

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 476 of 2022

Mangobinda Sahu

.....

Petitioner

Mr. T.P.Tripathy, Advocate

-versus-

Janmati Sahu and another

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

15.09.2022

Order No.

3.
 1. This matter is taken up through Hybrid mode.
 2. Although notice on the Plaintiffs/Opposite Party Nos.1 and 2 is held to be sufficient none appears on their behalf.
 3. This CMP has been filed assailing order dated 18th April, 2022 passed in CS No.50 of 2017, whereby learned Senior Civil Judge, Padampur, while setting aside the ex-parte order, refused to accept the written statement filed by Petitioner/Defendant No.2.
 4. Mr. Tripathy, learned counsel submits that no notice of the suit was served on him, as he is residing with his family at the place of his service, i.e., Ashram School (new) Hatabharandi in the district of Nabarangpur. During visit to his native place on the occasion of Dussehra in the year 2021, he came to know from the co-villagers that Opposite Party Nos.1 and 2 have filed the aforesaid suit impleading him as Defendant No.2. After enquiry it came to light that Petitioner/Defendant No.2 was set ex-parte on 6th July, 2018. Hence, he filed an application under Order IX Rule-7 CPC to set aside the ex-parte order and to accept the written statement. Learned trial Court, although set aside the ex-parte order, but relying upon a decision of the Hon'ble Supreme Court in the case of *Sangram Singh Vs. Election Tribunal*,

Kotah, Bhurey Lal Baya, reported in AIR 1955 SC 425, , but refused to accept the written statement on the ground that Defendant No.2/Petitioner cannot be relegated to the position prior to hearing of the suit. Being aggrieved, this CMP has been filed.

5. Mr. Tripathy, learned counsel for the Petitioner submits that learned trial Court, while refusing to accept the written statement, did not record any finding with regard to grounds taken by the Petitioner for non-filing of written statement in time. The principle laid down in **Sangram Singh (supra)** is not absolute. In the facts and circumstances of the case, learned trial Court is not denuded with power to accept the written statement for the ends of justice. It is a fit case where the written statement should be accepted. Hence, he prays for setting aside the impugned order to the extent of not accepting written statement of Defendant No.2. He further prays to direct the learned trial Court to accept the written statement of Defendant No.1 and to proceed with the matter in accordance with law.

6. Upon hearing learned counsel for the Petitioner and on perusal of record including the impugned order, it appears that the Petitioner has specifically taken a stand that since 26th December, 2011 he is staying at his service place he had no occasion to receive the notice of the suit. On perusal of the cause title of the impugned order, it is clear that the Petitioner is stated to be residing at his village Torla, PS: Jharabandh in the district of Bargarh. But, it is his specific case that he along with his family members are residing at his place of service in the district of Nabarangpur since 2011. He further stated in his petition that on 5th October, 2021 when he visited his native village at Torala

during Dusshera Puja vacation, co-villagers intimated him about pendency of the aforesaid suit against him. On enquiry, he could know that he was set ex-parte on 6th July, 2018. Accepting his contention, learned trial Court set aside the ex-parte order, but relying upon the decision of the Hon'ble Supreme Court in the case of ***Sangram Singh (supra)*** acceptance of written statement was refused. The facts and circumstances stated above appears to have not been disputed by the Plaintiff in the suit. Thus, it can be safely said that the Petitioner had no knowledge about pendency of the suit prior to his visit to his native place during Dusshera holidays on 20th October, 2021. In the fact and circumstances of the case, more particularly when learned trial Court has set aside the order assigning reason to deny acceptance of written statement, which is essential to dispose of the suit on merit. In that view of the matter, this Court is of the considered opinion that the written statement filed by Defendant No.2 should be accepted.

7. Accordingly, the impugned order to the extent of not accepting the written statement filed by Defendant No.2/Petitioner is set aside. Learned trial Court is directed to accept the written statement filed by Petitioner/Defendant No.2 and proceeding with the suit in accordance with law.

8. With the observation and direction, as aforesaid, the CMP is allowed to the aforesaid extent.

9. Interim order dated 21st June, 2022 passed in A No.541 of 2022 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

