

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee.

C.O. 376 of 2019

**SHANTI PRASAD DE
VERUS
ALOE KUMAR PAL & ANR.**

For the petitioner: Mr. Rabindranath Mahato,
Mr. Aritra Shankar Roy.

For the opposite party: None.

Heard on: 20.12.2021

Judgement on: 23.12.2021

Ajoy Kumar Mukherjee, J.

1. Being aggrieved by and dissatisfied with the order dated August 30, 2018, September 05, 2018, September 29, 2018 and October 03, 2018 passed in the J. Misc. Case No. 06 of 1995 pending before the learned Civil Judge (Junior Division) Bishnupur, present revisional application has been preferred by the Order No. 103 dated October 10, 2018 the learned Trial

Court was pleased to accept the written objection filed by the opposite parties of the J. Misc. Case. No. 06 of 1995.

2. The background of the case in a nutshell is that, the petitioner Shanti Prasad Dey filed an application under Order VIII of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as “the said Act of 1955” in short) being J. Misc. Case No. 6 of 1995 against the opposite parties Alope Kumar Pal and Tilak Kumar Pal praying for pre-emption in respect of the suit property. On 13th September 1996 the opposite parties entered appearance in a said proceeding but ultimately they did not contest and as such pre-emption application under Section 8 of the said Act of 1955 was allowed ex-parte.

3. Subsequently the opposite party filed an application under Order 9 Rule 13 of the Code of Civil Procedure praying for setting aside the ex-parte order dated 6th October 2001 but the learned Civil Judge (Junior Division) at Bishnupur by its order dated 24th June 2011 rejected the application under Section 5 of the Limitation Act and also an application under Order 9 Rule 13 on contest. Being aggrieved by that order dated 24th June, 2011 the opposite parties preferred misc. appeal being Misc. Appeal No. 03 of 2012 before the learned District Judge Bankura. By his judgment and order dated 19th March, 2015, learned District Judge, Bankura allowed the aforesaid Misc. Appeal. No. 03 of 2012 with costs of Rs. 10,000/- (Rupees Ten Thousand) and the learned District Judge was further pleased to direct the opposite parties to file written statement/objection within 30 days from the date of receipt of the order passed by the learned Trial Court and to dispose

of the matter within six months from the receipt of order without granting any adjournment.

4. On April 20, 2015 the learned Civil Judge (Junior Division) at Bishnupur received the aforesaid judgment dated 19th March, 2015 passed in Misc. Appeal No. 03 of 2012 and the same was shown to the learned Advocate for both the parties. Despite a specific direction made by the learned District Judge in Misc. Appeal No. 03 of 2012 which was also shown to the learned advocate for both the parties, the opposite parties did not file their written statement/objection within 30 days from April 20, 2015. Since the opposite party did not file their written statement within the stipulated time framed by learned District Judge as above, the learned Civil Judge (Junior Division) Bishnupur was pleased to reject the prayer made by the opposite party for filing written statement which was filed only on 4th May, 2017, but surprisingly on December 08, 2017 when the opposite parties filed written statement/objection to the application under Section 8 of the said Act of 1955 the learned Judge of the Trial Court has accepted the same.

5. On December 05, 2018 the petitioner filed an application under Section 151 of the Code of Civil Procedure praying for recalling the said order whereby the learned Trial Court had accepted written statement/objection in spite of flouting the specific direction made in the judgment dated 19 March, 2015 passed by the learned District Judge. On 20th September, 2018 the opposite party filed an application for time to file objection to the aforesaid application under Section 151 of the Code of Civil

Procedure and on September 29, 2018, the learned Judge allowed such prayer and fixed October 03, 2018 for filing objection by the opposite parties. On 3rd October 2018 the opposite parties not pressed the written statement/objection to the application under Section 8 of the said Act of 1955 filed by them on December 08, 2017 but since the opposite parties not pressed the written statement/objection to the petition under Section 8 of the said Act of 1955, so on October 03, 2018 the learned Civil Judge (Junior Division) at Bishnupur passed an order to the effect that there is no necessity for hearing of the application under Section 151 of the Code of Civil Procedure filed by the present petitioner for recalling order of acceptance of written statement/objection passed by Trial Court. After passing the aforesaid order on 3rd October, 2018 the opposite parties again filed written statement/objection to the application under Section 8 of the said Act of 1955 but surprisingly same was accepted by learned Trial Court ignoring all earlier orders and without assigning reason and as such being aggrieved by the aforesaid order the present revisional applications has been preferred.

