

THE HIGH COURT OF TRIPURA
AGARTALA

CRP 36 of 2011

1. Smti. Santana Banerjee (Dey)
W/O. Late Pradip Kumar Dey.
2. Shri Pritam Kumar Dey,
S/O. Late Pradip Kumar Dey.
3. Shri Pallab Dey (Minor),
S/O. Late Pradip Kumar Dey.

The minor is represented by his
Mother Petitioner No.1.
All are residents of Shreenagar, Gali
No.3, Milan Chakra, P.O. A.D. Nagar, P.S.
West Agartala, District-West Tripura.

..... *Petitioners*

- Vs. -

Shri Hiru Deb,
S/O. Lt. Sukumar Deb,
Resident of Rajnagar, Dashami Ghat,
P.O. Agartala,
P.S. West Agartala, Dist. West Tripura.

..... *Respondent*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioners : Ms. S. Deb Gupta, Advocate.

For the respondent : None.

Date of hearing & : 09.02.2015.
delivery of
Judgment & order

Whether fit for : Yes.
Reporting

JUDGMENT & ORDER (ORAL)

This revision petition is directed against the order
dated 16.03.2011 passed by the learned Civil Judge, Senior

Division, Court No.1, West Tripura, Agartala whereby the application filed by the petitioners, who is the defendants in the suit for condoning the delay in filing the written statement has been rejected.

2. The respondent (hereinafter referred to as 'the plaintiff') filed a Money Suit which was taken up by the Court on 23.06.2010 and adjourned to 20.08.2010. On this date, the defendants appeared and sought time to file written statement. Thereafter, the matter was adjourned to 04.10.2010 and again the written statement was not filed. On 02.12.2010, the written statement was again not filed, but this time, it was noted that the stipulated period of 90 days for filing the written statement is over. Thereafter, on 02.02.2011 the written statement was filed with an application for condonation of delay. This application has been rejected by holding that the ground given is not satisfactory. There is no discussion whatsoever on what is the ground taken in the application for condonation of delay. The Court totally lost sight of the fact that defendant No.1 was a widow and defendant Nos. 2 and 3 were minor sons. Minors cannot be proceeded against ex parte in a suit and even if the mother does not appear for them or does not look after their interest then the Court has to appoint a Court guardian. The defence of the minors could not have been struck away in such a cursory fashion.

3. In India, we must remember that the litigants more often than not are totally illiterate or semi literate and even if they are literate, they have very little knowledge of law. Once they go to the counsel, they are in the hands of the counsel, who guides them. How does a litigant know that the time prescribed for filing a written statement is 90 days? It appears that the counsel was under the impression that since the regular presiding officer had not held Court on any one of the dates mentioned hereinabove, and on all the dates, the matter was taken up by an alternative presiding officer it was not necessary to file the written statement. The fault, if any, was of the counsel and not of the parties.

4. In an event since minors are involved, I am clearly of the view that they could not have been proceeded against ex parte. Their defence should not have been struck off because the Court is duty bound to look after the interest of the minors.

5. In view of the above discussion, the petition is allowed. The written statement which has been filed is already taken on record.

6. The Registry is directed to send back the record to the learned Trial Court.

7. The defendant is directed to appear before the Trial Court on 19th March, 2015 and the Trial Court shall then issue summons to the plaintiff and then proceed with the suit in accordance with law.

CHIEF JUSTICE

sima