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Calcutta High Court

Case No: C.O. No. 4012 of 2007

Pir Mohammed — APPELLANT

Vs

Gopal Chatterjee — RESPONDENT

Date of Decision: Dec. 10, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 8 Rule 1

Citation: (2008) 2 CHN 525

Hon'ble Judges: Rudendra Nath Banerjee, J

Bench: Single Bench

Advocate: Mrityunjoy Goswami, for the Appellant;Bidyut Kumar Banerjee and Shila Sarkar, for the Respondent

Final Decision: Dismissed

Judgement

Rudendra Nath Banerjee, J.
This revisional application has been directed against the order dated 9.7.07 passed in title suit No. 148/03 in the 2nd Court of Civil Judge, Junior Division, Basirhat, North 24-Parganas.

2. The plaintiff/O.P. filed the title suit No. 148 of 2003 in the said Court against the defendant Pir Mohammed for eviction from the suit premises which was his place of business. The plaintiff made attempts to serve summon of the suit upon the defendant Pir Mohammed repeatedly and once the defendant refused to accept the summon and in another occasion the envelop returned with the endorsement as "not claimed".

3. However, the present petitioner Golam Rasul filed one application under Order 1 Rule 10 of the CPC (in short the CPC) for his addition as co-defendant on the ground that it was not the defendant Pir Mohammed, the sole tenant but he himself is also a tenant in the same premises as a partner of the business. However, such petition was rejected on contest.

4. The said Golam Rasul again filed the written statement on behalf of the original defendant Pir Mohammed on 20.12.2006 as his constituted attorney. The said Golam Rasul appeared in the suit on behalf of the original defendant on 3.5.05. Thereafter, the said defendant Pir Mohammed through such constituted attorney filed an application for accepting the written statement. Learned Court below by the impugned order rejected the application on the ground of delay in filing the written statement as it was barred under Order 8 Rule 1 of the CPC.

5. Mr. Mrityunjoy Goswami, the learned Advocate for the petitioner has strenuously contended that the written statement being filed on 20.12.06 is well within the time mentioned under Order 8 Rule 1 of the CPC particularly when there is no evidence of service of summon upon the original defendant Pir Mohammed. It is the further contention of Mr. Goswami that even if it be accepted that the written statement has been filed beyond four months from the date of service of summons or date of appearance of the defendant, such time mentioned in the said provision cannot be treated as mandatory but directory in nature and accordingly learned Court below ought to have accepted the written statement in the interest of justice.

6. Mr. Bidyut Kumar Banerjee, the learned Advocate for the O.P. points out that the present petitioner Golam Rasul at first tried to appear in the personal capacity as partner of the business of the original defendant. But having failed in that attempt has taken this plea of appearance as constituted attorney of the original defendant.

7. It transpires that the suit for eviction of premises tenant was of the year 2003. Repeated summons were sent from the end of the plaintiff under the direction of the Court under registered post with A/D. Once such registered envelop returned with the postal endorsement dated 14.5.04 as "not claimed". The earlier envelop with A/D returned with the postal endorsement dated 29.9.03 as refused. Whatever may that case be such postal endorsement showing refusal or no claim of the addressee speaks a volume in the eye of law and they tantamount to a good service upon the defendant. It might be that such good and satisfactory service has not been recorded in the Court''s order. At the time of disposal of the present petitioner''s petition under Order 1 Rule 10 of the CPC there might be the Court''s remark as to non-service of summon upon the original defendant Pir Mohammed. But the same was made in a different context and by such remarks the very postal endorsements mentioned above cannot be ignored.

8. However, irrespective of the question of any effective service upon the plaintiff by registered post with A/D the very fact of appearance of the present petitioner as constituted attorney of the original defendant Pir Mohammed on 3.5.05 cannot possibly be ignored, it is true that the defendant''s petition for addition of parties as partner to the original defendant''s business was pending on such date. But, the fact of appearance of the present petitioner on behalf of the original defendant on 3.5.05 is clear.

9. Under the provisions of Order 8 Rule 1 of amended CPC the defendant should not ordinarily be allowed more than one month time for filing the written statement after the receipt of summon by him. The Court has been empowered to exercise its discretion to extend such period for a period of ninety days after the service of summons upon the defendant. Now question has been raised from the end of petitioner as to whether such total 3 months can again be extended for the acceptance of the written statement as the provision was directory.

10. Such question has been set at rest after the amendment of Rule 1 Order 8 of the CPC with effect from December 7, 2006. By the added 2nd proviso, the Court has been given power to extend the time to file written statement beyond ninety days if it is proved to its satisfaction that the defendant was prevented from filing such written statement by some unforeseen circumstances. By the same amendment the 3rd proviso has been added by limiting the power of the Court to extend such time beyond 120 days from date of service of summons unless it is proved to the satisfaction of the Court that the defendant was prevented from filing the written statement earlier due to circumstances beyond his control.

11. But, in the present case this petitioner once made an attempt to appear as a partner of the business of the original defendant Pir Mohammed but thereafter, when his attempt failed or when he got the scent that his attempt was going to fail he took another plea that he is the constituted attorney of the original defendant Pir Mohammed. No special reason for delay in filing the written statement has been assigned in the petition for acceptance of the written statement to enable the Court to extend the time for filing written statement even beyond 120 days. The written statement was filed on 20.12.06 even after the expiry of 8 months after his appearance. There may not be any bar to appear for the defendant as his power of attorney holder but, the very conduct of present petitioner does not convince this Court to exercise its discretion to accept the written statement. After all, the provision under Order 8 Rule 1 of the CPC was brought for a particular purpose which should not be loosely viewed.

12. Thus considering all these aspects I am of the opinion that there is no flagrant defect or jurisdictional error or any irregular exercise of power in passing the impugned order by the learned Court below inviting this Court''s interference.

Accordingly, the revisional application is dismissed.

There shall be no order as to costs.

13. Learned Court below is directed to dispose of the original suit preferably within three months from the date of communication of this order.