

C.O.4029 of 2019

ASIT SARKAR VS. DHIMAN DEY

(Through Video Conference)

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
..for the petitioner
Ms. Sohini Chakraborty
..for the opposite party

This revisional application has been filed challenging an order dated July 9, 2019 passed by the learned Civil Judge, Junior Division, 1st Court, Alipore, District South 24 Parganas in Title Suit No. 214 of 2013.

The contention of Mr. Debjit Mukherjee, learned Advocate appearing on behalf the petitioner is that the learned Court below ought not to have allowed the defendant to file the written statement after a lapse of five years from the date of execution of the suit. According to Mr. Mukherjee, the explanation given by the defendant for condonation of delay in filing the written statement way beyond the statutory period was insufficient, lacking in the material particulars and not worthy of any credence. He further submits that although the learned Court below directed the acceptance of the written statement subject to payment of costs of

Rs.10,000/- , the said amount has not yet been paid. Thus, he prays for an order before this Court for rejection of the order of acceptance of the written statement on the ground of delay and insufficient explanation for the delay in filing the written statement within reasonable time.

I have perused the order impugned. The learned Court below under the fact situation exercised discretion and permitted the defendant to file the written statement belatedly upon payment of Rs.10,000/- as costs. I do not find any irregularity in the order impugned. Once the learned Court below has exercised discretion and accepted the reasons shown by the defendant as to why the written statement could not be filed on time, there is no scope for any interference with the order impugned.

This Court in exercise of the superintending power does not find it prudent to interfere with the order impugned. However, with regard to the Mr. Mukherjee's allegations that the costs have not yet been paid which was a condition precedent for acceptance of the written statement, this Court finds that justice would be subserved if the defendant is directed to pay costs of Rs.12,000/- in cash to be handed over to Ms. Susmita Chatterjee, learned Advocate on record for the petitioner in the High Court premises at 11-15 a.m. on April 27, 2021, subject to the above payment, the written

statement shall be accepted by the learned Court below. In case of default, the suit shall proceed ex parte. In view of the delay caused by the defendant, this Court directs the learned Court below to dispose of the suit expeditiously, preferably within a period of one year from the date of communication of this order, mandatorily.

In view of the above direction, the application filed by the defendant for extension of time to pay the costs and/or modification has become infructuous and is accordingly disposed of.

This revisional application is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)