

A.F.R

IN THE HIGH COURT OF ORISSA AT CUTTACK
C.M.P. No.209 of 2017

Debendranath Nayak & Ors.

....

Petitioner(s)

Ms. D. Mahapatra,
Advocate

-versus-

Bishnu Priya Padhi & Ors.

....

Opposite Party(s)

Mr. A. Choudhury,
Advocate for O.Ps.1 to 3

CORAM:
JUSTICE BISWANATH RATH
ORDER
14.03.2022

Order No.

04.

1. This C.M.P. involves rejection of an application to accept the written statement at the instance of all the defendants, appearing to be in consideration of an application U/s.151 of C.P.C. vide Annexure-8.

2. Short background involved in this case is that on completion of service of notice, the Defendant No.3 alone filed a written statement, however in hand written. The trial court finding the said written statement not a typed one, directed for filing of typed copy of written statement but by all the defendants. The same could not come on record and in the meantime framing issues on the basis of hand written written statement the trial Court proceeded for chief and cross examination of the P.W.1 witness. It is after some time by filing written statement and a typed one at the instance of all the

defendants, an application U/s.151 of C.P.C was also moved for accepting the written statement. Looking to the stage of the matter and as there was unaccountable delay on the part of the defendants in bringing their written statement and there was no compliance of previous direction of the very same court and for there is already commencement of trial, the trial court rejected such application thereby declining to accept the written statement on behalf of such parties.

3. While entertaining the C.M.P. this Court by its order dated 27.02.2017 directed for stay of further proceeding in C.S. No.496 of 2010 and accordingly there is no further progress in the suit as submitted by the learned counsel for all the sides. Though submission has been advanced that there is no provision for filing typed-out written statement to be submitted on behalf of the defendants, and as there already exists a hand written statement, on the basis of which issues were also framed, Ms. Mahapatra, learned counsel for the Petitioners contended that there is no difficulty in continuing with the written statement already existed. Ms. Mahapatra, learned counsel for Petitioners further also submitted that in compliance of the direction of the trial court there has already been filing of the typed written statement by all defendants and once typed written statement is filed and application to that effect is filed, in the interest of justice the trial court in allowing the application U/s.151 of C.P.C ought to have allowed for accepting the written statement to see a contest disposal of the suit. Miss Mohapatra, learned counsel for Petitioners thus contended that in the event the impugned order is not interfered with and sustained, there would be *ex parte* disposal of the suit in depriving the defendants to lose greatly.

4. Mr. Choudhury, learned counsel for the Opposite Party Nos.1 to 3, however, looking to the settled provision requiring the manner of filing of written statement and further for the defendants not coming out with their written statement in time at least prior to commencement of trial, attempted to justify the rejection order i.e. the impugned order herein. Taking this Court to the progress in the suit by the time the impugned order was passed, it is submitted that had the trial court unless decided in the manner, disposal of the suit would have been unnecessarily delayed. Mr. Choudhury, learned counsel thus attempted to justify the impugned order.

5. Considering the rival contentions of the parties this Court finds, undisputedly there was no filing of the written statement by all the defendants. Even though a written statement was filed by the Defendant No.3, but the same appears to have been a hand written one and there already exists an order by the trial court to all the defendants to come forward with a typed written statement to have a contest in the suit. It is, at this stage of the matter, this Court here looking to the extracts at Clause 14 Chapter-1 of G.R.C.O (Civil) Volume-I finds, this provision prescribes general rules relating to practice and procedure involving the suits. This Court here finds, the Clause 14 therein contains the following : **“Pleadings and petitions to be in English, if practicable and parties should where practicable file pleadings, petitions, applications and affidavits in English type written.”**

Reading the aforesaid clause, this Court finds, there should not remain any doubt that the direction therein are all directory and not mandatory. Requirement of filing of pleadings in English type written is, if practicable. Thus in the situation a party can also file pleadings in local vernacular and not only that even a hand written one. This Court here coming back to the case at hand finds, in the

circumstance, there was no obstruction in proceeding with the hand written statement filed by one of the party, but since there involves three defendants contesting the suit, there is no unreasonableness in the direction of the trial court in directing all the three defendants to file written statement, but the direction to file written statement in a type written remains contrary to the Clause 14 taken note hereinabove. Thus direction so far as filing of typed written statement may not be correct. Keeping in view the above procedure, this Court makes it clear that parties are at liberty to file hand written statement even.

6. Looking to the pleadings and the submissions of the parties, this Court finds, undisputedly there has been filing of a typed written statement by the Defendant Nos.1 to 3 but after coming of the P.W.1 to dock and also upon its examination and thus the trial court looking to the stage of the suit only came to reject the petition to accept the typed written statement but by all the defendants. For the settled position of law, the suit requires to be disposed of on contest rather than *ex parte* and all endeavor should be made to avoid multiplicity of litigation, in the event there was already commencement of trial on acceptance of written statement filed late, there was opportunity of compensation to the plaintiffs by way of cost. This Court observes, in the event the impugned order is upheld, the suit will not only be decided *ex parte*, but such judgment and decree again will also land in unending litigation. Keeping this in view and as the defendants have already brought written statement with signature of all such defendants, this Court finds, preventing the defendants from filing their written statement on rejection of application U/s.151 of C.P.C. becomes bad.

In the process and for the observation made hereinabove, this Court while interfering in the impugned order and while

allowing the application for accepting the written statement, directs the written statement filed by the defendants 1 to 3 shall be taken on record and the trial Court shall also consider the written statement in the process of trial. Keeping in view that there was some delay in bringing the written statement of the Defendant No.3 certainly not in time, thereby causing inconvenience to the Plaintiffs thereby making delay in disposal of the suit, this Court while interfering in the impugned order and giving the above direction, also awards a cost of Rs.2,000/- (rupees two thousand) to be paid by the defendants to the plaintiffs within seven days hence. Considering that the suit is pending since 2010, this Court while preventing the respective parties from entering into any unnecessary adjournments, directs the trial court to conclude the trial involving C.S. No.496 of 2010 within a period of six months from the date of production of an authenticated copy of this order alongwith copy of the receipt showing payment of cost. Further looking to the stage of the suit and as there is already completion of examination of P.W.1 on acceptance of the written statement, this Court directs, if any application is filed for recalling the P.W.1 for chief as well as for further cross examination, the trial court shall do well in allowing both the parties to have their option of chief as well as cross examination of P.W.1.

7. The C.M.P. succeeds.

(Biswanath Rath)
Judge