

C.O. 652 of 2021

**Aloka Sarkar
Vs
Antony Tapas Dutta.**

(Through Video Conference)

Mr. Sounak Bhattacharya

..... for petitioner

Learned advocate appearing for the petitioner files affidavit of service along with postal receipt and track reports. From track reports it is seen items sent to the opposite party Antony Tapas Dutta and one Tapan Kumar Das through speed post have been duly delivered. None appear from the side of the opposite party.

Therefore, the present application filed under article 227 of the Constitution is taken up for hearing.

The petitioner/defendant being aggrieved by the order of rejection of written statement filed by her in the Probate Case No. O.S. 78 of 2018 by the learned Additional District Judge, 2nd Court, Barrackpore, North 24 Parganas on 03.02.2021 has preferred the present revisional application.

It appears the petitioner and opposite party happened to be sister and brother. The opposite party being the executor of the will alleged to have been executed by their Late father Tapan Dutta, has filed the above mentioned Probate.

It has been contended by the learned Advocate for the petitioner, that petitioner was never served with the notice of the probate case. She came to know about such Probate case from the paper publication. That till date no notice or copy of probate application has been served upon the petitioner. The petitioner has voluntarily appeared before the Court below and filed written statement on 25.11.2019 and her W.S. was rejected vide impugned order and deprived her right to challenge the legality and validity of the will.

After the amendment in Civil Procedure Code the time limit for filling written statement has been fixed. The defendant is required to file written statement within thirty days from the date of service of summons/notice but not later than one hundred and twenty days from the date of service of summons.

From the order sheets of the learned court below it appears the opposite party has filed the case on 24.08.16 and had also filed requisite along with process fees. There was an order to issue notice upon other legal heirs of the deceased testator.

The present petitioner had put her appearance before the court below on 30.01.2017 and the learned court below had directed the opposite party to serve copy of the plaint to the present petitioner. The opposite party had filed the copy of plaint to be served on the petitioner on 18.05.17, but on that day and thereafter the present

petitioner has failed to appear before the court or take the copy of plaint and file written statement. Then the case was transferred to another court on 21.12.2017.

The petitioner put her appearance before transferee court by filing hazira on 26.02.19 and instead of filing written statement or making prayer for supply of the copy of the plaint filed by O.P. long ago on 18.05.17 and usual she just went filing haziras day after day. Ultimately, she took trouble to file written statement only on 25.11.2019 almost two years after initial appearance.

Having regards to such conduct of the petitioner and the provision of Order 8 Rule 1 Code of Civil Procedure, 1908 the learned court below was pleased to reject the written statement filed by the petitioner being filed beyond the prescribed statutory period.

From the facts discussed above it appears defiant attitude of the petitioner, her intention to frustrate the Probate proceeding by adopting hide and seek tactics and filing written statement in her own sweet will and desired time and to some extent justify the learned court below in passing the impugned order, but I am not unmindful to the facts the Principal Of Natural Justice demand an opportunity should be given to the defendant to plead her defence by filing written statement specially in a Probate suit, where she wanted to challenge the very execution of the will by her deceased father in favour of

the opposite party. Refusal may take away her valuable right of inheritance if the will happened to be invalid and void. Therefore, denial to file Written Statement may cause irreparable loss and injustice to the petitioner.

Legislature by making amendment in the provision of Order 8 Rule 1 CPC introduced the maximum time limit for filing written statement with an object to curb long adjournment for filing written statement and to avoid unnecessary delay. But at the same time Hon'ble Supreme Court in several decisions have been pleased to hold Procedural law is not to be tyrant but an aid to justice. The time can be extended only in exceptional hard cases. The discretion to extend time for filing written statement can be extended beyond the time limit prescribed, but it should not be exercised frequently and routinely so as to nullify the period fixed.

Therefore, it appears the court has discretionary power to grant time beyond prescribed period in exceptional cases. Since this court has taken the view that denial to file written statement in Probate matter may result in denial of right of inheritance of the petitioner a daughter of the alleged testator in disputed property, if the will is proved to be a void document.

In the light of above discussion the impugned order is hereby set aside. Let the written statement filed by the petitioner the opposite party in Probate case be accepted on payment of cost of Rupees thirty thousand to the

opposite party/the plaintiff in the court below within ten days from this day and if she fails, then learned court below is at liberty not to accept the written statement and to proceed with the hearing of the case as per law.

Accordingly, **C.O. No. 652 of 2021** is disposed of along with connected application, if any.

Interim order, if any, stands discharged.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Kesang Doma Bhutia, J.)