

12.04.2022
Item No.33
Ct. No.7
CHC
(disposed of)

**C.O.805 of 2022
(Physical Hearing)**

**Bankura Bus Owners Welfare Association
Vs.
Sri Dipak Sukul & anr.**

Mr. Kaushik Dey,
Mr. Debnath Mahata
...for the petitioner

Mr. Ashok Kumar Jena,
Mr. Debroop Chowdhury
...for the opposite parties

Petitioner assails the order passed in Civil Revision No.1 of 2021, by learned District Judge, Bankura, dismissing the revision.

Mr. Dey, learned advocate appearing for the petitioner submits that admittedly, there has been delay caused in filing the written statement, but there are good reasons explained in the petition, while attempting to vacate the *ex parte* hearing. The written statement, according to the learned advocate petitioner, could not be filed within the time, as mentioned under Order 8 Rule 1 C.P.C, due to the prolonged illness of the learned advocate for the defendant, and show-cause then directed to be filed even could not be submitted doing compliance of the order of the court below.

The entire effort of the defendant/petitioner to put up his defence has been frustrated, because of strict adherence to the technicalities.

Learned advocate for the petitioner frankly submits that an opportunity may be given so that defendant may put up his defence upon filing written statement.

Per contra, learned advocate appearing for the plaintiffs/opposite parties submits that the revisional application under Article 227 of the Constitution of India has been filed after dismissal of the revision by the learned District Judge.

More so, the defendant received summons on 5th August, 2019 and as such written statement was due to be filed on 22nd January, 2020. Ultimately the suit was set for *ex parte* hearing on 16th March, 2020. Evidence of the petitioner/plaintiff has been concluded in connection with *ex parte* hearing, and the date was fixed for *ex parte* hearing of argument. It is at this stage, the petitioner/defendant suddenly woke up to raise his voice simply to drag the case in a harassing manner.

Learned advocate for the opposite parties thus raises strong objection against the acceptance of the written statement due to its belated filing.

Having considered the submission of both sides, it appears that written statement could not be filed within the period provided under Order 8 Rule 1 C.P.C.

There were some laches, misconduct on the part of the petitioner/defendant, which cannot be condoned in the manner as proposed to be done, but at the same time, it is to be kept in mind that entire exercise of the petitioner/defendant is to ensure his defence upon filing the written statement.

If such an opportunity is given to file the written statement giving no precedence to technicalities, that will not cause any prejudice to the opposite parties/plaintiffs, but at the same time, the harassment, hardship already caused to the opposite parties/plaintiffs must be taken into account, and such harassment must be saddled with adequate amount of compensatory costs.

The order passed in Civil Revision No.01 of 2021, is, thus, set aside. As the corollary therefor, the order dated 11th January, 2021, passed by learned Civil Judge (Junior Division), 1st Court, at Bankura in Title Suit No.208 of 2019 fixing the matter for *ex parte* argument is also set aside, subject to payment of cost of Rs.30,000/- (Rupees Thirty Thousand) to be payable by the petitioner to plaintiffs/opposite parties within three weeks from the date of communication of this order to the learned court below.

Upon such deposit being made, within the time referred hereinabove, the written statement may be

accepted upon vacating the order setting the suit for *ex parte* hearing.

Upon acceptance of such written statement, the suit may be proceeded doing adherence to the provisions of the law expeditiously as possible, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

With this observation/directions, the 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.)