

06.07.2022
Item No.08
Court No.18
AJ.

C.O. 59 of 2022

**Balaji Packaging represented by its
proprietor Sri Swapan Ghosh
-Vs-
The Hanuman Estate Limited**

Mr. Kushal Chatterjee,
Mr. Abir Lal Chakraborty.
.....for the petitioner.
Mr. Arnab Roy,
Mr. Satyam Mukherjee.
.....for the opposite party.

The instant revisional application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for ejectment and is directed against part of the Order No. 30 dated November 30, 2021 passed by the learned 5th Bench, Small Causes Court at Calcutta in the said suit being Ejectment Suit No. 589 of 2016.

Owing to the failure of the defendant to file written statement within the prescribed period of limitation, the suit was posted for ex parte hearing vide order dated September 12, 2018.

The defendant filed an application under Section 151 of the Code of Civil Procedure seeking recall of the said order.

The defendant also filed two separate applications under Section 7(1) and Section 7(2) of the West Bengal Premises Tenancy Act, 1997. The application under Section 7(2) of the said Act of 1997 since was filed out of time, it was accompanied with an application for condonation of delay.

The learned Trial Judge by the order impugned has dismissed the said application under Section 151 of

the Code and also the said application for condonation of delay.

Mr. Chatterjee, learned Counsel appearing on behalf of the petitioner submits that his client in the present revisional application is assailing the part of the order impugned whereby his application under Section 151 of the Code was dismissed.

The defendant set up his illness as the ground of delay in filing the written statement, the explanation so offered is not convincing in the absence of any document in support thereof. Nonetheless, on scrutiny of the records, it appears that the suit was posted for ex-parte hearing before expiry of the prescribed period of limitation for filing written statement. The said irregularity although is weighing in favour of the defendant in allowing his prayer to file written statement at the belated stage but his lackadaisical attitude in taking steps for filing written statement even after transfer of the suit to the Court where it is now pending from the filing Court takes the said advantage away from him.

However, in view of the length of the delay and for the ends of justice, the defendant is permitted to file the said written statement within two weeks from date subject to payment of costs of Rs.80,000/- (Rupees Eighty Thousand Only) to the plaintiff within a week from date.

In view of the leave granted to the defendant to file the written statement, the suit shall be withdrawn from the Ex-parte Board.

In default of payment as aforesaid, leave hereby granted to file the written statement shall stand automatically recalled without any reference to this Court and the suit thereupon shall proceed ex-parte against the defendant.

The part of the order impugned whereby the application under Section 151 of the Code filed by the defendant was dismissed, is set aside.

It is, however, made clear that this order shall have no effect on the consequence of the rejection of the application under Section 5 of the Limitation Act, 1963 filed by the defendant for condonation of delay in filing the application under Section 7(2) of the said Act of 1997 or for non-compliance of the provision of Section 7(1) thereof.

C.O. 59 of 2022 is disposed of with the above terms.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)