

**HIGH COURT OF TRIPURA
AGARTALA
CRP No.58 of 2023**

Gour Das Saha
..... Petitioner(s);
Versus
Gour Chandra Saha
.....Respondent(s)

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate, Mr. Samarjit Bhattacharjee, Advocate, Mr. Kawsik Nath, Advocate.
For Respondent(s)	:	Mr. Somik Deb, Sr. Advocate, Mr. S. Bhattacharjee, Advocate, Mr. S. Noatia, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

11/01/2024

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Kawsik Nath, learned counsel for the petitioner and Mr. Somik Deb, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel for the respondent.

2. Petitioner filed a title suit for declaration and permanent injunction under Section 38 of the Specific Relief Act, 1963. The learned Trial Court granted injunction in favour of the plaintiff by order dated 06.05.2017 in the presence of the defendant/respondent herein. The matter was taken in Misc. Appeal No.09/2017 before the learned District Judge, West Tripura, Agartala. The appeal was dismissed on 27.01.2022 [Annexure-5]. Defendant/respondent herein filed his written statement on 23.05.2023 which has been accepted by the impugned order dated 20.07.2023. Defendant took a plea that since the records were called for by the learned Appellate Court in the miscellaneous appeal, the written statement has been filed after the disposal of the miscellaneous appeal

and return of the records to the learned Court of Civil Judge (Sr. Divn), West Tripura, Agartala, Court No.1. Plaintiff/petitioner, being aggrieved, has approached this Court taking a plea that the written statement has been accepted after a long delay without any sufficient explanation on the part of the defendant and that too, without imposing any reasonable cost.

3. Mr. Somik Deb, learned senior counsel appearing for the respondent, has *inter alia* submitted that the impugned order is within the bounds of the jurisdiction of the learned Trial Court, as the provision under Order VIII Rule 1 of CPC are not mandatory as has been clearly held in the case of ***Salem Advocate Bar Association, T.N. v. Union of India*** reported in ***(2005) 6 SCC 344*** also followed in the case of ***Desh Raj v. Balkishan (Dead) through proposed legal representative Ms. Rohini*** reported in ***(2020) 2 SCC 708*** by a three-judge bench of the Apex Court. The Apex Court has drawn a distinction between the prescribed period of filing written statement qua commercial suits under the Commercial Courts Act, 2015 which is mandatory in nature, and does not provide for discretion to the Courts to condone the delay as compared to non-commercial suits which are governed by the provisions of Order VIII Rule 1 of CPC and are directory in nature.

4. It is further submitted that the present case is almost on similar facts as that of ***Zolba v. Keshao and others*** reported in ***(2008) 11 SCC 769***. It is submitted that in the said case also, the delay in filing written statement was condoned by the Apex Court taking into account that the issue regarding injunction has been carried up to the Appellate Court of District Judge and as such, written statement could not be filed within the period of limitation. Those

facts constituted sufficient cause for condoning the delay in filing written statement.

5. Mr. Deb, learned senior counsel for the respondent, has also relied upon a decision of this Court in the case of *Sri Nirmal Sarkar and another v. M/S ITP Limited* in *CRP No.07/2023* vide order dated 21.12.2023 in support of his submission that the instant petition under Article 227 of the Constitution of India is fit to be rejected as the learned Trial Court has not committed any jurisdictional error for this Court to interfere.

6. Mr. P. Roy Barman, learned senior counsel for the petitioner, submits that the failure on the part of the learned Trial Court to record adequate reasons for condoning a substantial delay in filing written statement even after dismissal of the miscellaneous appeal would show non-application of mind and abdication of jurisdiction which is amenable before this Court under Article 227 of the Constitution of India. He further submits that delay in filing of written statement after substantial delay should not be casually condoned by learned Trial Courts otherwise the purpose and intent of the provisions under Order VIII Rule 1 of CPC would stand defeated leading to further delays in conclusion of the trial. The learned Trial Court has also failed to award any cost in favour of the plaintiff who has been diligent in prosecuting the suit throughout.

7. Considered the submission of learned counsel for the parties in a limited gamut of facts and in the light of the provisions under Order VIII Rule 1 of CPC.

The broad facts of the present case, of course, do accord with the case of **Zolba** (supra) relied upon by the respondent, but a conspicuous distinguishing feature which can be easily noticed is that in the case of **Zolba**, the delay in filing written statement was only 35 days whereas in this case, even if the plea of pendency of the injunction matter in miscellaneous appeal is taken into consideration, the written statement was filed almost after one year and four months of the dismissal of the miscellaneous appeal whereby challenge to the injunction granted in favour of the plaintiff was dismissed. The learned Court however, seems to have accepted the written statement in view of the plea made by the petitioner regarding pendency of injunction matter before the Appellate Court and that records were also summoned in connection with the Misc. Appeal which were returned only after dismissal of the Appeal. However, the learned Court ought to have considered grant of reasonable cost even if it was satisfied that the delay in filing written statement could be condoned in view of the directory provisions of Order VIII Rule 1 of CPC in such non-commercial suits.

8. As such, this Court though not inclined to interfere in the matter in view of the reasons recorded above but a cost of Rs.7,500/- is imposed in favour of the plaintiff/petitioner to be paid by the defendant/respondent by the next date fixed before the learned Trial Court.

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

(APARESH KUMAR SINGH), CJ