

(2004) 08 JH CK 0003

Jharkhand High Court

Case No: Writ Petition (C) No. 2600 of 2004

Lalit Chandra Raisurana

APPELLANT

Vs

Arun Raisurana

RESPONDENT

Date of Decision: Aug. 12, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 1, Order 8 Rule 1, 148
- Constitution of India, 1950 - Article 226

Citation: AIR 2005 Jhar 39 : (2004) 4 JCR 329

Hon'ble Judges: P.K. Balasubramanyan, C.J

Bench: Single Bench

Advocate: Manju Prasad and Anand Sen, for the Appellant; P.K. Prasad and Pandey Neeraj Rai, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Balasubkamanyan, C.J.

Heard both sides.

2. The defendant failed to file a written statement within 90 days of entering appearance in the suit. On. 4.11,2003. he was given time to file his written statement. He did not file the written statement. The plaintiff thereupon filed an application praying that the defendant be debarred from filing a written statement, since the defendant had not filed a written statement within the time prescribed by Order VIII Rule 1 of the CPC and even within the time allowed by the Proviso to that Rule. The defendant filed an objection to this petition by submitting that he had filed a written statement on the previous day and that the written statement may be accepted, since he had filed the written statement on the date to which the case was adjourned by the Court on 14.1.2004. The Court below rightly noticed that the mere adjournment of the suit to another day, did not mean an extension or fixation of

time for filing the written statement and the defendant not having adhered to the period prescribed by Order VIII Rule 1 of the Code of Civil Procedure, the written statement filed beyond 90 days could not be accepted. Thus, the prayer of the plaintiff was accepted and the defendant was debarred from filing a written statement.

3. When this proceeding under Article 227 of the Constitution of India was filed, while admitting it, I also directed that a sum of Rs. 1,000/- should be deposited by the defendant in this Court as a condition for stay of further proceeding in the Title Suit. This was by way of a costs thrown away with the object of directing the same to be paid to the plaintiff-respondent, when he appeared, as a condition for accepting the written statement filed eight days after the period of 90 days fixed by the Order VIII, Rule 1 of the CPC read with its proviso. Today, when the matter came up, counsel for the plaintiff, the respondent herein, submitted that Order VIII, Rule 1 of the Code was mandatory and the Court had no discretion to go beyond the period of 90 days mentioned in the Proviso to Order VIII. Rule 1 of the CPC and hence the order of the Court below did not call for any interference, The order passed was well within the jurisdiction of the Court. Counsel for the defendant-petitioner pointed out that the written statement was filed on 10.2.2004, the date the suit stood adjourned to and it was in the bona fide belief that it would be enough if the written statement was filed on that dated. He also submitted that it would be very harsh if the defendant is debarred from filing a written statement in the circumstances, considering the nature of the dispute between the parties and the issues involved in the suit.

4. It is true, as has been held by the Karnataka High Court in [A. Sathyapal and Others Vs. Smt. Yasmin Banu Ansari and Another](#), . that the time fixed by the Order VIII. Rule 1 of the CPC subject to its proviso, is mandatory and the power, if any, available to the Court for extension of time, would be very limited, if not altogether denied, if he go by the words of Order VIII Rule 1 of the Code of Civil Procedure. On an examination of that decision, I find that the Court has also taken the view that since the outer time limit for filing a written statement is fixed by Order VIII, Rule 1 of the Code and not by any order of Court, the power extension available u/s 148 of the Code. subject to the limitation introduced therein by the amendment, cannot be exercised. In a way, the decision of the Karnataka cannot be said to be not justified, taking note of the purpose with which amendment to Order VIII, Rule 1 of the CPC was made. But. at the same time, is it necessary to denude the Court dealing with a (is of even a limited power of granting some time to a defendant for filing a written statement in an appropriate case? No doubt, when the Parliament expressed an intention that the provision in that behalf must be followed, the Court has necessarily to proceed on that basis. But at the same time, when the power of the Court to extend some sort of a locus paenitentiae to a defendant is saved by Section 148 of the Code of Civil Procedure, should the Court be deprived of that discretion? I think that on a balancing of all aspects and considering the harsh consequence that

arises out of barring a defendant from filing a written statement on the ground that he has not filed it within 90 days of the receipt of summons the Court must be held to have that limited power if the defendant shows sufficient cause for extending the time beyond 90 days but within the limits of the proviso to Section 148 of the Code.

5. Even though an outer limit may be fixed by Order VIII. Rule 1 of the CPC in the matter of filing a written statement, normally it is the Court, that by an order of its own, fixes the actual time for filing a written statement, no doubt, within the period contemplated by Order VIII, Rule 1 of the Code. When a Court fixes the time for doing something, the Court has normally the power to extend that time and that power is saved by Section 148 of the Code of Civil Procedure. That power u/s 148 of the Code was unlimited, until it was curtailed by the recent amendment brought in force on 1.7.2002. By that amendment, the power to extend time u/s 148 of the Code has been limited to one month. It appears to me that in the interests of Justice and on a harmonious construction of Order VIII. Rule 1, and Section 148 of the Code, it is possible to hold that even in a case where the written statement has not been filed within 90 days of receipt of summons by a defendant, in an appropriate case, on his showing good cause, the Court can extend the time beyond the period of 90 days but limited to 30 days therefrom. In other words, the Court cannot, in any event, extend the time for filing a written statement beyond 120 days of the receipt of the summons by the defendant. But that would not mean that in every case the Court must automatically extend the time or can extend the time beyond the 90 days, The Court can do so only in those cases where good cause is made for not adhering to the time schedule fixed by Order VIII Rule 1 of the CPC as controlled by the proviso to that Rule. To that extent, I am inclined to deviate from the ratio of the decision of the Karnataka High Court, in the decision referred to above.

6. In the case on hand, the parties were fighting the interim application for injunction and the Court adjourned the suit to 10.2.2004. On that date, the defendant filed a written statement, no doubt, eight days beyond the period of 90 days. If the defendant pleads that he misunderstood the order of the Court as fixing the time for filing the written statement as 10.2.2004, it cannot be said that there was no bona fides in entertaining such a plea.

7. In this situation, I am of the view that the Court below could have extended the time for filing the written statement by eight days and accepted the written statement that was filed. This, of course, is in view of my interpretation of Order VIII Rule 1 read with Section 148 of the Code of Civil Procedure, as indicated hereinbefore. But, I think that in the circumstances, the plaintiff who has been dragged to this Court unnecessarily, is entitled to be compensated. Therefore, I direct that the sum of Rs. 1,000/- which has been deposited by the defendant in this Court as per the order of this Court on 25.6.2004, should be permitted to be withdrawn by the plaintiff towards his costs. I, therefore, allow this writ petition, set aside the order of the Court below and direct that Court to accept the written

statement filed by the defendant. I order that the sum of Rs. 1000/-deposited by the defendant-petitioner in this Court, be disbursed to the plaintiff-respondent unconditionally towards his costs of this proceeding.