

08.06.2022
Item No.7 & 8
Ct. No.7
CHC

C.O.624 of 2022

Sri Siba Prasad Guha & anr.

Vs.

Smt. Santi Guha & ors.

With

C.O.411 of 2022

Smt. Santi Guha Debnath & ors.

Vs.

Sri Siba Prasad Guha & anr.

Mr. Rabindra Narayan Dutta,
Mr. Sibasis Ghosh,
Mr. Hare Krishna Halder,
Mr. Ardhendu Nag,
Mr. Arkoday Mukherjee

...for the petitioners in C.O.624/2022
opposite parties in C.O.411 of 2022

Mr. Soumitra Deb,
Mr. K. K. Pathak

...for the petitioners in C.O.411/2022
opposite parties in C.O.624 of 2022

A common law point is involved in both these two revisional applications referred hereinabove, and on the prayer of learned advocate for both the parties, both the matters are taken up together for hearing.

Common order dated 28th January, 2022, passed in Title Suit No.17 of 2017, by learned Civil Judge (Senior Division), 1st Court, Barasat is under challenge.

By the said impugned order, an application filed by the defendants under Order 9 Rule 7 C.P.C. was allowed.

Plaintiffs being dissatisfied with the order impugned has preferred revisional application in

C.O.624 of 2022, while the defendants raising grievance against the same order has preferred another revisional application being C.O.411 of 2022.

Mr. Dutta learned advocate appearing for the plaintiffs submits that the court below has mechanically considered the petition under Order 9 Rule 7 C.P.C. without adhering to the facts and circumstances already surfaced indicating the revealing conduct and laches on the part of the defendants to file written statement.

Mr. Dutta further submits that as per order of this Court, petition, filed by the plaintiffs under Order 8 Rule 10 C.P.C. has been disposed of *ex parte* due to the non-appearance of the defendants on 7th April, 2021 and on the selfsame date i.e. 07.04.2021, the suit was set for *ex parte* hearing.

Admittedly, the suit was filed on 9th January, 2017 in which, defendants entered their appearance on 27th January, 2017. Soon after their appearance within the time provided under Order 8 Rule 1, no written statement could be filed by the defendants. The conduct exposed by defendants, as established in the case record, is fundamentally to cause delay in the disposal of pending suit, Mr. Dutta argues.

It is contended by Mr. Dutta that no explanation has been offered in the petition under Order 9 Rule 7

C.P.C. without which, the court below ought not to have allowed the prayer.

It is, thus, grossly contended by Mr. Dutta that decision reached by the court below in connection with a petition under Order 9 Rule 7 C.P.C. has been erroneously reached.

Per contra, Mr. Deb learned advocate appearing for the defendants submits that petition filed by the plaintiffs under Order 8 Rule 10 C.P.C. got disposed of *ex parte* behind the back of the defendants.

Regarding the explanation causing delay to the submission of written statement, learned advocate appearing for the defendants submits that sufficient explanation may be had from the averments contained in the petition itself, and it is basically due to surge of Covid-19, the written statement could not be filed in due time.

Having considered the submission of both sides, it appears that admittedly, the suit was filed in January, 2017, in which, defendants appeared on 27th January, 2017.

Though the petition under Order 9 Rule 7 C.P.C. has already been allowed, but till such time no written statement has yet been filed by the defendants, nor any application to file any written statement has been filed. Though, the application under Order 9 Rule 7 C.P.C. has been allowed upon saddling costs of

Rs.3,000/-(Three Thousand) directing the defendants to pay the same to the D.L.S.A., Barasat, but upto now no written statement has been filed, resulting in serious protraction to the trial of instant case.

Learned advocate appearing for the defendants at the time of his submission assures fairly to the Court that written statement may be filed shortly and a time limit may be there so that the written statement may be filed with all convenience of the defendants.

The dispute thus travels round the issue pertaining to non submission of written statement till date, though petition under Order 9 Rule 7 C.P.C. has been finally considered with same costs, as referred hereinabove. That being the position, a time limit is thus necessary for filing written statement in order to check further protraction of trial.

In that view of the matter, defendants are given liberty to file written statement within three weeks from date before the court below, upon supplying a copy of same well in advance to the learned advocate for the plaintiffs.

It is, however, clarified that upon filing of written statement within the period mentioned hereinabove, subsequent steps in accordance with the provision of law may be adhered to so as to ensure expeditious disposal of the pending suit.

While doing such exercise, pending application if there be any, filed by either of the parties to this case, must be disposed of.

In the event of non submission of written statement within the period mentioned hereinabove, the Court may proceed with the disposal of the suit without showing any further latitude for the purpose.

With this observation/direction, both the revisional applications stand 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.)