

05.01.2021  
Sl. No.4  
srm

**C.O. No. 1063 of 2020**  
**Ashok Kumar Pandit**  
**Vs.**  
**Hamid Ali Mondal @ Lalu & Ors.**

Mr. Tarak Nath Halder

...for the Petitioner.

Affidavit of service is taken on record. None appears on behalf of the opposite parties.

This revisional application has been filed by the plaintiff in Title Suit No.43 of 2013 being aggrieved by the order dated January 9, 2020 passed by the learned Civil Judge (Junior Division), Bidhannagar, District-North 24-Parganas. By the order impugned, the learned Court below accepted the written statement filed by the defendant Nos.2 and 3 after a period of six years.

It is argued by Mr. Halder, the learned Advocate appearing on behalf of the petitioner, that the learned Court below ought not to have accepted the said written statement after a lapse of six years without there being exceptional circumstances which had prevented the said defendants from filing the written statement within a reasonable time, if not within the 120 days, as prescribed under the Code of Civil

Procedure. Mr. Halder further submits that the learned Court below has also not recorded its satisfaction with regard to the inability of the said defendants to file the written statement. Mr. Halder further submits that reasons should have been assigned by the learned Court below as to why the Court in exercise of its discretion had been satisfied that the defendants were not responsible for the delay in filing the written statement.

Mr. Halder urges that the opposite parties were also liable to compensate the petitioner adequately in terms of the decision of the Hon'ble Apex Court in *Kailash vs. Nanhku & Ors.* reported in AIR 2005 SC 2441. The learned court has already directed payment of cost of Rs.5000/- by the defendants Nos.2 and 3.

I have gone through the order impugned. I find that the learned Court below has recorded that the erstwhile learned Advocate for the defendants refused to attend the Bidhannagar Court, where the suit was transferred. A new learned Advocate was appointed and upon enquiry it was found that the suit had already been fixed for *ex parte* hearing. In the application for acceptance of the written statement, it has been pleaded that the defendants are illiterate and the defendant No.3 is a poor man working as daily labourer and

the defendant No.2 is a housewife having no source of income of her own. A learned Advocate, Ms. Pratima Roy Chowdhury, was entrusted to look after the case but the defendants lost the connection with the said learned Advocate. On the other hand, the Title Suit No.142 of 2014 filed by the defendants was being conducted by the learned Advocate Ms. Nibedita Roy who was regularly attending the Court on behalf of the defendants. When all the cases were transferred to the Bidhannagar Court, the learned Advocate Ms. Roy expressed her inability to attend the Court at Bidhannagar and another learned Advocate was entrusted by the defendants to attend the Court at Bidhannagar. Thereafter, the newly appointed learned Advocate after going through the record discovered that the Title Suit No.43 of 2013 had been fixed for *ex parte* hearing.

Having gone through the averments mentioned hereinabove, I am of the opinion that, had the defendants been negligent in proceeding with the litigation then they would have also adopted the same attitude in their own suit. The reasons assigned cannot be totally disbelieved. Daily labourers may not have easy access to the learned Advocates and also may not be in a position to pursue their legal remedies effectively, unlike the educated and privileged class. When the

learned Court below already exercised its discretion and accepted the written statement with costs of Rs.5000/- to be paid to the petitioner, I do not see any reason to differ with the view of the learned Court below.

It is also directed that if the conduct of the defendants in future is negligent, the same may be taken into consideration by the learned Court below more strictly. If the learned Court finds that the defendants were intentionally not attending the suit and trying to delay the suit, the learned Court below will proceed in accordance with law without allowing any unnecessary adjournments to them. The learned Court below shall make all endeavour to dispose of the suit within six months, considering the prejudice suffered by the plaintiff in these six years.

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.)**