

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM : NAGALAND : MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR BENCH

CRP 03 (AP) 2015

*Smti. Yanga Nima,
W/o Shri Tapu Nima,
R/o Nima Village,
P.O/P.S.-Daporijo,
Upper Subansiri District,
Arunachal Pradesh.*

-----Petitioner.

-VS-

1. *Shri Tara Maling,
S/o Lt. Tatum Maling,
R/o Sigin Colony Daporijo,
P.O/P.S.-Daporijo,
Upper Subansiri District,
Arunachal Pradesh.*

-----Respondent.

Advocate for the petitioner : Mr. C. Modi, Advocate.
Advocate for the Respondent : Mr. T. Son, Advocate.

B E F O R E

THE HON'BLE MR. JUSTICE NISHITENDU CHAUDHURY

Date of hearing : 24.02.2016.
Date of Judgment & Order : 24.02.2016.

JUDGMENT & ORDER (Oral)

Heard Mr. C. Modi, learned counsel for the petitioner and Mr. T. Son, learned counsel for the opposite party.

2]. In this application under Article 227 of the constitution of India, the defendant of Money Suit No. 549/2014 of the Court of Addl. District Judge, Basar has challenged the order dated 04.02.2015 whereby the learned Court has decided to proceed ex-parte against the sole defendant.

3]. In this case, the opposite party as plaintiff instituted a Money Suit praying for a decree of Rs.5,04,828/- along with interest at Bank rate w.e.f. 24.08.2012. The notice was issued to the defendant and he accordingly appeared. On perusal of the LCR, it appears that ultimately on 03.11.2014 a copy of the plaint was served on the learned counsel of the defendant. Service of notice on a defendant would be complete only on furnishing of the copy of the plaint. This is because along with a copy of summon the plaintiff is duty bound to furnish a copy of plaint to the defendant. Unless a copy of the plaint is furnished, defendant would not be aware about the pleadings of the plaintiff and so it would not be possible on his part to file a written statement. Since the defendant in the present case received the copy of the plaint on 03.11.2014, service on him within the meaning of Order VIII Rule 1 of the Code of Civil Procedure would be deemed to be made on 03.11.2014 only. The defendant, therefore, was duty bound to submit his written statement within a period of 90 days as prescribed under Proviso to Order VIII Rule 1 of the Code of Civil Procedure.

4]. But on 04.02.2015 when the case was fixed for filing of written statement defendant submitted an application praying for time on medical ground. It was stated that the defendant because of his medical problem could not turn up to Court below for filing written statement. This application was received by the learned court but it was neither allowed nor rejected and impugned order was passed fixing the suit for ex-parte hearing against the defendant. The Court appears to have acted on the basis of provision of Order VIII Rule 1 of the Code of Civil Procedure for refusing further time to the defendant for filing written statement.

5]. Although Order VIII Rule 1 CPC, has laid down a time frame of 90 days for filing of written statement after amendment of CPC in the year 2002 but power of Court to

accept written statement beyond the 90 days has not been taken away. After all these are procedural Rules which are handmaid of justice. In a number of Judgments, Hon'ble Supreme Court has held that the Court is not devoid of power to accept written statement beyond 90 days if reference is necessary, one can take help of the following cases:-, *Shaikh Salim Haji Abdul Khyaumsab-vs- Kumar and Others* reported in (2006) 1 SCC 46, *Kailash-vs-Nanhku and Others* reported in (2005) 4 SCC 480, *Rani Kusum (Smt)-vs- Kanchan Devi (Smt) and Others* reported in (2005) 6 SCC 705, *Sandeep Thapar-vs-SME Technologies Private Limited* reported in (2014) 2 SCC 302 etc.

6]. Having regard to the learned counsel for the parties and on perusal of the records, it appears that the learned Trial Court has not considered the application filed by the defendant praying for time.

7]. The order directing ex-parte hearing of the case against the defendant, therefore, has been vitiated for such non consideration of the application. Be that as it may, after hearing the learned counsel for the parties and more particularly after the learned counsel for the petitioner submitted that the written statement is already ready, the revision petition stands disposed of with direction.

8]. The impugned order is hereby set aside. The defendant shall submit the written statement before the learned Court below within a period of 2 weeks from today. Upon receipt of written statement the learned Court below shall frame issues and proceed thereafter in accordance with law.

9]. Mr. Son, learned counsel for the opposite party submits that the matter has already been much delayed. The learned Court below shall proceed as expeditiously as possible to dispose of the suit preferably within a period of 6 months from the date of receipt of the records.

10]. Send down the records.

No order as to costs.

JUDGE

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