

16.09.2021
Item No.13
Ct. No.7
CHC

**C.O.1089 of 2020
(Via Video Conference)**

**Dharmendar Jaiswal
Vs.
Pritam Kumar Manna & ors.**

Mr. Anirban Majumder,
Mr. Somnath De
...for the petitioner

Mr. Rahul Karmakar,
Mr. Debabrata Roy
...for the opposite parties

Affidavit-of-service furnished by the petitioner be taken on record.

The impugned order dated 5th February, 2020, passed by learned Judge, Second Bench, City Civil Court, Calcutta, recording the evidence of P.W.1 in part after non submission of written statement within the period mentioned in Order VIII Rule 1 C.P.C. is the subject of challenge in this revisional application.

Mr. Anirban Majumder, learned advocate representing the petitioner submits that admittedly there had been some laches on the part of the petitioner/defendant to file written statement within the period mentioned in Order VIII Rule 1 C.P.C, but under some compelling circumstances, after being ill advised and misguided, for no fault on his part, the

written statement to challenge the suit could not be filed resulting in the suit to be proceeded *ex parte*.

Upon advancing such submission, Mr. Majumder proposes for making condonation of such laches on the part of the petitioner/defendant taking the plea of illiteracy of petitioner and incidental issues connected therewith.

Mr. Karmakar, learned advocate representing opposite parties/plaintiffs submits that this is a suit for eviction of a trespasser and in which the defendant has failed to furnish written statement within the stipulated period mentioned in Order VIII Rule 1 C.P.C. after responding to summons.

As regards, the admitted laches on the part of the petitioner/defendant, Mr. Karmakar submits that the suit was instituted in the year 2019, the harassment already caused, should be duly compensated, if delay in filing the written statement be at all considered.

Upon perusal of the impugned order, it appears, that P.W.1 has been examined in connection with an *ex parte* hearing of the suit, and some of the documents being relied upon by the plaintiffs have been marked exhibits. Thereafter, the evidence of P.W.1 is lying deferred.

There has been some laches on the part of the defendant without any controversy, though not deliberate and intentional.

At the same time, there has also been harassment and unwanted hardship, suffered by the opposite parties/plaintiffs.

As has been submitted by the petitioner that the sincerest intention of the petitioner being to contest the suit, the Court is of the view, that a special chance should be given to petitioner for contesting the same upon filing the written statement therefor in the manner as directed hereinbelow.

The technicalities involved in such exercise, as appearing in Order VIII Rule 1 C.P.C, in the given facts and circumstances of this case should not be given precedence to deprive the valuable rights of the petitioner to contest the suit.

Having considered the submission of both sides, the impugned order needs to be set aside upon saddling the petitioner/defendant with costs.

The impugned order dated 5th February, 2020, passed by learned Judge, 2nd Bench, City Civil Court, Calcutta, in Title Suit No.1264 of 2019 is set aside subject to payment of costs of Rs.5,000/- c.p. to be payable by the petitioner to opposite parties/plaintiffs within a fortnight from hence, failing which the order passed in this case shall automatically stand vacated without making any reference to this Court.

Upon such deposit of costs supported by receipt being made within the period mentioned hereinabove,

the petitioner is given liberty to furnish a show cause petition together with, written statement for acceptance of the same within a fortnight thereafter, and upon making such compliance by the petitioner, the learned court below shall accept the written statement after setting aside the order fixing the suit for *ex parte* hearing.

Since the suit has been instituted in the year 2019, the Court reposes confidence upon the trial court that the logical conclusion of this suit may be reached at an early date, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, unless it is extremely unavoidable.

Petitioner is directed to make communication of this order to the learned court below.

With this direction/observation, the instant revisional application stands disposed of.

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

(Subhasis Dasgupta, J.)