

CIVIL REVISION

Present :

The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 02.09.2010

C.O. No.1113 of 2010

Anukul Ch. Das.

Versus

A.B.S. Builders Pvt. Ltd. & Ors.

Points:

Written Statement-Whether written statement can be accepted by Court after expiry of period mentioned in O.8 R 1 C.P.C. without explaining the delay.-Code of Civil Procedure, 1908 O 8 R 1

Facts:

The defendant nos.1 to 3 appeared and they are contesting the said suit by filing a joint statement. The defendant no.4 did not choose to appear and contest the suit and as such, an order was passed to the effect that the suit shall proceed ex parte against the defendant no.4. The defendant/opposite party no.4 filed an application under Section 151 of the C.P.C. praying for accepting the written statement filed by the defendant nos.1 to 3 after about 4 years 9 months. Trial Court allowed the said application.

Held:

The defendant no.4 failed to explain why the prayer for extension of time should be granted to him, particularly after lapse of more 4 years from the date of filing of the written statement by the defendant nos.1 to 3. He filed the application under Section 151 of the C.P.C. after 4 years and 9 months from the date of service of summons upon him. Therefore, the order

impugned has been passed by the learned Trial Judge without the support of the law. He failed to exercise the jurisdiction vested in him under Order 8 Rule 1 of the C.P.C. The learned Trial Judge has committed errors of law in disposing of the said application under Section 151 of the C.P.C. Para 8
Cases cited:

Kailash Vs. Nanhku and ors., (2005) 4 SCC 480; R. N. Jadi & Brothers and ors. Vs. Subhashchandra, (2007) 6 SCC 420; Aditya Hotels (P) Ltd. Vs. Bombay Swadeshi Stores Ltd. & ors., (2007) 14 SCC 431 and Mohammed Yusuf Vs. Faij Mohammad & ors., (2009) 3 SCC 513

For the Petitioner: Mr. Biswajit Basu,

Mr. Prasenjit De,

Mr. S. Banik,

Mr. Arijit Dey.

For the opposite parties: Mr. Tapas Singha Roy.

Prasenjit Mandal, J.: This application is at the instance of the plaintiff and is directed against the order no.2 dated February 24, 2010 passed by the learned Civil Judge (Junior Division), First Court, Serampore in Title Suit No.210 of 2004 thereby allowing an application under Section 151 of the Code of Civil Procedure filed by the defendant no.4.

2. The short fact is that the plaintiff instituted the Title Suit No.210 of 2004 before the learned Civil Judge (Junior Division), Serampore for declaration of title, permanent injunction restraining the defendants / opposite parties from changing the nature and character of the suit property and other reliefs. In that suit, the defendant nos.1 to 3 appeared and they are contesting the said suit by filing a joint statement. The defendant no.4 did not choose to

appear and contest the suit and as such, an order was passed to the effect that the suit shall proceed ex parte against the defendant no.4. Thereafter, the contesting defendants filed a counter-claim in the said suit for declaration and permanent injunction to which the plaintiff/petitioner filed a written statement.

3. The defendant/opposite party no.4 filed an application under Section 151 of the C.P.C. praying for accepting the written statement filed by the defendant nos.1 to 3. His contention is that due to mistake the name of the defendant no.4 was omitted in the written statement filed by the defendant nos.1 to 3. The defendant nos.1 to 3 are acting on the basis of power of attorney executed by the defendant no.4 for promoting multistoried buildings, etc. By the order impugned, the learned Trial Judge has been pleased to allow the application under Section 151 of the C.P.C. on contest. Being aggrieved, this application has been preferred.

4. Now the point for consideration is whether the impugned order can be sustained.

5. Upon hearing the learned Advocate for the parties and on perusal of the materials on record, it appears that the plaintiff filed the suit on November 30, 2004. Summons were served upon the defendant no.4 on December 4, 2004 (as per information slip furnished by the petitioner). The defendant nos.1 to 3 filed a written statement on February 2, 2005. They also filed a counterclaim on April 29, 2006. Thereafter, after lapse of more than 4 years from the date of filing of the written statement by the defendant nos.1 to 3, on September 3, 2009 the defendant no.4 filed the application under Section 151 of the C.P.C. for accepting of the written statement filed by the defendant nos.1 to 3.

6. The contention of the defendant no.4 for accepting the written statement is that by mistake he could not sign the written statement filed by the defendant nos.1 to 3. The defendant nos.1 to 3 are none but the promoters for development of the property on behalf of the defendant no.4 as per terms and agreement between them. Under the circumstances, it is difficult to believe that the defendant no.4 could not sign on the written statement filed by the defendant nos.1 to 3 by mistake. This story of contention is totally an absurd proposition. So, if this contention is not accepted, fact remains that in spite of issuance of summons upon the defendant no.4 on December 4, 2005, he wilfully did not appear and contest the suit and as yet he did not file or pray for time to file a written statement, save the application under Section 151 of the C.P.C.

7. The Hon'ble Apex Court in a catena of decisions starting from the case of Kailash Vs. Nanhku and ors. reported in (2005) 4 SCC 480, R. N. Jadi & Brothers and ors. Vs. Subhashchandra reported in (2007) 6 SCC 420, Aditya Hotels (P) Ltd. Vs. Bombay Swadeshi Stores Ltd. & ors. reported in (2007) 14 SCC 431 and Mohammed Yusuf Vs. Faij Mohammad & ors. reported in (2009) 3 SCC 513 has observed that the discretionary power to allow a defendant to contest a suit can be granted; provided the Court is satisfied with the reasons assigned by the defendant for delay in filing the written statement or appropriate application for the same. Though it has been held by the Hon'ble Apex Court that the provision of Order 8 Rule 1 of the C.P.C. is not mandatory but directory. In Md. Yusuf (supra) case, it has been stated that the defendants may be permitted to file a written statement after expiry of the period of 90 days only in exceptional situations when the defendant is able to assign sufficient and cogent reasons in support of the non-appearance for taking appropriate steps within the time limit under

Order 8 Rule 1 of the C.P.C. In the case of R. N. Jadi & Brothers Pvt. Ltd. (supra) case, the Hon'ble Apex Court has clearly laid down the principles that should be followed in entertaining the prayer for acceptance of the written statement beyond the period of 90 days in paragraph 15 of the said decision. In order to understand the proposition of law as made out therein, the said paragraph (at page no.428) is quoted below:

“15. A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of the suits filed in courts. The lament of Lord Denning in Allen v. Sir Alfred McAlpine & Sons that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?”

8. In view of such proposition of law and the above findings, I am of the view that the defendant no.4 failed to explain why the prayer for extension of time should be granted to him, particularly after lapse of more 4 years

from the date of filing of the written statement by the defendant nos.1 to 3. He filed the application under Section 151 of the C.P.C. after 4 years and 9 months from the date of service of summons upon him. Therefore, the order impugned has been passed by the learned Trial Judge without the support of the law. He failed to exercise the jurisdiction vested in him under Order 8 Rule 1 of the C.P.C. The learned Trial Judge has committed errors of law in disposing of the said application under Section 151 of the C.P.C.

9. Accordingly, the order impugned cannot be supported. The application is, therefore, allowed. The impugned order relating to allowing the application under Section 151 of the C.P.C. is hereby set aside.

10. Considering the circumstances, there will be no order as to costs.

11. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.

(Prasenjit Mandal, J.)