the written statement.

10. In the result the appeal is allowed. However, we direct the parties through their counsel to appear before learned Assistant District Judge, Sonitpur on the 22nd July, 1986 to take necessary orders from the learned Judge.

F.A. No. 6 of 1984

11. We have just delivered the judgment in F.A. No. 5 of 1984 wherein we have set aside an order of the learned Judge who had passed similar order under Order 8, Rule 10 of the Code. Herein as well, counsel for the defendants had prayed for adjournment on the ground of the disturbed law and order situation prevailing in the State during the relevant period. We are constrained to hold that the law and order situation in Assam was acute at the relevant time and the defendants had sufficient cause for not filing the written statement.

12. For the reasons set forth in the judgment rendered by us in F.A. No. 5 of 1984 we hold that the defendants had sufficient cause for not presenting the written statement on the date. We also hold that the application for adjournment was not disposed in accordance with law. Learned Judge did not consider the prevalent law and order situation. Learned Judge did not take into consideration the relevant fact that the business of the Court had to be adjourned from time to time due to "bundhs", etc. He overlooked the fact that business of the Court

could not be taken up because of "hartals" and "bundhs". We have given elaborate reasons in the connected appeal which we do not like to reiterate herein.

13. For the reasons set forth above we hold that the impugned order praying for adjournment was rejected without sufficient reasons. The defendants had sufficient cause for not filing the written statement.

Accordingly, we allow the defendants to file written statement within the time bound period of two months from the date of receipt of the records by the trial Court. In view of the adjournments which had been granted earlier and in view of long delay the plaintiff has suffered and accordingly, we award cost of Rs. 1001/- against the appellant-defendant No. 1 payable by them to the plaintiff before the filing of the written statement.

14. In the result the appeal is allowed. However, we direct the parties through their counsel to appear before learned Asst. District Judge, Sonitpur on 22nd July, 1986 to take necessary orders from the learned Judge.