

30.11.2021

Sl. No. 6

Court No.25

B.M.

C.O. 3145 of 2019

Ardhendu Shekhar Kundu

Vs.

Ashok Kumar Sinha & Ors.

(Via Video Conference)

Ms. Kavita Rani ... for the petitioner

Mr. Kaustav Chandra Das ... for the opposite parties

Affidavit of service filed be kept on the record.

In response to the service Mr. Kaustav Chandra Das learned advocate appears for the opposite party except opposite party no.1 who is reported to have passed away and the death report has been submitted in the trial court record. Now it is for the plaintiff to take steps in the suit.

Heard learned advocate for both the parties.

The plaintiff has challenged the order dated 01.08.2019 passed by the learned Civil Judge, Senior Division, 4th Court, Alipore, South 24 Parganas in Ejectment Suit No.42 of 2017 (Serial No.97 of 2017), inter alia, on the ground that the learned court has failed to exercise his jurisdiction in holding that the defendant has not filed any petition showing cause in delay filing written statement beyond statutory period and presumed that the court has extended time by written statement where

such finding is not warranted by material record as well as by law. It is pointed out that having appeared before the trial court, the defendant/opposite party filed application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 with an application under Section 5 of the Limitation Act, 1963 but did not file written statement and any application under Section 5 of the Limitation Act for condonation of delay in filing written statement in time. It is also pointed out that the defendant having appeared in court on 14.03.2018 had prayed for time to file written statement and dates were given on flimsy ground by the learned trial court without recording cogent reason for extension of time to file written statement which is not permissible in law.

My attention is invited by the learned advocate for the opposite parties to the order impugned which reflects that though the learned advocate for the plaintiff sought for not accepting the written statement yet submitted that if the court accepted the written statement that may be accepted subject to payment of heavy costs. So obviously on consent of the parties having regard to the submissions made on their part and presuming that the court had extended time to file written statement, the learned trial court accepted written statement subject to payment of costs of Rs.1,000/- (CP), it signify that the written statement is required to be accepted on condition

of deposit of the costs imposed on the opposite party/defendant. It is pointed out by the learned advocate for the opposite parties/defendants that costs has already been deposited and the written statement has been accepted.

Having heard the learned advocate for the parties and in consideration of the fact that it is the learned advocate for the plaintiff/petitioner who submitted for acceptance of written statement on condition to deposit heavy costs, this court does not find any ground to interfere with the order impugned.

Accordingly, revisional application being C.O. 3145 of 2019 is hereby dismissed.

However, learned trial court is directed to proceed with the trial of the suit as expeditiously as possible.

(Shivakant Prasad, J.)