

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.24 of 2023

Smt. Malabika Singha

.....Petitioner(s)

Versus

Sri Manik Kahar

.....Respondent(s)

For Petitioner(s) : Mr. Soumendu Roy, Advocate.

For Respondent(s) : Mrs. S. Deb (Gupta), Advocate,
Ms. Rumpa Dey, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

03/08/2023

Heard Mr. Soumendu Roy, learned counsel for the petitioner and Mrs. S. Deb (Gupta), learned counsel for the respondent.

2. The case of the petitioner has been captured in the order dated 23.06.2023 while issuing notice upon the plaintiff/respondent and is extracted hereunder for better appreciation of her case:

“By the impugned order dated 27.02.2023, the prayer for vacating the ex-parte order dated 04.08.2021, and to allow the defendant/petitioner herein to file written statement has been rejected by the learned Trial Court of Civil Judge (Sr. Divn), West Tripura, Agartala.

Mr. Soumendu Roy, learned counsel for the defendant/petitioner, has drawn the attention of this Court to the averments made in the instant petition and submitted that the laches for non-filing of the written statement within time, is on the part of the erstwhile counsel representing the defendant since even when the application dated 22.09.2021 for vacation of the ex-parte order dated 04.08.2021 was filed, it was not accompanied by the written statement due to fault of the erstwhile learned counsel representing the defendant/petitioner. The proceedings of the suit thereafter would show that the application for recall of ex-parte order dated 04.08.2021 was not even pressed on the subsequent dates i.e. 18.11.2021 and 10.12.2021 and was dismissed. Later on, the erstwhile counsel for the defendant sought to recuse himself from the case by alleging that the defendant is not communicating with him despite notice to her.

Learned counsel for the petitioner further submits that after engaging a new counsel, the learned Trial Court has been pleased to recall the order dated 10.12.2021, by which the application for setting aside of the ex-parte order was dismissed vide order dated

30.09.2022. However, since the written statement was not accompanied with the application dated 22.09.2021, the same was later on filed on 06.01.2023. While considering the application for recall of the ex-parte order dated 04.08.2021 preferred under Order IX Rule 7 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure, the learned Trial Court has, vide impugned order dated 27.02.2023, declined to vacate the ex-parte order and to allow filing of written statement on the ground that there was lack of diligence on the part of the defendant and the plaintiff witnesses had been examined and her entire prosecution case has been disclosed. It is submitted that if the delay in filing written statement, the non-accompaniment of written statement along with the application for setting aside the ex-parte order and non-appearance of the erstwhile learned counsel on the part of the defendant for consecutive dates leading to dismissal of the application for setting aside the ex-parte order on 10.12.2021 are attributable not to the defendant, but to the erstwhile counsel representing her, reasons for rejection of her application for setting aside the ex-parte order and permission to file written statement are not proper in the eye of law.

The learned Trial Court has failed to exercise jurisdiction, though adequate grounds and pleadings were made out for the said purpose. Since it is a suit for declaration of title, the case of the defendant/petitioner would suffer irreparably if she is not allowed to properly contest by filing a written statement.

Let notice be issued upon the plaintiff/respondent to be served through the learned counsel representing the plaintiff in the Title Suit No.09 of 2021 pending before learned Court of Civil Judge (Sr. Divn), West Tripura, Agartala, Court No.1. Requisites for service of notice be filed by 28th June, 2023.

Office to issue notice to be served on learned counsel representing the plaintiff/respondent through the office of the learned Civil Judge (Sr. Divn), West Tripura, Agartala where the instant Title Suit No.09 of 2021 is pending.

Service report be sent within 3(three) weeks of its receipt. Matter be listed accordingly immediately thereafter.

Notice is made returnable on **21.07.2023.**”

3. Upon appearance of the respondent, an objection has been filed contesting the revision petition *inter alia* on several grounds of fact indicating the lack of diligence and interest on the part of the defendant/petitioner herein in defending the case. Mrs. S. Deb (Gupta), learned counsel for the respondent submits that in the T.S. No.09/2021, summons were received on 13.02.2021. The matter was then fixed on 15.03.2021 for filing of written statement. It was again adjourned to 14.04.2021 for filing of written statement and then again adjourned to 03.05.2021 for filing written statement. It was further adjourned to

