

18.02.2021
Sl. No. 1
srm

C.O. No. 777 of 2020

Sri Sushil Kumar Agarwal

Vs.

Smt. Chandrika Ray

Mr. Gunjan Shah,

Mr. Vinit Kumar Choubey

...for the Petitioner.

Mr. Amitabha Ghosh

...for the Opposite Party.

This revisional application is filed by the sole defendant in Title Suit No.1136 of 2016 passed by the learned Judge (Senior Division), 2nd Court at Barasat, District- 24-Parganas (North). The petitioner is aggrieved by the order dated January 22, 2020 by which three applications filed by the petitioner being I.A. No.3 of 2020, I.A. No.4 of 2020 and I.A. No.5 of 2020 were taken up for hearing and rejected on contest. By these three applications, the petitioner prayed for acceptance of the show cause explaining the reasons for delay in filing the written statement out of time, for vacating the order fixing the suit for *ex parte* hearing and for acceptance of the written statement out of time. The learned Court below held that the defendant appeared on February 6, 2019 but filed the written statement as late as on October 1, 2019. The learned Court below further held that the ground set-forth by the defendant

explaining the delay in filing the written statement was not considered when the petitions dated February 6, 2019 were disposed of. The learned Court below directed that the suit will continue *ex parte*.

Aggrieved by the aforementioned order, this revisional application has been filed.

Records reveal that previously the defendant had filed an application for taking off the suit from the *ex parte* board. The explanation given was that there was a mistake in posting of the dates in the diary of the learned Advocate appointed by the defendant. In these three applications, the ground for delay in filing the written statement has also been mentioned as misposting of the dates in the diary of the learned Advocate.

The first application, which was rejected, as an application for taking off the suit from the *ex parte* board. By an order dated June 11, 2019, the learned Court below rejected the application on the ground that the written statement not having been filed, the question of taking off the suit from the *ex parte* board did not arise and hence the application was rejected.

Subsequently, the defendant filed the written statement along with the applications. The earlier order will not operate as *res judicata* in this case in view of the fact that the

application for taking off the suit from the *ex parte* board was rejected. Thereafter, once the written statement has been filed along with an application for acceptance of the same out of time and also for vacating the further order of fixing the suit for *ex parte* hearing by the order dated June 11, 2019, in my opinion, the earlier order will not be treated as deciding an issue. In an adversarial form of litigation, a party cannot get a walkover in a suit. Procedural law can only be in aid of justice and not in derogation thereof. Litigants normally cannot suffer on account of mistakes of their learned Advocate. However, this Court cannot be oblivious of the fact that delay in filing the written statement has caused prejudice to the landlord/plaintiff and the plaintiff should be duly compensated.

The learned Court below is directed to accept the written statement and thereafter proceed with the suit expeditiously. Such written statement shall be accepted subject to payment of costs of Rs.10,000/- by the defendant to the plaintiff. Such costs shall be paid by cash to be handed over by the learned Advocate on record for the defendant to the learned Advocate on record for the plaintiff in the learned Court below. Payment should be made within two weeks from date. A receipt of acceptance of such costs shall be granted to

the learned Advocate for the defendant. Such receipt shall be filed in Court. The learned Court below shall satisfy itself about the payment and thereafter proceed with the hearing of the suit as a contested suit. In case of default the suit shall proceed *ex parte*. As the evidence of the plaintiff has already commenced, it is made clear that the learned Court below shall make serious endeavour to dispose of the suit expeditiously preferably within a period of one year from the next date fixed.

The order impugned dated January 22, 2020 is set aside and quashed.

This revisional application is, thus, disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)