

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.1055 of 2022

Raipudi Rajeswari and others ***Petitioners***
Mr. Prasanta Kumar Panda, Advocate

-versus-

Raipudi Loaknath and others ***Opp. Parties***
Mr. Sanjay Kumar Pradhan, Advocate
(For Opposite Party No.1)

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
06.12.2022

3. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 21st September, 2022 (Annexure-3) passed by learned 2nd Additional Senior Civil Judge, Berhampur in CS No.313 of 2019, whereby an application filed by the Petitioners/Defendant Nos.4 to 7 for acceptance of the written statement beyond the statutory period, has been rejected.
3. Mr. Panda, learned counsel for the Petitioner submits that learned trial Court, while adjudicating the matter has misconstrued the law by applying the ratio in the case *of M/s SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. and others*, reported in 2019 SCC Online SC 226, in which it is held that the statutory period provided under Order VIII Rule 1 CPC is mandatory in nature. As such, learned trial Court has committed error of law in holding the written statement filed by the Petitioners beyond the statutory period cannot be accepted.

3.1 It is his submission that in non-commercial suit, the statutory period provided under Order VIII Rule 1 CPC is directory in nature and not mandatory. Thus, learned trial Court in a misconception of law, has passed the impugned order, which is not sustainable in the eyes of law. He, therefore, prays for setting aside the impugned order and remit the matter back to learned trial Court for fresh consideration of the petition for acceptance of written statement.

4. Mr. Pradhan, learned counsel for Plaintiff-Opposite Party No.1 submits that although the statutory period provided under Order VIII Rule 1 CPC is not mandatory in nature, but said period cannot be condoned in a routine manner with cavalier attitude. He verily relied upon the ratio decided in the case of ***Desh Raj Vs. Balkishan (D) through Proposed LR Ms. Rohini***, reported in 2020 (1) OLR (SC) 340, para-20 of which reads as follows:-

“20. Routine condonations and cavalier attitudes towards the process of law affects the administration of justice. It affects docket management of Courts and causes avoidable delays, cost escalations and chaos. The effect of this is borne not only by the litigants, but also commerce in the country and the public in general who spend decades mired in technical processes.”

In the instant case, on a plain reading of the petition for acceptance of written statement as at Annexure-2 series clearly reveals that Petitioners have not explained the delay in filing the written statement. Thus, learned trial Court has committed no error in not accepting the written statement.

5. Taking into consideration the submissions made by learned counsel for the parties, this Court is of the considered opinion that the period for filing of written statement in a non-commercial suit is directory in nature. The statutory period provided as such is mandatory in a commercial suit only. The case law relied upon by learned trial Court relates to a commercial suit. Thus, it has no application to the case at hand. In that view of the matter, the impugned order is set aside. The matter is remitted back to learned trial Court for fresh consideration of the petition for acceptance of written statement filed by Petitioners/Defendant Nos.4 to 7 providing opportunity of hearing to the parties.

6. With the observation and direction, as aforesaid, the CMP stands disposed of.

7. Interim order dated 1st November, 2022 passed in IA No.1110 of 2022 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy