

THE HIGH COURT OF TRIPURA

A G A R T A L A

CRP No. 87 of 2015

Defendant-Petitioners :

1. Sri Kartik Debbarma,

S/o. Late Vivekananda Debbarma.

2. Sri Banamali Debbarma,

S/o. Late Ganesh Debbarma,

Both resident of village-Biljoynagar, Khamarbari,
P.S-Sonamura, District-West Tripura now
Sepahijala.

By Advocates :

Mr. K. N. Bhattacharji, Sr. Adv.

Mr. R. C. Deb, Adv.

Plaintiff-Respondent :

Binoy Debbarma,

S/o. Late Bidya Ch. Debbarma, Village-Bijoynagar,
Khamarbari, P.S-Sonamura, District-West Tripura
now Sepahijala.

By Advocate :

Mr. A. De, Adv.

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &

Judgment & Order : **1st September, 2015.**

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER (ORAL)

This petition is directed against the order dated 30th June, 2015 passed by the learned Civil Judge (Jr. Division), Sonamura, West Tripura in Title Suit No. 12 of 2014 whereby the learned trial Court has virtually *suo motu* recalled its earlier orders and has held that because 90 days had expired and no application for extension of time was filed, the defendants were not entitled to file the written statement.

[2] The undisputed facts are that written statement has not been filed within 90 days as provided under law. Normally, an extension beyond 90 days should only be granted by the Court if a written application is filed giving reasons why the written statement could not be filed within the prescribed period of 90 days.

[3] However, the facts of this case are quite different and make interesting reading. On 13th May, 2015 the case was listed for filing of written statement. The Court in its order notes that 92 days have already elapsed and written statement has not been filed. A petition was submitted on behalf of the defendants to grant them more time to file written statement in which it was stated that though the written statement was ready the affidavit of the defendants could not be prepared because the defendants were absent. This petition was allowed by the learned trial Court subject to payment of Rs.300/- as costs. The case was adjourned to 3rd June, 2015 for payment of costs and filing of written statement. On 3rd June, 2015 the written statement was again not filed. Costs of Rs.300/- were paid which were accepted by the plaintiff. Again a petition was filed that because the defendant could not appear before the counsel the necessary affidavit could not be prepared. The learned trial Court observed that similar prayer had been made on the earlier dated and that 110 days had elapsed. However, the learned trial Court went on to hold as follows:

******* For the ends of justice last and final chance is given in favour of the defendants for submitting their W/S. It is also observed that apparently the defendants are not willing to contest this case but considering the submission of the Ld. Advocate for the defendants time has been allowed subject to payment of further cost of Rs.400/-.**

The cost of Rs.300/- so paid by the defendants shall be deposited in the State Fund maintained by the Sub-division Legal Services Committee, Sonamura, West Tripura.*"**

[4] On 30th June, 2015 written statement was filed and at this stage an objection was raised on behalf of the plaintiff that the defendant having not submitted the written statement within 90 days could not be permitted to file the written statement and reliance was placed on the judgment of the Apex Court in ***Kailash Vrs. Nanhku and Others : AIR 2005 SC 2441***. The learned Court went on to hold that the defendants were negligent in not filing the written statement within 90 days and, therefore, refused to take the written statement on record and ordered that the suit shall proceed ex-parte against the defendants due to their laches. With regard to the previous petition for time and with regard to imposition of costs the Court held as follows:

"On previous occasion the defendants sought several times for filing the written statement but could not filed the same. For these reasons, Court imposed cost of Rs.300 vide order dated 13.05.2015 and a cost of Rs.400 vide order dated 03.06.2015. On both the occasion, the defendants paid both the cost amount and deposited in the Court.

But it is to be remembered that the cost was so imposed against the time petitions so allowed after recording the reasons, howsoever briefly, for allowing the same. The cost was not imposed for filing the written statement."

[5] To say the least, the reasoning given by the learned trial Court is totally erroneous. A perusal of the orders dated 13th May, 2015 and 3rd June, 2015 leave no manner of doubt that the costs were imposed and adjournment granted only for the purpose of filing of written statement and nothing else. If the right to file written statement was to be closed because the defendants had not shown cause why he could not file written statement in time, this order should have been passed 13th May, 2015 itself. There was no idea of imposing costs if the litigant was to be proceeded against ex-parte. The counsel prayed for time to file written statement. In the application it was prayed that since the defendants were not present and the affidavit could not be prepared and hence

written statement cannot be filed. These applications were allowed on two occasions subject to payment of costs and I am constrained to observe that the order of the learned trial Court holding that the costs were paid only to grant adjournment and not for the purpose of filing the written statement is an absurd order. This order makes no sense. Time was sought to file written statement and this is apparent from the earlier orders.

[6] Another aspect of the matter is that a Court cannot *suo motu* start reviewing or revising its own orders. There is a procedure prescribed for review or recall of the earlier orders. In the order dated 13th May, 2015 it is specifically mention 'fix 03.06.2015 for payment of costs and filing of written statement by defendants'. In the order dated 3rd June, 2015 it is mentioned 'fix 30th June 2015 for payment of cost by the defendants/W.S'. This portion of the order clearly indicate that the time was being granted for filing of written statement and payment of costs.

[7] In this view of the matter, I have no hesitation in setting aside the order under revision. The same is accordingly set aside. The learned trial Court is directed to take the written statement on record. In case the plaintiff wants to file replication to the written statement, he may do so and thereafter the learned trial Court shall frame issues and proceed to decide the case in accordance with law.

[8] Petition is disposed of in the aforesaid terms. No costs.

CHIEF JUSTICE