

(1999) 07 OHC CK 0047

Orissa High Court

Case No: Civil Revision No. 326 of 1997

Harish Chandra Panda
and Others

APPELLANT

Vs

Satyanarayan Panda
and Others

RESPONDENT

Date of Decision: July 22, 1999

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13

Hon'ble Judges: R.K. Dash, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.K. Dash, J.

In this revision, challenge has been made to the "order of the learned Civil Judge (Senior Division), Baripada refusing permission to Defendants 6, 7 and 8 to file written statement.

2. The Plaintiff" opposite party No. 1 herein, filed Title Suit No. 166 of 1994 against the present Petitioner and others. The learned court below by order dated 7-3-95 had allowed time to Defendants 2 to 8, 12 and 13 to file written statement subject to payment of cost. On the adjourned date further time was sought for to file written statement, but since the cost as ordered earlier was not paid their prayer was not accepted and consequently they were set ex parte. On 4-7-95 ex parte hearing was taken up in which the Plaintiff examined his witnesses and proved certain documents. On 5-1-95 preliminary decree was passed and thereupon the Plaintiff filed a petition to make the preliminary decree final. In the meanwhile Defendants 6, 7 and 8 applied to the trial Judge under Order 9, Rule 13. C.P.C. to set aside the ex parte decree passed against them. Upon hearing, he set aside the ex parte decree

but refused them permission to file written statement. For arriving at such conclusion reliance was placed on the decision of this Court in the case of V. Kameswar Rao v. B. Nageswar Rao 1987 (II) O.L.R 106.

3. From the facts narrated above it appears that Defendants 6, 7 and 8 failed to comply with the court's order, inasmuch as when time was granted to them to file written statement subject to payment of cost, on the next day while applying for further time they ought to have paid the cost as ordered. But they did not do so. The Plaintiffs suit was decreed ex parte. However, taking into consideration the cause, for non-appearance of Defendants 6, 7 and 8 when the decree was passed, the trial court set aside the decree. After the suit was restored they again moved a petition for time to file written statement. This was objected to by the Plaintiff. It may be noted that as pointed out by the learned court below, the aforesaid Defendants failed to make out a case to set aside the order dated 6-4-95 whereby they were set ex parte. Merely because the ex parte decree was set aside and the suit was restored to file, the Defendants cannot be relegated back to their earlier position prior to 6-4-95 and they cannot be permitted to file written statement, reason being that they failed to make out sufficient cause to recall the order dated 6-4-95 setting them ex parte. The position of law as decided in the case of [Surendra Mohapatra Vs. Annapurna Mohapatra](#), was followed in v. Kameswar Rao (supra). In my opinion, the principle decided therein squarely applies to the present case. I therefore, find no reason to take a contrary view and interfere with the impugned order in the present revision.

4. Civil Revision is accordingly dismissed being not admitted.

Revision dismissed.