

(1990) 09 GAU CK 0007

Gauhati High Court

Case No: First Appeal No. 40 of 1990

Pada Acharjee

APPELLANT

Vs

Haripada Acharjee

RESPONDENT

Date of Decision: Sept. 7, 1990

Acts Referred:

- Civil Procedure Code, 1908 - Order 8 Rule 10
- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 10

Citation: (1991) 1 GLJ 246

Hon'ble Judges: R.K.Manisana Singh, J

Bench: Single Bench

Advocate: A.K.Goswami, S.K.Sen, N.Choudhary, G.P.Bhowmik, G.N.Sahewalla, Advocates
appearing for Parties

Judgement

This appeal arises from the decree passed by the Assistant District Judge Tinsukia in Title Suit No. J 6 of 1987. On 4. 12. 87, the Assistant District Judge, in Title Suit No. 16 of 1987, passed the following order :

1. "Plaintiff present. No steps by the defendant. Seen the plaint of the plaintiff. The plaintiff's suit is decreed with cost as per prayer.""

Thereafter, a decree was drawn up. Being aggrieved by the order/judgment and decree, this appeal has been filed by the defendant.

2. The learned counsel for the parties do not dispute that order/judgment has been passed under Order 8 Rule 10, CPC. Order 8 Rule 10, CPC provides:

"Where any party from whom written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit, and on the pronouncement of such judgment, a decree shall be drawn up". (Emphasis added)

3. Rule 10 contemplates two contingencies, namely (1) where a party from whom a written statement is required under Rule 1 fails to present the same within the time permitted by the Court; and (2) where a party from whom a written statement is required under Rule 9, CPC fails to present the same within the time fixed by the Court. Under Rule 10, when any party fails to present written statement under any of the circumstances stated above, the two courses are open to the Court. First, the Court may "proceed to pronounce judgment. Secondly, the Court may make such order in relation to the suit as it thinks fit.

4. If the Court adopts the first course, it has to pronounce judgment against the party who fails to present written statement irrespective of the merits of the suit as the expression "pronounce judgment against" employed in Rule 10 indicates giving a verdict against the party who fails to present written statement irrespective of the merits of the case. It is a penalty imposed on the party who fails to present written statement.

5. The question which, therefore, arises for consideration is under what circumstances the first course, viz, pronounce judgment is to be adopted. There may be cases where the claims are barred by limitation; there may be cases where plaint of the plaintiff, or setoff or counterclaim of the defendant, is not in accordance with law. Even then, if the penalty provided under Rule 10 is to be imposed by pronouncing judgment irrespective of the merits of the case, it will cause a great injustice in the given case. The appellate Court shall also find difficult to interfere with the judgment on merits, except on the question whether the discretion to adopt the first course has been exercised properly, as under Rule 10 the judgment should always be against the party failing to present written statement irrespective of the merits of the case. Although, law is that every allegation of facts in the pleading, if not denied, shall be taken to be admitted, the Court may in its discretion require any fact so admitted to be proved. Therefore, this power of the Court has to be exercised in rare and exceptional cases after applying its mind to the facts and circumstances of the case.

6. The next question which arises for consideration is whether judgment shall be pronounced without recording reasons, the essential requisites of a judgment cannot be left out even in the judgment under Rule 10 merely because the Court has power to pronounce judgment against the party who fails to present written statement called for by the Court. Section 9 (2) defines "judgment". to mean the statement given by the Judges of the grounds of a decree or order. Order 20 Rule 4, CPC provides that other than judgments of Small Cause Courts judgments of other Courts shall contain concise statement of the case, the points for determination, the decision thereon, and the reasons of such decision. That apart, the necessity to record reasons is a cardinal principle of rule of law while deciding a case affecting rights of the parties. The recording of reasons in deciding the case affecting rights of the parties is imperative and a mandatory requirement. The order or judgment

affecting the rights of the parties should record relevant reasons which have been taken into consideration by the Court in coming to its final conclusion thereby enabling the parties seeking justice as well as the superior Court where an appeal lies to know the mind of the Court as well as the reasons for its findings.

7. In a case where the Court adopts second course, the Court may proceed with further hearing of the suit, or adjourn the case and allow the party to file written statement. If the Court proceeds with hearing the suit, although the party who fails to file written statement, subsequently he may participate in the hearing. But he cannot be allowed to lead any evidence in respect of defence on account of his failure to file written statement.

8. Coming to the present case, by a laconic order dated 4. 12. 87 the suit was decreed without recording any reason. The order cannot, therefore be allowed to stand. That apart, merely because the defendant failed to file the written statement in the present case, the Court is not bound to adopt the first course without applying its mind to the facts and circumstances of the case.

9. For the foregoing reasons, the impugned order/judgment and decree are set aside. The case is sent back to the Assistant District Judge for disposal of the matter afresh. Liberty is given to the defendant to file application before the trial Court to allow him to file written statement. If such application is filed, the trial Court shall consider the same on its merit.

With the said observation and direction, the appeal is allowed and disposed of,