

21.01.2021
Court No. 19
Item No.11
CP

C.O. 27 of 2021
Sri Niranjan Tikader & anr.
vs.
Sri Debranjana Roy & ors.

Mr. Atiq Kumar Biswas
Mr. Amit Singh

....for the petitioners.

Mr. Soumya Majumder
Mr. Sabir Ahmed

...for the caveators/defendants.

This revisional application has been filed by the plaintiffs in Title Suit No. 784 of 2019, pending before the learned Civil Judge (Senior Division), 3rd Court, Barasat. The petitioners are aggrieved by the order dated December 11, 2020 by which the written statement filed belatedly by the defendant nos. 1 and 3 was accepted by the learned court and the order for ex parte hearing of the suit against the said defendants was vacated.

It is the submission of the petitioners that the defendant nos. 1 and 3 adopted dilatory measures to delay the suit which has caused huge loss to the organization of which the plaintiffs are the office bearers. It is further submitted that the learned court allowed the belatedly filing of the written statement on the ground that the pandemic situation prevented the said defendants from filing the written statement

on time, although, the said reason was not the reason assigned by the defendant nos. 1 and 3 while filing an application for acceptance of the written statement belatedly. It is further stated that during the pandemic situation the defendant nos. 1 and 3 contested the proceedings and filed several other interlocutory applications.

Although the application for acceptance of the belatedly filed written statement is not happily worded, however, for the ends of justice it cannot be ruled out that the pandemic situation may have caused some disruption in the proper functioning of the courts and the delay around a year can be condoned in the fact situation. In an adversarial form of litigation, suits of this nature cannot go uncontested. The dispute in the suit relates to functioning of the governing body of a trust property and also other educational institutions and, as such, the social implication of such a suit is far reaching for which, this court believes that the suit should not go uncontested. However, in the fitness of things, the court believes that the petitioner should be awarded cost of Rs.3000/- for the delay caused in filing the written statement. The Hon'ble Apex Court time and again has reiterated that filing the written statement within 120 days was not mandatory but a directory provision in case of regular suits and the court had

the discretion to allow belated filing of a written statement for proper reasons.

I do not find any illegality or material irregularity with the order impugned. The order impugned is modified to the extent that cost of Rs.3000/- should be paid to the petitioners by the opposite parties. The said cost will be paid by the learned advocate for the opposite parties to the learned advocate on record for the petitioners within the course of the day and the receipt of the same shall be filed before this court within the course of the day. Once the receipt is filed, the defendant nos. 1 and 3 shall be allowed to contest the suit on the basis of the written statement which is already on record.

In case of default of payment as directed above, the written statement shall not be taken into consideration by the learned court below.

The revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)