



GAHC010241432018

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

Case No. : CRP(I/O)/357/2018

SATYAPAL SHARMA AND ANR.
SON OF SHRI JAI DEV SHARMA, R/O. FOREST GATE, HOUSE NO. 40,
NARENGI, GUWAHATI- 781021, IN THE DISTRICT OF KAMRUP(M), ASSAM.
PERMANENT RESIDENT- HOUSE NO. 7, SFS PUNJABI BAGH APPT, ROHTAK
ROAD, DELHI- 110063

2: SMTI. MANORAMA SHARMA
WIFE OF SHRI SATYAPAL SHARMA
R/O. FOREST GATE
HOUSE NO. 40
NARENGI
GUWAHATI- 781021
IN THE DISTRICT OF KAMRUP(M)
ASSAM. PERMANENT RESIDENT- HOUSE NO. 7
SFS PUNJABI BAGH APPT
ROHTAK ROAD
DELHI- 11006

VERSUS

LORD JAGANNATH TEMPLE TRUST AND 3 ORS.
HAVING ITS REGISTERED OFFICE AT TARUN NAGAR, G.S. ROAD,
GUWAHATI- 781006, IN THE DISTRICT OF KAMRUP(M), ASSAM, REP. BY
ITS TRUSTEE CUM AUTHORISED SIGNATORY SHRI MANORANJAN DASH,
SON OF SHRI NARAHARI DASH, PROTECH PARK, G9H, HENGRABARI,
GUWAHATI- 781036 IN THE DISTRICT OF KAMRUP(M), ASSAM.

2:NARENDRA KUMAR BEHERA
SON OF SHRI GOLAK CHANDRA BEHERA
RESIDENT OF HOUSE NO. 6
1ST FLOOR
FAGUNA RABHA PATH
BYE LANE NO. 3
JATIA



KAHILIPARA ROAD
DISPUR
GUWAHATI- 781006. PERMANENT RESIDENCE- VILLAGE-
SHYAMMASUNDARAPUR
GRAM
PANCHAYAT/ TOWN- BHAGABATPUR
P.S. KENDRAPARA
DISTRICT- KENDRAPARA
ODISHA
PIN- 754208.

3:NITUL BARUAH
ADVOCATE
CHAMBER AT GROUND FLOOR OF KALPANA BIBHAH BHAWAN
NOONMATI
FOREST GATE
GUWAHATI-20
KAMRUP(M)
ASSAM.

4:RIDIP KUMAR DUTTA
ADVOCATE
CHAMBER AT GROUND FLOOR OF KALPANA BIBHAH BHAWAN
NOONMATI
FOREST GATE
GUWAHATI-20
KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. R J BORDOLOI

Advocate for the Respondent : MR. D SHARMA

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER (ORAL)

Date : 09.09.2021

Heard Shri R. Ali, learned counsel for the petitioners who is aggrieved by two orders passed by the learned Additional District Judge, FTC No. 2, Kamrup (M), Guwahati.



2) By the first order dated 01.03.2017, the petition filed by the present petitioners who are defendants for allowing to file written statement has been rejected. By the subsequent order dated 12.09.2018, the petition to vacate ex-parte and to allow filing of written statement have been rejected. It may be mentioned that along with the petition filed on 12.09.2018. The written statement was also placed on record by the present petitioners.

3) By referring to the plaint, Shri Ali, learned counsel submits that the plaint has been instituted by a Trust while the present petitioners are defendant nos. 2 & 3. Unfortunately, while notice was issued, neither any documents annexed to the plaint nor the plaint itself was furnished to the learned counsel for defendant nos. 2 & 3 or the defendant nos. 2 & 3 themselves.

