
(2004) 10 JH CK 0002

Jharkhand High Court

Case No: Writ Petition (C) No. 2233 of 2004

Bhim Mahto @ Bhim
Lal Mahto

APPELLANT

Vs

Budhan Mahto

RESPONDENT

Date of Decision: Oct. 6, 2004

Citation: (2005) 2 JCR 534

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: Atanu Banerjee, for the Appellant; Dilip Kumar Jaiswal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.

In this writ petition the petitioner has prayed for quashing the order dated 6.4.2004 passed by the learned Munsif Bermo at Tenughat in Title Suit No. 29 of 2003 whereby the petition filed by the petitioner for recalling the order dated 22.12.2003 has been rejected by the Court below on the ground that several adjournments for filing the written statement were sought for on the ground that his counsel had gone abroad.

2. The grievance of the petitioner is that he is a rural cultivator and the suit is related to the agricultural land and if the petitioner is not allowed to contest the suit he shall be put to suffer irreparable loss and injury and shall be seriously prejudiced. According to the petitioner, there was no intentional delay on his part as he had engaged counsel but the counsel thereafter went abroad. He has been waiting for his return and owing to the same he could not file written statement on the date fixed. As soon as his counsel came from abroad he has filed written statement on 13.2.2004. According to the petitioner, there was no wilful laches or negligence on his part and he was prevented from filing written statement in the circumstance beyond his control.

3. Mr. Banerjee learned counsel for the petitioner submitted that the Court below has taken pedantic view and has not taken into consideration the circumstance due to which the petitioner was prevented from filing his written statement. The learned Court below has not properly considered the ground taken by the petitioner which was bona fide and has erroneously observed that the petitioner has not taken interest in the said suit.

4. Notice was issued in the matter to the respondent who has appeared through his learned counsel Mr. Dilip Kumar Jaiswal. It has been submitted by Mr. Jaiswal that more than sufficient time was granted to the petitioner for filing his written statement but he failed to file the same and that the petitioner has been rightly debarred from filing written statement. It has further been stated that there was no weighty ground for recalling the order dated 22.12.2003 by which the petitioner was debarred from filing the written statement and that the impugned order is just sound and valid.

5. Having heard the learned counsel for the parties and considered the circumstances, in my opinion, one last chance may be given to the petitioner to contest the suit for the ends of justice. This view is being taken on the ground that the petitioner is a rural cultivator and the subject matter of the suit is an agricultural land and agriculture is the source of his livelihood as stated by the petitioner's counsel. However, as delay in filing the written statement has caused harassment to the plaintiff-respondent, the written statement already filed shall be accepted subject to payment of cost of Rs. 2000/- to the plaintiff-respondent within a period of one month of this order in the Court below. It is made clear that this amount is over and above the amount of cost, directed to be deposited initially in this case which will be also now paid to the respondent.

6. With the aforesaid observation this writ petition is disposed of.