

16.09.2021
Item No.3
Ct. No.7
CHC

**C.O.1317 of 2020
(Via Video Conference)**

**Jitendra Jaiswal
Vs.
Pritam Kumar Manna & ors.**

Mr. Anirban Majumder,
Mr. Somnath De
...for the petitioner

Mr. Rahul Karmakar,
Mr. Debabrata Roy
...for the opposite parties

Affidavit-of-service furnished by the petitioner be taken on record.

The impugned order dated 10th February, 2020, recording the evidence of P.W.1 in part after fixing the suit for *ex parte* hearing for non submission of the written statement within the period mentioned in Order VIII Rule 1 C.P.C. is the subject of challenge in this revisional application.

Learned advocate for the petitioner at the very threshold of this case draws attention of this Court to the order dated 16th April, 2021, when the matter was released by a coordinate Bench of this Court for want of determination. Taking recourse to such order, learned advocate for the petitioner submits that he was very much present for his client in the Court. It

is, thus, sought to be established that learned advocate for the petitioner was all along present in this case. This is not a matter to be critically looked into, for the issue being remotely connected with the present issue, required to be addressed by this Court. However, when the learned advocate for the petitioner fairly submits stating that he was all along present in the Court, the Court is of the view that there is no reason to take a contrary view in the absence of anything others being reflected by the other side.

As regards the issue involved in this case, learned advocate for the petitioner submits that admittedly, there had been some laches on the part of the petitioner/defendant to file written statement within the period mentioned in Order VIII Rule 1 C.P.C, but for some reasons and others, the petitioner being misguided, for no fault on his part, the written statement to challenge the case could not be filed. And thus, proposes for condoning the laches on the part of the petitioner/defendant taking the plea of his illiteracy and all other incidental points connected therewith.

Mr. Karmakar, representing the opposite parties/plaintiffs submits that this is a suit for eviction of a trespasser, in which the defendant has failed to furnish written statement within the period

stipulated in Order VIII Rule 1 C.P.C. after responding to summons.

As regards admitted laches on the part of the petitioner/defendant, Mr. Karmakar submits that suit was instituted in the year 2019, and the harassment already caused should be duly compensated.

Upon perusal of the impugned order, it appears that P.W.1 has been examined in connection with *ex parte* hearing of suit. There has been some laches on the part of the defendant without any controversy, though not be deliberate and intentional. However, there has been harassment and unwanted hardship suffered by the opposite parties/plaintiffs.

As has been submitted by the petitioner that the sincerest intention of the petitioner being to contest the suit, the Court is of the view, that a special chance should be given to petitioner for contesting the same upon filing the written statement therefor in the manner as directed hereinbelow.

The technicalities involved in such exercise, as appearing in Order VIII Rule 1 C.P.C, in the given facts and circumstances of this case, should not be given precedence to deprive the valuable rights of the petitioner to contest the suit.

Having considered the submission of both sides, the impugned order needs to be set aside upon saddling the petitioner/defendant with costs.

The impugned order dated 10th February, 2020, passed by learned Judge, 2nd Bench, City Civil Court, Calcutta, in Title Suit No.1265 of 2019 is set aside subject to payment of costs of Rs.5,000/- c.p. to be payable by the petitioner to opposite parties/plaintiffs within a fortnight from hence, failing which the order passed in this case shall automatically stand vacated without making any reference to this Court.

Upon such deposit of costs supported by receipt being made within the period mentioned hereinabove, the petitioner is given liberty to furnish a show cause petition together with written statement for acceptance of the same within a fortnight thereafter, and upon making such compliance by the petitioner, the learned court below shall accept the written statement after setting aside the order fixing the suit for *ex parte* hearing.

Since the suit has been instituted in the year 2019, the Court reposes confidence upon the trial court that the logical conclusion of this suit may be reached at an early date, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, unless it is extremely unavoidable.

Petitioner is directed to make communication of this order to the learned court below.

With this direction/observation, the instant revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)