4) Though the suit was instituted in the year 2016, the same situation continued and during the pendency thereof, the plaintiff had filed a petition on 15.12.2016 under order VI Rule 17 of the CPC praying for amendment of the plaint. The learned Court accordingly allowed the aforesaid prayer made on behalf of the plaintiff whereby amendment was allowed. The said order further reflects that the defendant nos. 2 & 3 (the present petitioners) had filed a petition to furnish the plaint and the documents, which was also allowed by directing the plaintiff to furnish. The next date was accordingly fixed on 01.03.2017 for filing the written statement. It may be mentioned that on the same date i.e. 20.02.2017, copy of the plaint was furnished to the learned counsel for the defendants nos. 2 & 3 (present petitioners), the

acknowledgement of the receipt being given in the order sheet itself which is revealed from the photocopy of the original order sheet. On the next date, i.e. 01.03.2017, the present petitioners had filed a petition for allowing some time to file the written statement. The learned Court below after making certain observation regarding the various dates of issue of summons etc. had rejected the petition and came to a finding that defendants would not be allowed to file the written statement. The further endeavour of the petitioners by filing another petition for allowing the written statement failed to yield any fruitful results and culminated in order dated 12.09.2018, whereby the Court declined to revoke the observation made earlier to proceed ex-parte.

5) The learned counsel has submitted that it is no longer *res Integra* that the provisions of 8 Rule 1 are directory in nature. At the same breadth, it is submitted that the present is not a case of delay at all as not only the documents, but the plaint itself was furnished to the learned counsel for the petitioners only on 20.02.2017 that too at the direction of the Court. Under such circumstances, it was wholly unjustified on the learned Court below in calculating 90 days from the date of issue of summons as without a copy of the plaint, a contesting party would be deprived of filing an effective statement of defence.

6) In respect of his submission, the learned counsel has placed reliance upon a case of this Court reported in (**2006**) **3 GLR 230 Srinivas Vasudev Vs. Vinod Kumar Kothari**. This Court in the said case of *Srinivas Vasudev (Supra)* after relying upon the case on the subject decided by on the Hon'ble Supreme Court namely, **Kailash vs. Nanhku & Ors. (2005) 4 SCC 480** .and **Smt Rani Kusum Vs Smt.**

Kanchan Devi and Ors. (2005) 5 SCC Pg 750 has reiterated that provisions of Order 8 Rule 1 cannot be held to be mandatory but are directed in nature and the only requirement is whether the defendant has come up with a reasonable explanation.

7) In the instant case, this Court finds force in the submission of the learned counsel that by the impugned orders, the defendants nos. 2 & 3 have been denied a reasonable opportunity to defend their cases as the time provided by the Statute has not been effectively given to them.

8) It is submitted that though a written statement is required to be furnished within thirty (30) days as per Order 8 Rule 1 CPC with an extended period of 90 days (in total), the said amendment of the CPC has been interpreted in a harmonious manner to declare the same to be directory in nature, such finding is with the view that while the proceedings are not unnecessarily delayed, in a case a deserving party should not be denied of the right to place on record an effective statement of defence.

9) The learned counsel has also drawn the attention of this Court to the affidavit-in-opposition filed by the contesting respondent (plaintiff) on 25.11.2019, wherein in paragraph 3 thereof, it has been stated that the plaintiff has no objection, if the petitioners are allowed to file their written statement.

10) Considering the aforesaid facts and circumstances and also by following the law laid down by the Hon'ble Supreme Court, this Court is of the view that the impugned orders dated 01.03.2017 and 12.09.2018 passed by the learned Additional District Judge No.2, Kamrup (M), so far as they relate to denying the present



petitioners (defendants Nos. 2 & 3) to file written statement and the decision to proceed ex-parte in the suit are interfered with and accordingly set aside.

11) It is accordingly directed that the written statement so filed along with application which was considered on 12.09.2018 be taken on record and the suit be proceeded in accordance with.

12) Since there is an interim order on passing of the present order, the said interim order is vacated and the parties are directed to appear before the learned Additional District Judge No.2, Kamrup (M) on 21.09.2021.

13) Since the learned counsel for respondents (plaintiffs) are absent in spite of being name shown in cause list, the learned counsel for the petitioners shall inform them about the order passed today and in the event, there is no representation on behalf of the plaintiffs, the learned Court of the learned Additional District Judge No.2, Kamrup (M), Guwahati may issue notice to the plaintiff and proceed accordingly.

14) The CRP stands disposed of.

JUDGE

Comparing Assistant