

S/L 63
11.02.2021
Court. No. 19
GB

C.O. 1675 of 2020

Sheila Ganguly & Anr.
Vs.
Nilanjana Halder & Anr.

(Through Video Conference)

Mr. Biswanath Chatterjee.

... for the Petitioners.

Mr. Raghunath Das.

... for the Opposite Party.

Liberty is granted to the petitioners to correct the cause title here and now.

This revisional application is directed against an order dated February 17, 2020 in Title Suit No.160 of 2012 passed by the learned Civil Judge, Junior Division at Howrah.

By the order impugned the show cause filed by the petitioner/defendant no.2 in the suit as to why the written statement could not be filed within time, was found unsatisfactory and the written statement was not accepted and the learned court also did not allow the application for vacating the order of ex parte hearing of the suit.

This matter has a chequered history, inasmuch as, it is the contention of the petitioners that although the petitioners were defendants in the suit, and had

filed the application under Order 7, Rule 11 of the Code of Civil Procedure soon after receiving the summons, the mother of the petitioners would look after the litigation and the petitioners were under the impression that the learned advocate who was entrusted to look after the matter must have filed the written statement on time. It appears that an application under Order 7, Rule 11 of the Code of Civil Procedure was filed on February 1, 2013. I do not find from the record that the said application has been disposed of.

The suit was fixed for ex parte hearing on August 18, 2012. There are certain dates when the defendants filed hazira through their learned advocate. The defendants are ladies and it is submitted that they were dependant on their learned advocate, who failed to file the written statement. Subsequently, the defendant no.1, that is the mother of the defendant nos.2 and 3/petitioners died.

Records reveal that as many as thirty five adjournments had been taken by the plaintiffs/opposite party before the learned court below in the suit. Records further reveal that the plaintiffs approached this Court for a direction upon the learned court below for expeditious disposal of the suit, soon after having taken as many as 10

adjournments in the suit. By an order dated October 1, 2015, a Coordinate Bench of this Court directed the learned court below to dispose of the suit in six months' time. On the very next day when the suit was fixed, being emboldened by the order of the High Court, the plaintiffs again prayed for an adjournment before the learned court below. That was the 11th adjournment prayed for by the plaintiff in the suit. Thereafter, further adjournments had been taken. The order sheet reveals that ultimately as many as thirty five adjournments were taken by the plaintiff. It also appears that in 2018 the plaintiffs filed an application for amendment of the plaint. The said amendment was allowed by an order dated April 10, 2019. Thereafter, the plaintiffs again took time. The amended plaint was directed to be filed on June 10, 2019, but the said amended plaint was filed belatedly as well.

Thus, the records do not reveal that the plaintiffs have been diligent and serious about proceeding with their own suit. Even if the allegations of delay, negligence and dilatory tactics against the defendants are available to the plaintiffs yet, the Court in order to do substantial justice has to balance the irreparable loss and injury. The facts as narrated hereinabove, reveal that the plaintiffs had already delayed their own suit by their own conduct and

continuous adjournments were taken. Whereas, non-acceptance of the written statement would amount to giving a walk over to the plaintiffs which is not desirable in an adversarial form of litigation.

Laws of procedure are grounded on a principle of natural justice which requires that a man should not be condemned unheard. Decisions should not be reached behind their backs. Proceedings that affect their lives and property should not continue in their absence and they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.' " [See: [SK. Salim Haji Abdul Khyumsab v. Kumar](#) (2006(1) SCC 46)] and R.N. Jadi & Bros. v. Subhashchandra [2007(6) SCC 420] [See: Sambhaji & ors. vs. Gangabai & Ors. (2008) 17 SCC 117].

In the show cause filed by the petitioners they have stated that the petitioners were not looking after the case regularly but their mother was. They were married and were busy with their families and were unaware of the intricacies of the law and depended on their learned advocate. They were under the

impression that the written statement had been filed. The petitioner No.1 is a senior citizen, a widow and has a specially abled child and lives from hand to mouth. These are the grounds set-forth as an explanation as to why the written statement was not filed within time and the petitioners could not diligently follow up with the learned advocate engaged in this litigation.

Thus, in my opinion, in order to do substantial justice, I need to weigh the convenience and inconvenience of the parties and irreparable loss and injury which will occur if the written statement is not allowed to be filed. A widowed mother having to look after a specially abled child and not having any independent source of income, may not be as upright, diligent and energetic as a normal litigant to follow day to day proceedings in court. The plaintiffs have miserably failed to show diligence in this case. The suit did not progress at all, due to the laches of the plaintiffs. At this juncture, in the aid of justice when the amended plaint has just been filed by the plaintiffs, I am of the view that plaintiffs will not suffer serious loss and injury if the written statement is accepted by the learned court below upon payment of cost. The amended plaint is also required to be served upon the defendants.

Decisions relied upon by the learned advocate for the plaintiffs/opposite parties does impress the Court, inasmuch as, the facts are distinguishable. The time limit fixed for filing the written statement under the Code of Civil Procedure is a procedural law and the Court can make exceptions for the ends of justice by extending the time to file the written statement beyond the stipulated period.

Under the facts and circumstances of this case, this Court is of the opinion that the order impugned should be set aside and quashed. The learned Trial judge failed to appreciate the delay caused by the plaintiffs themselves in the progress of the suit which is evident from the record.

The learned court below is directed to accept the written statement and allow the petitioners to contest the suit. The petitioners shall be allowed to file additional written statement to the plaint. Such additional written statement shall be filed within a period of three weeks from the date of receipt of the amended plaint. The written statement shall be accepted in terms of this order subject to the petitioners paying a sum of Rs.15,000/- as costs to the plaintiffs. The costs to be paid by account payee cheque to be tendered by the learned advocate of the petitioners to the learned Advocate of the plaintiffs.

The said cheque will be drawn in the name of the plaintiff no.2, Nilanjana Halder. The payment shall be made within the next date fixed by the learned court below. Receipt showing such payment shall be deposited in the learned court below. The learned court below on being satisfied with the payment and receipt thereof shall proceed with the suit in accordance with law by accepting the written statement.

In default, the written statement shall not be accepted, and the learned court below shall proceed ex parte in accordance with law.

The revisional application is disposed of.

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

(Shampa Sarkar, J.)