

AD. 20.
July 8, 2021.
MNS.

C. O. No. 1224 of 2021
(**Via video conference**)

Rukma Sen
Vs.
Dipankar Sircar

Mr. S. Lahiri,
Mr. A. Chakrabarty,
Ms. Rajashree Kundalia

...for the petitioner.

Mr. Mainak Boase,
Mr. Sabyasachi Sen

...for the opposite party.

The petitioner has challenged an order, whereby the petitioner's application for granting an opportunity to file written statement at a belated stage and to recall the order fixing the suit for *ex parte* hearing was refused.

Learned counsel for the petitioner contends that the delay in filing the written statement was *bona fide* and that a copy of the plaint was served on the petitioner only in September, 2019 and, as such, the petitioner had little time before the pandemic to have her written statement ready.

It is further submitted that the bar of 120 days, as stipulated in the second proviso to Order VIII Rule 1 of the Code of Civil Procedure, is directory in nature and as such, the petitioner ought to have been permitted to have a contested hearing of the suit for the ends of justice, if necessary, upon putting the petitioner to terms.

Learned senior counsel appearing for the plaintiff-opposite party, on the other hand, argues that the reasons for delay disclosed in the application-in-question were cryptic in nature and revolved primarily around the pandemic. However, in the present case, the outer limit of 120 days expired as long back as on November 17, 2019. Thereafter the defendant/petitioner got ample time to file her written statement, which opportunity was never availed of by the petitioner. Much prior to the pandemic, the statutory limitation for filing of written statement was over. As such, it is submitted that there is no scope to show lenience in favour of the petitioner.

Upon going through the materials on record and considering the submissions of the parties, it is clear that the only probable ground on which the defendant-petitioner sought to explain the delay in filing the written statement is

the Covid-19 pandemic, coupled with the fact that she resides in Shillong, Meghalaya.

However, such feeble excuse does not absolve the liability of the defendant, as stipulated in law, to file the written statement within the outer limit of 120 days. Even if the petitioner's contention is accepted and it is construed that the plaint was served on the petitioner only in September, 2019, despite the defendant having entered appearance in the suit on July 31, 2019, there is no plausible explanation as to why the petitioner could not thereafter avail the long period prior to commencement of the pandemic to file her written statement.

In the absence of any explanation and there being little leeway in view of the stipulation of 120 days under Order VIII Rule 1 of the Code, the trial court was justified in passing the order impugned. Since there is no material irregularity and/or gross miscarriage of justice occasioned by the exercise of judicial discretion in the impugned order, C. O. No. 1224 of 2021 is dismissed on contest, thereby affirming the order dated March 30, 2021 passed in Title Suit No.518 of 2019, which is impugned in the present application.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)