

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 38 of 2019

Date of Decision: 27.02.2024

Smti. Malati Prasad

Vs.

Smti. Batasi Rajbhar

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) :

Mr. S.A. Sheikh, Adv.
Mr. L.N. Areng, Adv.

For the Respondent(s) :

Mr. S. Sen, Adv.
Mr. A. Momin, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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JUDGMENT AND ORDER

1. The respondent as plaintiff had filed a Title Suit being T.S. No. 5 of 2009, before the Court of Additional District Magistrate (J), West Garo

Hills, Tura, seeking a declaration that she was the legally married wife of one (L) Gyani Ram and also for declaration that the petitioner (defendant) is not entitled to the death cum retirement benefits of (L) Gyani Ram. After the separation of the judiciary from the executive had taken place in South West Garo Hills, the case was then transferred to Ampati before the regular court. The petitioner counsel then on 28.02.2018, filed the written statement, to which the respondent (plaintiff) raised objections and on this issue the Trial Court vide the impugned order dated 27.03.2018, closed the opportunity to file written statement. An application thereafter, was also filed for recalling the order dated 27.03.2018, but the same also stood rejected by an order dated 06.09.2019. Being aggrieved thereby, this Revision Application has been preferred by the petitioner by invoking Article 227 of the Constitution of India.

2. As the Title Suit in question was of the year 2009, and the issue of filing of written statement being as recent as in 2018, this Court for a proper adjudication of the matter had requisitioned the records from the Trial Court. On receipt thereof, the same have been examined thoroughly and the submissions of the learned counsels also taken into consideration.

3. Mr. S.A. Sheikh, learned counsel for the petitioner has submitted that the case has been long pending, in view of the fact that the same did not proceed effectively after its institution, as it was pending before the

Executive and that it was only after the separation and endorsement of the case to the District Court at Ampati, that the same proceeded. It is submitted that due to the situation, the petitioner entered appearance only on 07.11.2017, through her counsel who received copies of the plaint from the Court on the same day itself, and the matter was then fixed on 28.11.2017, for appearance of the other defendants. On the said date, he submits the other defendants entered appearance and the case was posted for 06.02.2018, for filing of written statements, whereafter it was re-fixed to 26.02.2018, but on that date, as the Presiding Officer was unavailable, the case was put up again on 28.02.2018, and on this date, the petitioner filed her written statement. The other defendants, he submits filed their written statement on 05.03.2018, to which the plaintiff raised objections.

4. It is submitted by the learned counsel for the petitioner that though the case was instituted as far back as on 2009, it was only after 11.05.2017, when proper notice and copies of the plaint were received by the petitioner and time was allowed by the Court for filing of the written statement. He further submits that it is not reflected anywhere in the order sheet that, the respondent/plaintiff had objected in writing to the filing of the written statement by the petitioner/defendant, but the learned Trial Court by the first impugned order dated 27.03.2018, had closed the written statement of the petitioner on the ground that, there was no prayer in writing for

condonation/extension of time to file the written statement. It has been contended that, time had been allowed by the Court for filing of written statement, and that the stipulation of the outer limit of 90(ninety) days for filing of written statement is only directory and not mandatory. In support of his submissions, the learned counsel has placed reliance on the following judgments:

- (i) *Bharat Kalra vs. Raj Kishan Chabra reported in (2022) SCC OnLine SC 613*
- (ii) *Judgment dated 8th October, 2021, Shoraj Singh vs. Charan Singh passed in Civil Appeal No. 6304 of 2021.*
- (iii) *M/s Meghalaya Infratech Private Limited & Ors. vs. Smti. Margareth Khyriem passed in CRP No. 2 of 2017.*

5. Mr. S. Sen, learned counsel appearing for the respondent has countered the submission of the petitioner's counsel that, the defendant had entered appearance only on 07.11.2017, and submits that in fact, the petitioner/defendant had appeared in the suit as far back as on 31.07.2009, and has placed the said order before this Court. He submits that, as the petitioner/defendant had entered appearance in 2009, the filing of the written statement only on 28.02.2018, cannot be overlooked, and that on

this ground alone, the Revision Application is liable to be dismissed. He further submits that, though Order 8 Rule 1 of the CPC, as has been interpreted is only directory and not mandatory, however, the requirement of explaining the delay and the circumstances thereof, are absent, and as such, the impugned orders suffering from no illegality, no interference is called for by this Court, in the exercise of powers under Article 227 of the Constitution of India. Learned counsel has placed reliance on the case of ***Atcom Technologies Limited vs. Y.A. Chunawala and Company & Ors. reported in (2018) 6 SCC 639.***

