

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.373 of 2017

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1. Anil Jayaswal, S/o Late Chaturbhuj Singh Jayaswal.
2. Adarsh Jayaswal, S/o Sri Anil Jayaswal, Resident of Fraser Road, P.S.-
Kotwali, Town and District- Patna. Petitioners.

Versus

M/s Bharat Petroleum Corporation Ltd., 'Bharat Bhawan' Land 6 Currimbaoy Road,
Ballard Estate at, Mukmbai, Pin- 400001 its local Office at Bharat Petroleum
Corporation Ltd., Village- Pakri Via Anisabad, P.S.- Phulwarisharif, District Patna,
Pin- 800002. Respondent

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Appearance :

For the Appellant/s : Mr. ANIL JAYASWAL (IN PERSON)

For the Respondent/s : Mr. Sanjay Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-05-2017

This application has been filed under Article 227 of the Constitution of India by the plaintiffs of T.S.No. 628/2012 questioning the legal acceptability of the order dated 26.02.2016 whereby the learned court below has accepted the written statement filed by the defendant in the suit after imposing cost and rejected the petition dated 22.07.2013 filed by the plaintiffs praying for ex parte hearing of the suit after debarring the defendants from filing the written statement .

The T.S.No.628/2012 has been filed by the plaintiff petitioners seeking a decree of eviction against the defendants respondent on the ground of expiry of the fixed period lease. It appears from the order sheet (Annexure-1A) of title suit that after the publication of notice in the daily newspaper, the defendant appeared



in the suit on 20.04.2013, which was the date fixed in the notice as published (Annexure-1). It further transpires from the said order sheet that the prayer on behalf of the defendant for filing the written statement was allowed by the court on different dates and ultimately the written statement was filed on 27.09.2013. However, prior to that, on 22.07.2013 the plaintiffs filed their petition under Section 8 Rule 10 C.P.C. for debarring the defendant from filing the written statement and fixing the suit for ex parte hearing. By the impugned order, the plaintiff's prayer as made in the petition dated 22.07.2013 has been rejected and the written statement filed by the defendant has been accepted after imposing cost.

The petitioner no.1 who has appeared in-person, representing another petitioner who is his son as well, has submitted that the impugned order passed by the learned court below is entirely arbitrary, illegal and against the settled principles of law. It has been emphatically contended that there has been delay of 145 days in filing the written statement by the defendant and in view of the provision as contained in Order 8 Rule 10 C.P.C. the learned court below was bound to reject the written statement filed by the defendant and enjoined to proceed with the suit in accordance with the manner prescribed in the said provision. In order to strengthen the submissions, the reliance has been placed upon different provisions of law as well the



judgments of the apex court and it has vehemently contended that there is no ambiguity in law with regard to the course which would have been followed by the trial court in such a situation. It has also been complained that several decisions were cited on behalf of the plaintiff-petitioners before the court below but the same have not been taken into notice in the impugned order.

It is manifest from the submissions and the facts of this case that the suit has been filed by the plaintiff-petitioners seeking eviction of the defendant on ground of expiry of fixed period lease. The written statement filed by the defendant in the suit was belated by 145 days according to the submission made on behalf of the petitioners and it was on that base that the plaintiff petitioners made the prayer before the court for proceeding ex parte in the suit after debarring the defendant from filing written statement.

It is well settled by now that in an adversarial system of justice dispensation, the parties to the suit /proceeding are entitled to grant of adequate opportunity of hearing unless expressly barred by law. Though the provision contained in Order 8 Rule 1 C.P.C. prescribes the time limit to a defendant for presenting the written statement but while considering the ambit and scope of the said provision the apex court in ***Kailash Vs.Nanhku, (2005)4 SCC 480*** has observed that “*the purpose of providing the time schedule for*



filing the written statement under Order 8 Rule 1 C.P.C. is to expedite and not to scuttle the hearing”

The inter-play of the provision as contained in Order 8 Rule 1 and Rule 10 C.P.C has also been considered by a three Judge Bench in ***Salem Advocate Bar Association Vs. Union of India***, (2005) 6 SCC 344 and their lordships have ruled as follows.

“20.....The use of the word “shall” in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or the directory. The use of the word “shall” is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance cause of justice and not to defeat it

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“In construing the provision, of Order 8 Rule 1 and Rule 10 , the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 1 of Order 8, the Court in its discretion would have the power to allow the defendant to



file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to “make” such order in relation to the suit as it thinks fit”. Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1.....”

In the present case, the court below has exercised its discretion in accepting the written statement filed by the defendant after considering the facts and circumstances including the fact that the defendant is a corporate body and not an individual. This Court in



view of the dictum of the apex court as above, is not inclined to align with the submission on behalf of the petitioners that the court has no jurisdiction to extend the time limit for filing written statement. The provisions of Order 8 Rule 1 and Rule 10 C.P.C. are definitely not penal in nature but only the provisions in-terrorem meant to curtail undeserved delay and to expedite the proceeding. The said provisions, in any view of the matter, do not confer a right upon the plaintiff to get the suit heard and disposed of ex-parte. Moreover, there is also inherent power in the court to pass any order for the purpose of advancing cause of justice and absence of specific prayer by the defendant for extension of time would not fetter the exercise of such power. While considering an identical matter in the case of ***Paramount Enterprises Limited Vs.S.D.Surie, (2014)14 SCC 542*** the apex court has set aside the order of the appellate court which interdicted the order of the trial Judge accepting the belated written statement and it has been observed that “*once the inherent power was exercised by the trial Judge under Section 151 of the Code of Civil Procedure, 1908 , we are afraid in an intra-court appeal, there was no justification for interference in the just order that advanced the cause of justice*” In the present fact situation the discretion exercised by the court below cannot be said to be arbitrary or perverse calling for interdiction under Article 227 of the Constitution of India.



Even otherwise also this Court has not been persuaded to hold that the impugned order has resulted in failure of justice qua the plaintiff petitioners. The acceptance of the written statement by the learned court below would, at the most, result in disposal of the suit on merits after contest in accordance with law .The refusal by the learned court below to accept the prayer of the plaintiff for proceeding ex parte in the suit, and granting opportunity of hearing to the defendant by accepting the written statement can by no stretch be said to have caused injustice to the plaintiff-petitioners. The hair splitting interpretations of the procedural law and mathematical calculation of the time as prescribed therein, which have been ventured on behalf of the plaintiff-petitioners in this regard, have also failed to persuade this Court to invoke its jurisdiction under Article 227 of the Constitution of India in the matter. The scope of jurisdiction under Article 227 of the Constitution of India has been noticed by the apex court in ***Jai Singh Vs.Municipal Corporation of Delhi, (2010)9 SCC 385*** where their lordships have ruled as follows:

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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 cannot be exercised like a “bull in a china shop”, to correct all errors of judgments of 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.....”

For the aforesaid reasons and discussion, this Court declines to invoke its jurisdiction under Article 227 of the constitution of India for interdicting the impugned order as prayed.

The application is accordingly dismissed.

However, the learned court below is directed to proceed with the suit expeditiously keeping in view that it is a suit for eviction and there has already been delay in the disposal of the same. The learned court below is further directed to avoid unnecessary adjournments in the suit and proceed to deal with such prayer for adjournments in accordance with the provisions of the Code of Civil Procedure in that regard.

(V. Nath, J)

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