

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.72/2024

1. Sri Biswanath Paul, S/O. Late Gouranga Ch. Paul,
2. Sri Pradip Chandra Paul, S/O. Late Gouranga Ch. Pal.

Both are residents of Teliamura Bazar, P.O. & P.S.-Teliamura, Disttict-Khowai Tripura.

..... Petitioner(s).

V E R S U S

1. Sri Renulal Roy, S/O. Late Nilratan Roy, Resident of Netaji Nagar, P.O. & P.S.-Teliamura, District-Khowai Tripura.
2. Sri Prabir Ch. Paul, S/O. Late Gouranga Ch. Paul,
3. Smt Yamuna Paul, W/O. Late Gouranga Ch. Paul,
4. Smt Jaya Rani Paul, D/O. Late Gouranga Ch. Paul,
5. Smt Soma Saha, W/O. Late Tulsi Saha.

All are residents of Teliamura Bazar, P.O. & P.S.-Teliamura, District-Khowai Tripura.

.....Respondent(s).

For Petitioner(s)	: Mr. A. Gon Chaudhury, Advocate, Mr. D.C. Roy, Advocate.
For Respondent(s)	: Mr. Ranjit Dasgupta, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

26/09/2024

Heard Mr. D.C. Roy, learned counsel appearing for the petitioners and Mr. Ranjit Dasgupta, learned counsel appearing for the respondents.

2. In Title Suit No.03 of 2023 after receipt of summons, the defendant No.3/petitioner No.2 herein could not file the written statement on the next date, i.e. 04.04.2023. The learned trial Court vide order passed on the same date directed the suit to proceed *ex parte* on account of failure to file written statement within the statutory period of 90 days. The defendant No.3

made a request for recall of the *ex parte* order under Order IX Rule 7 of the CPC which has been rejected by the impugned order dated 08.01.2024.

3. I have heard learned counsel for the petitioners and also learned counsel for the defendants. Learned counsel for the petitioners submits that there was no such inordinate delay in filing the written statement on the first date after receipt of the summons, but apart from that petitioner was undergoing treatment outside the State in support of which certain medical prescription issued by the AMRI Hospital, Mukundapur dated 15.04.2023 has also been relied upon. Bill-cum-receipt from the same hospital dated 22.04.2023 in the name of the defendant No.3/petitioner No.2 has also been relied upon. He submitted that the learned trial Court has in haste without proper consideration of the explanation urged condoned the delay despite the ratio laid down by the Apex Court in the case of ***Salem Advocate Bar Association, Tamil Nadu vrs. Union of India*** reported in (2005) 6 SCC 344 that the time prescribed under Order VIII Rule 1 of the CPC to file written statement is directory. Therefore, delay, if any, may be condoned in filing written statement on account of the treatment of the petitioner outside the State.

4. Learned counsel for the respondents has strongly opposed the prayer. He submits that the learned trial Court was not satisfied with the plea as no corroborative medical document could be submitted to establish that he had gone outside the State for treatment. Moreover, the application had been moved by a counsel in whose favour the defendant had not executed the *Vakalatnama*. Therefore, a cost of Rs.500/- was imposed.

5. On consideration of rival submission of parties and taking a broader view of the matter that on the first date of appearance after receipt of summons though beyond statutory period of 90 days petitioner could not file written statement, the learned trial Court could have taken a lenient view of the matter on the application under Order IX Rule 7 of the CPC. In the present revision petition, petitioner has furnished certain documents of his treatment during the period prior to 04.04.2023 and thereafter, both at Tripura and later in a hospital outside Tripura.

6. This Court, therefore, in exercise of the powers under Article 227 of the Constitution of India, feels it proper that an opportunity should be granted to the defendant No.3/petitioner No.2 herein to file his written statement. Accordingly, the impugned order dated 08.01.2024 passed in Civil Misc. case No.33 of 2023 arising out of T.S. No.03 of 2023 by the learned Civil Judge (Sr. Division), Court No.2, Khowai, Tripura is set aside. Written statement, if any, filed by the petitioner be taken on record after proper verification.

The petition is allowed, however, subject to payment of cost of Rs.1,500/- to be paid to the principal defendant before the trial Court within a period of 6(six) weeks.

7. The revision petition is disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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