6. Having heard the learned counsel for the parties and considering the facts of the case, this Court is of the view that the sequence of events and the orders passed in the case are of extreme relevance to be examined closely, in order to arrive at a finding as to the legality of the impugned orders. At first, it is to be noted that the suit was instituted in 2009, and as per the order dated 31.07.2009, it was recorded as follows:

31.07.2009

Plaintiff present and represented.

Defendant No. 2 and 4 represented by their lawyer. Case adjourned due to other ad. work.

Fix 18.08.2009.

As such, from the records, it is revealed that the petitioner who was arrayed as Defendant no. 4, had appeared and was represented by her lawyer on that date. It is to be noted also that, at that relevant point of time, the judiciary and executive was still not separated, and as such, there were no effective orders on the dates thereafter, but on 04.07.2011, the following order was passed.

04.07.2011

CR put up today.

Plaintiff is represented. Defendant is absent.

Hence, case is adjourned.

Heard the Ld. Counsel for the Plaintiff. Last chance is given to Respondent No. 4 to take steps failing which case will proceed ex-parte.

Issue notice to Respondent No. 4 to her present address in village Matiakhurd, P.O Madhopur, Bujurg, District Kushinagar, UP by speed post/registered A/D. Fix 12.09.2011 for steps.

Refix on 21.11.2011.

After the above noted order, a perusal of the order sheet shows that the same did not proceed and though separation was effected on 18.07.2013, the Title Suit as it had been filed in Tura, West Garo Hills and though by order dated 29.03.2016, the Court of Assistant to Deputy Commissioner, had issued notice to the parties, however, on the question of jurisdiction, the

counsel for the plaintiff had prayed the matter be transferred to South West Garo Hills District.

7. On the said prayer, the Court of the Assistant to Deputy Commissioner, as the territorial jurisdiction was with the Courts at South West Garo Hills, allowed the same by order dated 20.06.2016, and it appears that the records were then received on 16.01.2017. By order dated 11.05.2017, the Assistant to Deputy Commissioner, South West Garo Hills, Ampati, then passed the following order:

11.05.2017

CR put up today.

Seen the office order of the Ld. Additional Deputy Commissioner (J), South West Garo Hills, Ampati, endorsing the case to my file for disposal.

Vide notification No. HCM.II/184/2015/592 dt. 21.02.2017 and No. I.J. (A) 77/2000/Pt. 227 Dated 22nd February, 2017. I have been appointed and invested with powers as Judicial Magistrate First Class and Assistant to Deputy Commissioner, South West Garo Hills, Ampati.

Issue notice to the parties.

Fix 30.06.2017 for appearance and steps.

After the above noted order was passed, by subsequent dates i.e. on 30.06.2017, 25.07.2017, 22.08.2017, 27.09.2017, as seen from the order sheet, directions were issued for re-issuance of notice to the defendants. On

30.10.2017, adjournment was sought from the plaintiff side and it appears that it was on 07.11.2017, that the plaintiff filed copies of the plaint and other documents which was received by the counsel of the petitioner/defendant no. 4. Order dated 07.11.2017, is reproduced herein below.

07.11.2017

CR put up.

Ld. Counsel S.T.Ch.Marak, present in Court for the plaintiff and filed the copies of the plaint and relevant documents.

Ld. counsel S. Chakravarty present and filed vakalatnama and is representing defendant 4.

BA to notify the GP.

Re-issue notice to defendant 1 to 3.

Copies furnished to the defendant no. 4.

Fix 28.11.2017 for appearance of defendant 1 to 3 and steps.

8. Thereafter, by order dated 28.11.2017, the Trial Court fixed 06.02.2018, for filing of written statements and on 06.02.2018, on the prayer of the defendants, the Court fixed 22.02.2018, for filing of written statements. On 22.02.2018, as the Presiding Officer of the Court was on leave, the matter was taken up on 28.02.2018, wherein the written statement on behalf of the petitioner was filed. The respondent/plaintiff then on 05.03.2018, objected to the filing of the written statements as

recorded in the order so dated, but from the records no written objection is present. The Trial Court, then by order dated 27.03.2018, on the finding that no prayer had been made in writing for condonation of delay, closed the filing of written statement.

