
Shah Monauwar Equbal Vs Shah Abu Nazir and Others

None

Court: Jharkhand High Court

Date of Decision: Nov. 4, 2009

Acts Referred:

Constitution of India, 1950 – Article 227

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Judgement

D.N. Patel, J.

The present petition has been preferred under Article 227 of the Constitution of India against an order passed by Sub Judge

VII, Deoghar, whereby an order has been passed by trial court compelling the present petitioner, who is the original defendant No. 6, to adduce

his evidence immediately after the evidence of the plaintiff is over. This order has been passed on 28th of April, 2009, in Title Suit No. 77 of 1993,

which is at Annexure-2. The said order has been challenged mainly on the ground that the petitioner should not have been compelled to adduce his

evidence unless the contesting respondents adduce their evidence This aspect of the matter has not been properly appreciated by the trial court

and hence, the impugned order at Annexure-2, dated 28th of April, 2009, passed in Title Suit No. 77 of 1993, deserves to be quashed and set

aside.

2. Alternatively, it is submitted by learned Counsel for the petitioner that by now during the pendency of this writ petition the stage to take evidence

by the present petitioner (original defendant No. 6) has also been closed down on 30th of June, 2009 and, therefore, at least the stage of taking

evidence by the present petitioner be opened and the petitioner will not ask for adjournment and will complete their evidence within a period of

two or three days.

3. I have heard learned Counsel appearing on behalf of contesting respondents No. 3, 4, 15 & 16 who has submitted that enough adjournments

were given by the trial court for taking evidence but because of the lethargic approach of the present petitioner (original defendant No. 6) the stage

of taking evidence had to be closed by the trial court. So far as the order of Annexure-2, is concerned, it is submitted by learned Counsel for the

contesting respondents that in Title Suit No. 77 of 1993, petitioner is defendant No. 6 and looking to the written statement filed by defendant No.

6, he is supporting the plaintiff and, therefore, the trial court has passed the order dated 12th April, 2009, in Title Suit No. 77 of 1993, that original

defendant No. 6 should adduce his evidence immediately after the evidence of plaintiff is over. Hence, no error has been committed by the trial

court in passing the order at Annexme-2, looking to the stand taken by the original defendant No. 6 in Title Suit No. 77 of 1993, and, therefore,

petition deserves to be dismissed and even alternative prayer may not be granted by this Court.

4. Having heard learned counsels for both sides and looking to the facts & circumstances of the case, it appears that:

(I) respondent No. 1 is original plaintiff who has filed Title Suit No. 77 of 1993, wherein the present petitioner is original defendant No. 6 and the

present Respondent No. 3, 4, 15 and 16 are the main contesting defendants in the Title suit.

(II) it appears from the facts of the case that the written statement filed by the present petitioner i.e. by original defendant No. 6 is supporting the

original plaintiff and, therefore, the trial court has rightly passed the order dated 28th of April, 2009, compelling the present petitioner to adduce his

evidences first, after plaintiff has adduced his evidence.

(III) looking to the facts & circumstances of the case, no error has been committed by trial Court in passing the order dated 28th of April, 2009, at

Annexure-2.

(IV) so far alternative prayer is concerned, it appears that stage of adducing evidence by original defendant No. 6 is closed down on 30th of June,

2009. Learned Counsel for the petitioner submitted that the petitioner will not take much time in adducing his evidence and within two or three

days it will be over and they will not ask any unnecessary adjournments.

(V) looking to the facts & circumstances of the case, it appears that if defendant No. 6 is not allowed to adduce or bring his evidence on record it

will cause serious prejudice to the original defendant No. 6.

5. In view of these facts, I hereby, allow original defendant No. 6 to adduce his evidences within a period of two weeks from today as the stage of

taking evidence of defendant No. 6 which is closed down which shall be opened. As defendant No. 6 was given opportunities, initially, but has not

adduced evidence and is now seeking opening of stage of taking evidence, I hereby, impose a cost of Rs. 1500/- which will be deposited by

respondent No. 6 before the trial court within two weeks from today and will be allowed to be withdrawn by the contesting respondents i.e. by

defendant No. 3, 4, 15 & 16 in the title suit. Learned Counsel for both sides have assured that they will cooperate in hearing of title suit No. 77 of

1993, so that evidence stage of defendant No. 6 which would be opened can be completed within the aforesaid time limit.

6. The time limit granted by this Court as per order at Annexure-1 in M.A. No. 313 of 2008, vide order dated 26th of March, 2009 for

completing the final hearing of the Title Suit is up to 30th of November, 2009, is hereby extended up to 30th of December, 2009. Thus, Title Suit

No. 77 of 1993, will be disposed of on or before 30th of December, 2009.

7. In view of this, this writ petition is partly allowed and disposed of.