05.07.2021 for filing written statement. Thereafter on 04.08.2021, the order was passed by the learned Trial Court that the trial would proceed ex parte. On 01.09.2021, though the respondent submitted some documents, in original; but no application for vacating the ex parte order was filed. Later on 22.09.2021, the examination-in-chief of plaintiff witness was submitted. On that date, an application for vacation of the ex parte order was filed, but no written statement was annexed to it, which is the ordinary practice and procedure followed. The defendant remained unrepresented on 10.12.2021 which led to dismissal of her application for vacating the ex parte order. It is submitted that thereafter, the learned counsel appearing for the defendant sought to recuse himself, as according to him, the defendant had not responded even to notices served upon her by him. The main case proceeded in the meantime for evidence of the prosecution witnesses. On 21.03.2022, prosecution witnesses were examined-in-chief. On that date also, the defendant counsel for defendant/petitioner prayed for adjournment as he could not prepare for cross-examination which was allowed subject to payment of conveyance charge. On the next date, i.e. 19.05.2022, learned counsel for the defendant/petitioner stated that he wanted to withdraw himself from the case as the petitioner was not communicating with him. He also filed a copy of the notice sent by him to the defendant/petitioner through registered post expressing his wish to withdraw from the case. His prayer was allowed and the case was fixed for argument. At that stage, on 02.08.2022, a petition was filed by a new counsel on behalf of the defendant/petitioner for recalling the order of dismissal dated 03.08.2021. The said petition was allowed on 30.09.2022 in the interest of justice. However, the learned Trial Court by the impugned order dated 27.02.2023 refused to recall the ex parte order as the trial had reached to a stage where the evidence of the plaintiff witnesses had been concluded and the entire plaintiff's case had been

disclosed. The written statement was filed on 06.01.2023 only, and not at the time of filing of the petition for vacating the ex parte order on 22.09.2021 or also at the time of filing of petition on 02.08.2022 for recalling the order of dismissal dated 03.08.2021. Learned counsel for the respondent submits that the case has reached to a stage of arguments. As such, the impugned order may not be interfered, since the defendant/petitioner cannot claim an advantage on account of her own wrongs. Any interference in the impugned order would be at the peril of the plaintiffs who have been diligently prosecuting the case.

4. I have considered the submission of learned counsel for the parties and taken note of the chronology of dates and events borne from record by the parties. Petitioner, it appears, has sought to attribute non-filing of the written statement to her counsel. Ignorance of procedure or law cannot come to the avail of the defendant if there is repeated lack of diligence and interest on her part for not one or two dates, but for several dates when the case was being adjourned for filing of written statement. Even if the period from 15.03.2021 till 05.07.2021 is discounted for the reason that the second wave of COVID-19 was at its peak; but the conduct of the defendant thereafter is inexplicable. Even though an application for vacation of the ex parte order was filed on 22.09.2021, but the written statement was not annexed to it. No purpose would have been achieved merely by allowing the application for vacation of ex parte order, if the defendant did not care to file a written statement to be taken on record after vacation of the ex parte order. It further appears that though such application was dismissed on 10.12.2021 on account of non-representation of the defendant, but thereafter also, it is the learned counsel for the defendant who sought to recuse himself by informing the Court on 19.05.2022 about the lack of interest on the part of the defendant in communicating with him despite

service of notice upon her through registered post, a copy of which was filed in the Court. The petition for recalling the order of dismissal dated 03.08.2021 was again filed on 02.08.2022 which was, however allowed on 30.09.2022 in the interest of justice. However by that time, the plaintiff witnesses had been examined and the case of the plaintiffs had been disclosed. The impugned order is dated 27.02.2023, but the instant revision petition was filed on 02.06.2023 when the case had further progressed to the fag end of the trial. The chronology of facts narrated hereinabove, therefore, does not excuse the responsibility of the defendant on alleged grounds of lapses on the part of the learned counsel representing her to restore the proceedings of the suit to a stage of filing of written statement when the entire trial has progressed so far and is at the stage of final arguments.

5. As such, this Court does not find any error of jurisdiction on the part of the learned Trial Court in refusing to recall the ex parte order passed against the defendant/petitioner at this fag end of the proceedings. Defendant/petitioner cannot be allowed to take advantage of her own wrong and that too, to the disadvantage of the other side who has been diligently prosecuting his case. As such, this Court does not find any grounds of interference in the impugned order passed by the learned Trial Court.

6. Therefore, the instant revision petition stands dismissed. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