9. The petitioner then filed an application dated 16.08.2019, praying for recall of the order dated 27.03.2018, and for condonation to condone the delay for filing of written statement, on the ground that she was unaware about the passing of order dated 27.03.2018, and further that she was an illiterate woman, and a permanent resident of Uttar Pradesh, without any shelter in the district. The Trial Court then by order dated 06.09.2019, rejected the said application.

10. From the entire sequence of events, that unfolded as narrated above, though undoubtedly the filing of the written statement was delayed over an unduly long period of time, this Court is to examine as to whether the same was occasioned due to the gross negligence of the petitioner/defendant no. 4, or by compelling and exceptional circumstances which have to be taken into consideration. In this instant case, it is noted that though the petitioner/defendant entered appearance on 31.07.2009, thereafter it appears notices were again re-issued on subsequent dates, as is apparent from the order sheet itself. Coupled with this, is the fact that the Trial Court at the relevant point of time, was erratic in its sittings, as the judiciary was

yet to be separated from the executive. The progress of the case which was not definite and predictable, continued until the separation was effected, and the jurisdictional issue raised, finally settled by order dated 20.06.2016, the matter then was taken up on transfer only on 11.05.2017, by the present Trial Court at South West Garo Hills. Copies of the plaint and documents were furnished to the petitioner on 07.11.2017, and time thereafter, was allowed and dates fixed, for filing of the written statement. These factors therefore, necessarily deserve due consideration as to whether there were compelling circumstances, which caused the delay in filing the written statement.

11. Order 8 Rule 1 CPC, requires the defendant to file the written statement within 30(thirty) days from the date of service of summons, and by the proviso, the time limit is upto 90(ninety) days, on recording reasons for the failure to file written statement within the said period of 30(thirty) days. However, Order 8 Rule 9 and 10 CPC are provisions that allow the Court to permit subsequent pleadings or to make such other orders. The time limit as prescribed and incorporated in the CPC was with the objective to curb parties or defendants from adopting dilatory tactics, which would delay disposal of cases, and these provisions therefore, were incorporated to expedite proceedings. The Courts however, are not powerless to consider the cases on their own merits, keeping in mind the fact that these provisions

are procedural and not substantive. Moreover, as has been held in the case of *Salem Advocate Bar Association, T.N. vs. Union of India (2005) 6 SCC 344*, on the question as to whether the Court has any power or jurisdiction to extend the period beyond 90(ninety) days, it was held that the upper limit i.e. 90(ninety) days to file the written statement was directory and the time cannot be extended in a routine manner, but that the same could be done only in exceptionally hard cases. This Court in the case of *M/s Meghalaya Infratech Private Limited & Ors. vs. Smti. Margareth Khyriem* passed in *CRP No. 2 of 2017*, also held that “*when the narration of facts does not point out towards delaying tactics on the part of the defendant, it would be a travesty of justice to deny opportunity to defend the title suit on merits*”.

12. In the instant case, what is clearly revealed is that the petitioner who is also seeking to maintain her rights as the widow of the deceased employee namely one (L) Gyani Ram, there is no question of adoption of any dilatory tactics to thwart the progress of the suit. Moreover, it has been stated on affidavit and also evidenced from the order sheet itself that, the petitioner is a permanent resident of Uttar Pradesh apart from being illiterate. From the facts as placed earlier, the vesting of judicial functions upon the executive was also responsible for the considerable delay caused. As such, all these factors taken together and also that there is no bar for the

Court to accept and allow a written statement to be filed, after the stipulated time, this Court is of the considered view that in view of the compelling circumstances, and for the ends of justice, the written statement filed by the petitioner should be accepted by the Trial Court.

13. Consequently, the impugned orders shall stand set aside and quashed, and the Trial Court is to proceed to dispose of the matter most expeditiously preferably within a period of 6(six) months from the date of this order. The parties are put to notice to appear before the Trial Court on 14th March, 2024.

14. Lower Court records to be transmitted back immediately.

15. In view of the observations and findings above, this Civil Revision stands allowed and disposed of.

Judge

Meghalaya
27.02.2024
"D.Thabab-PS"