

**HIGH COURT OF TRIPURA
AGARTALA
CRP No.51 of 2023**

Sri Biswajit Banik

..... Petitioner(s);

Versus

Sri Manish Kar

.....Respondent(s)

For Petitioner(s) : Mr. D.K. Daschoudhury, Advocate.

For Respondent(s) : Ms. R. Majumder, Advocate,
Mr. B. Banerjee, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

25/01/2024

Heard Mr. D.K. Daschoudhury, learned counsel for the petitioner
and Mr. B. Banerjee, learned counsel for the respondent.

2. By the impugned order dated 04.09.2023, the application preferred by the petitioner under Order VIII Rule 1 read with Section 151 of the Civil Procedure Code for acceptance of the written statement 39 days beyond the statutory period of 90 days has been rejected by learned Civil Judge (Senior Division), Court No.1, Gomati District, Udaipur on the ground that the conduct of defendant is not satisfactory.

3. Mr. D.K. Daschoudhury, learned counsel for the petitioner, submits that petitioner had been out of town for business purposes for a substantial period and returned to Udaipur on 28.05.2023 whereafter he delivered all the relevant papers to his counsel on 03.06.2023 for preparation of the written statement. Therefore, delay has occasioned in submission of the written statement. It is submitted that the time period prescribed under Order VIII Rule 1 has held to be directory in nature in view of the judgment rendered

by the Apex Court in the case of *Salem Advocate Bar Association, T.N. v. Union of India* reported in (2005) 6 SCC 344.

4. Mr. B. Banerjee, learned counsel for the respondent, has opposed the prayer. He submits that a written objection was taken by the plaintiff to the petition dated 21.06.2023 filed by the defendant for acceptance of his written statement. The plaintiff has categorically refuted the grounds for delay in filing the written statement stating that the petitioner had meanwhile appeared before the Revenue Authority in connection with MR No.20220204/202214837 on 06.04.2023, but he did not take any initiative to appear before the Trial Court and file his written statement. As such, the statements made by the defendant/petitioner herein are not correct. Therefore, the prayer may be rejected.

5. Learned counsel for the petitioner, in reply, submits that the summons was received on 13.02.2023 and a prayer for further time was made by the petitioner, just after expiry of 90 days period therefrom for filing written statement, which was rejected on 15.05.2023. It is not that the petitioner was not diligent in seeking time from the learned Court for filing written statement all the while. However, learned counsel for the petitioner does not dispute the contention of the respondent that in the meantime during the period of 90 days, he had appeared before the Revenue Authority along with his pleader on 06.04.2023, but he reiterates that he had been out of State for substantial period and could not submit the written statement because of that reason. Once the prayer was rejected on 15.05.2023 i.e. just few days after the expiry of 90 days period, he preferred an application under Order VIII Rule 1 read with Section

151 of the CPC for allowing the written statement to be accepted. As such the delay, if any, is not gross neither is the conduct of the petitioner negligent. Therefore, the prayer may be allowed so that the suit can be properly contested.

6. Considered the submission of learned counsel for the parties and taken note of the relevant pleadings placed on record.

It appears that there is a delay of 39 days in filing the written statement by the petitioner which stands rejected by the impugned order dated 04.09.2023. It further appears that petitioner had received summons on 13.02.2023 and only few days after the period of 90 days, on 15.05.2023 he had sought time for filing written statement which was rejected. It however also appears that during the said period of 90 days, he had once appeared before the Revenue Authority on 06.04.2023; but could not take steps for filing written statement within the time prescribed. The plea raised by the petitioner is that he was out of State for substantial period during that time. The petitioner did not contend that he was out of the State throughout during that period. The period of filing written statement under Order VIII Rule 1 of CPC has been held to be directory in non-commercial matters as per the recent judgments rendered by a three-judge bench of the Apex Court in the case of *Desh Raj v. Balkishan (Dead) through proposed legal representative Ms. Rohini* reported in (2020) 2 SCC 708 following the decision rendered in the case of *Salem Advocate Bar Association* (supra).

7. The delay, if any, is not inordinate. As such, this Court is of the view that interest of justice would be served if the written statement of the defendant/petitioner herein is accepted and the matter is decided on contest. Accordingly, the impugned order dated 04.09.2023 is set aside. Let the written

statement of the defendant/petitioner be accepted, however with a cost of Rs.5,000/- to be paid to the plaintiff/respondent.

8. Accordingly, the instant revision petition is disposed of. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

