

21.12.2021
(S/L-12)
Ct.No.-3
(A.J & S.M)

**Calcutta High Court
in the Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction
(Via Video Conference)**

C.O. No.83 of 2021

**Smt. Sanjana Sarkar nee Sodhi
-Versus-
M/s. Uttorayan Residency Apartment
Owner's Association (URAOA) & Anr.**

Mr. Avrojoyti Das,
Ms. Radhika Agarwal,
Ms. Shakshi Agarwal.
... For the petitioner.

Affidavit-of-service files on behalf of the
petitioner be kept with the record.

None appears on behalf of the opposite
parties in spite service.

The plaintiff in a suit for declaration and
injunction is the petitioner of the present
application under Article 227 of the
Constitution of India which is directed
against Order No. 3 dated September 06,
2021 passed by the learned Civil Judge
(Junior Division), Siliguri, District Darjeeling,
in the said suit being Title Suit No. 180 of
2021.

The learned Trial Judge by the order
impugned, inter alia, had fixed December 08,

2021 as the date for filing written statement by the defendants.

The grievance of the petitioner is that December 08, 2021 is beyond ninety days from the date of service of summons upon the defendants.

The learned advocate for the petitioner submits that the summons was served upon the defendants long prior to their appearance in the suit on September 06, 2021. He further submits that the period of limitation of ninety days if reckoned even from the date of appearance of the defendants in the suit, December 08, 2021 would be beyond ninety days.

Having heard the learned advocate for the petitioner and on perusal of the materials on record, it appears that the learned Trial Judge by the order impugned had fixed a date for filing written statement beyond ninety days from the date of appearance of the defendants in the suit.

Filing of written statement within the time prescribed under order VIII Rule I of the Code of Civil Procedure is the rule departure therefrom is the exception.

The learned advocate for the petitioner files certified copy of the subsequent order

passed in the said suit which is taken on record.

It appears from the said order that January 28, 2022 is the next date fixed in the said suit.

C.O. 83 of 2021 is disposed of by granting liberty to the petitioner to take out appropriate application on the said next date fixed for fixing the ex parte hearing of the said suit for the failure of the defendants to file the written statement within the prescribed period of time.

If such an application is filed, the learned Trial Judge shall decide the same expeditiously in accordance with law without granting any unnecessary adjournment to either of the parties.

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 of all requisite formalities.

(Biswajit Basu, J.)