

05.02.2021
Court No. 19
Item No.11
CP

C.O. 235 of 2021

Radharani Tea Company Private Limited
vs.
Serenity Tea LLP

(via video conference)

Mr. Aniruddha Chatterjee
Ms. H. Chakraborty
Ms. Arpita Saha
Ms. A. Das

....for the defendant/petitioner.

Mr. Shounak Bhattacharya
Mr. Biswajit Kumar
Mr. D. Sen

.....for the plaintiff/opposite party.

This revisional application has been filed by the defendant in Money Suit No. 70 of 2019, pending before the learned Judge, XIth Bench, City Civil Court at Calcutta. By the order impugned, the learned court below rejected an application filed by the defendant to accept the written statement which was filed out of time.

According to Mr. Chatterjee, the learned court for the petitioner, the summons were received by Mr. Chatterjee's client in May 2019 and the defendant entered appearance in July 2019. The next date fixed was August 2, 2019 for filing the written statement. On August 2, 2019 the petitioner was surprised to see that the suit was fixed for ex parte hearing. On

August 6, 2019 an application was filed for acceptance of the written statement. The learned court below came to the conclusion that the application filed by the defendant for acceptance of the written statement out of time, was devoid of merits.

Records reveal that the summons were issued on February 8, 2019. SR was filed by the plaintiff showing service upon the defendant. By an order dated May 30, 2019, the Judge-in-charge did not accept such service and directed the plaintiff to make fresh service. However, on July 16, 2019 the defendant entered appearance and prayed for time to file the written statement. The learned court fixed August 2, 2019 for filing the written statement. On August 6, 2019, the defendant was ready with the written statement along with an application for acceptance of the written statement out of time. Reasons assigned by the defendant for the delay is that a confusion was created as to whether the summons were actually served or not and the matter was put up before the learned Judge-in-charge. Thereafter an order was passed for ex parte hearing of the suit.

However, this court does not find any intentional laches on the part of the defendant in filing the written statement which was ready to be

filed on August 6, 2019. Business of the court did not permit the matter to be taken up on August 6, 2019 and, thereafter. This court is satisfied that the defendant had honest intention to contest the suit. In an adversarial form of litigation ex parte disposal of matters is not warranted. Yet the plaintiffs must be compensated for the delay caused.

The written statement filed be accepted subject to payment of cost of Rs.30,000/- to be paid by the defendant within February 15, 2021. Such payment to be made by cheque to be tendered by the learned advocate-on-record for the defendant to the learned advocate-on-record for the plaintiff appearing in the learned court below. A receipt showing such payment shall be deposited in the learned court below. The learned court below will satisfy itself that the payment has been made as directed and proceed with the suit in accordance with law. In case of default, the written statement shall not be accepted.

The learned court below is also directed to dispose of the suit as expeditiously as possible.

The revisional application is disposed of. There shall be no order as to costs.

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.)