

# RAJASTHAN HIGH COURT

Manik Singh

Vs.

Kumawat Panchayat Mandi, Udaipur

Civil Revn. No. 174 of 1996

(Prakash Tatia, J.)

11.09.2003

## ORDER

**Prakash Tatia, J.**

1. By the impugned order dated 25-1-1996, the trial Court refused to take on record the written statement and the counter claim.
2. The brief facts of the case are that the plaintiffs filed a suit as representatives of members of Kumawat Caste under Order 1, Rule 8, Civil Procedure Code. It appears that initially plaintiffs impleaded one defendant Trilokram. On application filed by the members of the said caste, the Court allowed the application under Order 1, Rule 10, Civil Procedure Code and permitted the applicants to be impleaded as defendants. Thereafter, one application for review was filed by one of the defendants which was dismissed by the Court and thereafter several opportunities were granted to the defendants to file the written statement. Even the Court granted opportunity to the defendants to file written statement on payment of cost and ultimately, by order dated 26-10-1995, the defendant's right to file written statement was closed. Before the next date, the defendants submitted written statement along with application under Section 151, Civil Procedure Code for taking on record the written statement filed by the defendants petitioners. The trial Court, after hearing the parties, by order dated 25-1-1996 refused to take on record the already filed written statements on the ground that in total 33 opportunities were granted to the defendants to file written statements but they did not file the same. The petitioners are aggrieved of the said order dated 25-1-1996.
3. This Court entertained the revision petition against the said order and granted interim order staying further proceedings in the suit before the trial Court on 22-2-

1996. The said order was confirmed by order dated 7-3-1996 after hearing both the parties. In this way the matter is pending before this Court since last more than seven years.

4. Learned counsel for the petitioners submits that it is true that opportunities were granted to the defendants but the facts reveal that petitioners were interested to contest the matter and they themselves come forward and became party in the suit. The relevant fact at the time of passing of the order by the trial Court was that on the day when the trial Court refused to take on record the written statement and counter claim of the defendants, the defendants had already filed the written statements and counter claim. Taking on record of the written statement would not have delayed the matter for a single moment. It is also pointed out that in view of the way in which the proceedings are taken in the suit and which is the usual way of the proceedings of the suit of and if the petitioners as the defendants, on a particular day were given the order dated 26-10-1995 closing their entire right to file the written statement, the entire back ground and the proceedings taken before the trial Court cannot be ignored. It is also submitted that even if when the matter can wait for order on challenge to the order of the trial Court for seven years, then the procedure, which was prevailing at the point of time is also weighty factor on the facts of which this court may take a lenient view as there is no personal interest claimed by any of the defendants.

5. Learned counsel for the non petitioner vehemently submitted that there must be an end to the right of the defendants as the trial Court tried its best to warn the defendants by imposing cost and thereafter closed the written statement of the defendant. The plaintiff cannot be compelled to wait and drag for such a long period in litigation. It is also submitted that there is no reason for any sympathy for the defendants.

6. After going through the record which was summoned by this Court and in view of the fact that before amended in Civil Procedure Code, the Courts were proceeding in a manner which compelled the law framers to amend the entire Civil Procedure Code and during that period when the Court was going on giving time for filing written statement and on a particular date when the event went absolutely against the defendants which made the plaintiff stronger to raise grievance against the petitioner in the trial Court, despite the fact that there appears from the order sheets no more seriousness of the plaintiff than the seriousness of the defendants. The grievance of the plaintiff now that about 33 opportunities were granted to the defendant is with more vehemence now after not successfully resisting adjournment before the trial Court. It appears even from the order sheets till 23-5-1995 that the adjournments were granted

by recording no objection of the plaintiff and thereafter one opportunity was granted to the defendants on the next date, the written statement was closed.

7. In the totality of the facts and in view of the involvement of the public interest in the suit if, the defendants are permitted an opportunity to contest the suit only by taking on record the already filed written statement and counter claim which was filed as back as in the year 1996, the plaintiffs cannot have any prejudice and at the most they will not have advantage of mere default of the defendants who also have no personal interest in any of the property as he plaintiffs are also pleading that they do not have any personal interest in the property and this is a matter relating to some caste. Therefore, the impugned order is liable to be set aside on payment of cost of Rs. 2,000/- by the petitioners jointly to the non petitioners.

8. The revision petition is, therefore, allowed and the impugned order dated 25-1-1996 is hereby set aside and the written statement and counter claim filed by the defendants petitioners be taken on record on payment of cost of Rs. 2000/-. The cost be paid by the defendants petitioners before the trial Court on or before the first day of hearing or may deposit that amount in Court.

9. The stay order passed by this Court is vacated and the trial Court may proceed with trial of the suit expeditiously. Both the parties are directed to appear before the trial Court on 13-10-2003.

Petition allowed.