

06.12.2021
Item No. 14
Court No.18
A.J.

C.O. 2924 of 2019
(Through Video Conference)

Subir Prasad Roy
-Vs-
Mrs. Shampa Barai

Mr. Rahul Karmakar.
...for the petitioner.

Mr. Rahul Karmakar, learned advocate for the petitioner files affidavits-of-service which are taken on record.

The postal article addressed to the opposite party has returned with the endorsement 'Door Locked'.

Mr. Karmakar submits that the learned advocate representing the opposite party in the Court below has refused to accept the notice of the present revisional application.

None appears on behalf of the opposite party either virtually or physically on call.

The opposite party as it appears from the sequence of events recorded above is not interested to contest the present revisional application.

The petitioner is the plaintiff of the connected eviction suit being Title Suit No. 30 of 2018 pending before the 1st Court of the learned Civil Judge (Senior Division), Barasat, District 24 Parganas (North).

The defendant choose not to appear immediately on receipt of summons. She appeared

subsequently when the suit was posted for ex parte hearing against her.

Long after appearance the opposite party filed an application in the form of show cause praying acceptance of her written statement.

The learned Trial Judge by the order impugned being Order No. 5 dated May 18, 2019 has vacated the order of ex parte hearing of the suit against the defendant and by accepting the explanation offered by her justifying delay in filing the written statement on payment of costs has directed the defendant to file written statement by September 05, 2019.

Mr. Karmakar by referring an acknowledgement due card being Annexure 'B' to the revisional application submits that the opposite party has received the summons on January 29, 2018 by putting signature on the said acknowledgement due card as such she is not entitled to file written statement on September 05, 2019.

Heard Mr. Karmakar perused the materials on record.

The show cause filed by the defendant is too casual, in fact it offers no explanation justifying delay of more than one year in filing the written statement.

Filing of written statement within the prescribed period of limitation is the rule, departure there from is the exception. The opposite party has failed to bring her case within the said exception.

The mandate of Order VIII Rule 1 of the Code of Civil Procedure to file written statement within the

time stipulated under the said provision of the Code cannot be bypassed on payment of costs only.

The learned Trial Judge has failed to take into consideration of the aforementioned factors while allowing the defendant to file written statement at a belated stage.

The order impugned for the aforesaid reasons is set aside. The suit shall now proceed ex parte against the defendant.

The learned Trial Judge is requested to expedite the disposal of the suit without granting any unnecessary adjournment to either of the parties.

C.O. 2924 of 2019 is disposed of with the above terms without any order for costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)