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Ct. 18
07.12.2021

**C.O. No. 3036 of 2019
(Via Video Conference)**

**Ashok Kumar Gayen
Vs.
Manabendra Haldar & Ors.**

Mr. Lakshminath Bhattacharya ... For the petitioner.

Mr. Lakshminath Bhattacharya, learned advocate appearing on behalf of the petitioner files affidavit-of-service, which is taken on record.

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

The petitioner has filed a petition under Section 79 of The West Bengal Panchayat Elections Act, 2003 for a declaration that the election of the returned candidate, the defendant no. 1 in the Zilla Parisad Election held on May 14, 2018 in respect of Mathurapur – I/ZP-31 Constituency is void.

The said application has been registered before the learned District Judge at Alipore, District-24 Parganas (South) being Title Suit No. 12 of 2018.

The petitioner in the said suit filed an application for fixing ex-parte hearing of the said petition as the defendants did not file their written statement within the prescribed period of limitation.

The learned District Judge by the order impugned being Order No. 09 dated April 04, 2019 has dismissed the said application and fixed May 21, 2019 as the date for filing of such written statement.

Mr. Lakshminath Bhattacharya, learned advocate for the petitioner submits that the defendants entered appearance in the said proceeding on October 11, 2018, as

such, they are liable to file their written statement within the period of limitation prescribed under Order VIII Rule 1 of the Code of Civil Procedure.

He further submits that the said defendants since did not file the written statement within the aforesaid period, the petitioner prayed that the proceeding may be fixed for ex-parte hearing against the said defendants.

Having heard the learned advocate for the petitioner and on perusal of the record, it appears that the defendants did not file their written statement within the prescribed period of limitation. Filing of the written statement within the said period is the rule; departure therefrom is an exception, to get the benefit of the said exception, the defendants are required to justify the delay in filing the written statement.

It appears that the order impugned has been passed without addressing the aforesaid issue as such, is not sustainable and is accordingly set aside.

C.O. 3036 of 2019 is disposed of with a request to the learned District Judge to reconsider the said application expeditiously in accordance with law. There shall be no order as to 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.)