6. Considered submission and also perused the copy of the order sheets. It is revealed from the Order No. 93 dated 4th May, 2017 that learned Civil Judge (Junior Division) at Bishnupur was pleased to reject the prayer made by the opposite party for filing written statement/objection in J. Misc. Case No. 06 of 1955 / J. Misc. Case No. 23 of 2003 and was further pleased to fix 05/07/2017 for ex-parte hearing. Subsequently, on 03/10/2018 the opposite party has made not pressed the written statement/objection filed

by him on 08/12/2017 and as such the Court observed that there was no necessity for hearing the petition dated 05/09/2018 but surprisingly the written statement/objection filed by the opposite party was accepted and the case was posted for peremptory hearing on 19/01/2019.

7. From the above backdrop, it is clear that the learned District Judge by his order dated 19th March, 2015 was pleased to direct the opposite parties to file written statement within 30 days from the receipt of the order and it also appears that disregarding that order when the written statement was not being filed till 05/07/2017 the learned Trial Court was pleased to reject the prayer for filing written statement/objection. Now, once the prayer for filing written statement/objection has been rejected by the learned Trial Court, it can sit to review/reverse its own order and to pass a completely contradictory order without assigning any reason as to why he had contradicted his earlier order dated 4th May, 2017.

8. The object of assigning time frame for filing written statement by the learned District Judge was to prevent the opposite parties to cause delay in filing written statement. Order VIII Rule 1 has been amended and a specific direction in respect of time frame for filing written statement has been mentioned therein. It may be that considering this provision of law the learned Trial Court by his order dated 4th May, 2017 was justified in passing the rejection order vide Order No. 93, but subsequently when the written statement/objection was again filed, it was accepted by the Court without assigning reason. The petitioner challenged the order of acceptance of written statement by filing a recall petition. When the opposite party has not

pressed the written statement/objection filed by him on 08/12/2017 which was filed against the application under Section 8 of the said Act of 1955, it is not understandable why the opposite parties were subsequently allowed to file written statement/objection against the application under Order 8 of the said Act of 1955 without assigning any reason.

9. However, considering all the above mentioned anomalies and also considering the fact that in a roundabout way the learned Trial Judge has reviewed, and/or reversed his own order without assigning any reason, but justice demands that when the suit has already been posted for peremptory hearing, if the order for acceptance of written statement by the Trial Court keeps uninterfered by this appellate authority, the highest prejudice that may cause to the petitioner would be that the case would be disposed of on merit after contested hearing and nothing more. But at the same time, I am not unmindful to the fact that the direction about filing written statement within a specified time has not only been flouted but also the direction made by the learned First Appellate Court about disposal of the case within six months, has also been flouted for the same reason and for which the opposite parties are liable to pay cost and I am also of the view that a specific direction for disposal of the case within a time frame is required to be passed, in view of the fact that the pre-emption case was initiated in the year 1995.

10. In view of the above, I dispose of the present revisional application with a direction that the opposite party will pay cost of Rs. 20,000/- (Rupees Twenty Thousand) to the petitioner within one month from the date

of receipt of order for not filing written statement within the time scheduled by the learned First Appellate Court and with a further direction upon the learned Trial Court to dispose of the J. Misc. Case No. 06 of 1995 (C. No. 18 of 2015) positively within a period of six months from the date of receipt of the record without granting any unnecessary adjournment, to either of the parties. In terms of the above, without touching the merit of the case and without interfering the order of acceptance of written statement/objection by the learned Trial Court,(except imposition of cost) for the reason as stated above, C.O. 376 of 2019 is disposed of accordingly.

As prayed for, let the copy of the order be sent to the learned Trial Court by special messenger at the cost of the petitioner.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)