

THE HON'BLE MR.JUSTICE HN SARMA

THIS REVISION PETITION HAVING BEEN HEARD ON THE 4TH DAY OF DECEMBER, 2006 THIS COURT PASSED THE FOLLOWING :

JUDGMENT AND ORDER (ORAL)

Heard Mr A M Mazumdar, learned senior counsel for the petitioner and also heard Dr B Ahmed, learned counsel appearing on behalf of the respondents.

2. Challenging the legality and validity of the Judgment and Order dated 22.6.2006 passed in Misc case No 36/2005 in Title Suit No 104/2006 by the learned Civil Judge, Junior Division, Karimganj, this present petition has been filed under Article 227 of the Constitution of India.

3. By aforementioned impugned order, the learned trial Court refused to accept the petition filed by the petitioner praying for adjournment on the count that the same was filed beyond the statutory period of 90 days.

3. It is the case of both the parties that on 8.7.2005 although notice received by the defendants/petitioners and time was granted to that till 6.10.2005 on different occasions, on 7.10.2005, the learned trial Court passed an order to proceed the suit ex-parte against the defendants fixing 7.12.2005 refusing to grant further time. On 7.12.2005, the petitioners filed the written statements in the suit and prayed for acceptance of the same. But the learned trial Court vide impugned order dated 22.6.2006, rejected the said prayer of the petitioners. The learned trial Court rejected the prayer of the petitioner stating that upon perusal of the case records it transpires that summons upon defendant No 1 was served on 8.7.2005, he has filed written statement on 7.12.2005, that is beyond the statutory limitation of period of 90 days. Hence, the prayer stands rejected. The learned trial Court did not at all consider as to how and on what occasions the defendants filed the written statements at this belated stage. In the impugned order there is no whisper about the basis of consideration, more particularly, as to the sufficiency of the grounds projected by the petitioner. The provisions of Order 8, Rule 1, CPC, has been interpreted by the Apex Court to be directory one on several decisions, more particularly, in the case of Salem Advocate Bar Association Vs-Union of India, reported in (2005) 6 SCC 49, reiterated the proposition of law enunciated in earlier cases. The Apex Court has held in subsequent cases the same view, which goes to show that the relevant provisions under Order 8, Rule 1, CPC, are not mandatory one meaning thereby that on appropriate occasions the learned Court is not powerless to extend further time for filing written statements. The impugned order does not disclose whether any such ground was made or not by the petitioner and passing the order without considering this aspect, in my considered opinion, necessitated for interference with the impugned order dated 22.6.2005. Accordingly, the order dated 22.6.2005 stands set aside and quashed. The written statements filed by the petitioners on 7.12.2006 shall be accepted and the suit shall be tried by giving opportunities to the parties. Since the suit is filed in the year 2005 and it is in the preliminary stage, the learned trial Court shall decide the suit as expeditiously as possible not later than six months. The written statements filed by the petitioners shall be accepted subject to the payment of costs of Rs 3,000.00 by the defendants/petitioner to the plaintiffs/respondents as costs. The aforesaid cost shall be paid before the learned trial Court and on payment of such costs, the defendants petitioners will be allowed to participate in the proceedings.