

24.11.2022

Item No.18

b.r.

Crt. No. 12

CO 1036 of 2022

Saharali Khan

-vs-

Akbar Ali Khan & Ors.

Mr. Saurav Sen

Ms. Adrisnata Chakraborty

..... For the petitioners.

Mr. Tarapada Halder

..... for the O.P. No. 1 to 3.

Affidavit of service filed in Court today be retained with the record.

In the instant revisional application, the order No.20 dated 22.03.2022 as passed in Title Suit No. 252 of 2019 by the Learned Civil, Junior Division, 2nd Court, Basirhat, North 24-Parganas is has been assailed.

By the said impugned order, learned trial court vacated the ex parte order as against the defendant nos. 1 to 3 and at the same time accepted written statement which has been filed beyond the period as prescribed by the statute. Plaintiffs felt aggrieved and preferred the said instant revisional application.

At the time of hearing, Mr. Saurav Sen, learned advocate for the plaintiff/petitioner draws the attention of this Court to the order No. 6 dated 13.03.2020 and the order impugned dated 22.03.2022 as passed in the aforementioned suit. It is contended by him that by order

No.6 dated 13.03.2020, learned trial court was pleased to reject the present opposite party nos. 1 to 3's application for time to file written statement and thus directed that the said suit would be proceeded ex parte against the present opposite party nos. 1 to 3.

It is argued by Mr. Sen, learned advocate for the petitioner that since the Order No. 6 dated 13.03.2020 has not been challenged, the said order becomes final and therefore learned trial court ought not to have allowed the present opposite party nos. 1 to 3 to file their written statement by vacating the ex parte order under cover of the impugned order. Mr. Sen, learned advocate for the petitioner thus submits that it is a fit case for setting aside the impugned order.

Mr. Tarak Nath Halder, learned advocate for the opposite party nos. 1 to 3 submits that no illegality or irregularity has been done by the learned trial court in allowing the present opposite party nos. 1 to 3 to contest the suit by filing written statement.

It is argued that it is not the intention of the legislature to deprive the defendants from contesting a suit simply because he/they has/have failed to file written statement within the time as prescribed by law.

It is thus submitted that this is a fit case for dismissal of the instant revisional application.

On perusal of the entire materials as placed before this Court and after hearing learned advocates of both

sides, it appears to this Court that admittedly by order No.6 dated 13.03.2020 as passed in Title Suit No. 252 of 2019, learned trial Court rejected the prayer of the present opposite party nos. 1 to 3 to grant to file written statement and thus directed that the said suit should be heard ex parte against them.

It is equally true that the said order has not been challenged before the higher forum. However, probably for the ends of justice, learned trial court by passing the impugned order considered the prayer of the present opposite party nos. 1 to 3 on compassionate ground and thus accepted their written statement and allowed them to contest the said suit.

In considered view of this Court, the learned trial court while passing the impugned order has not committed much illegality or irregularity in allowing the prayer of the defendant nos. 1 to 3 and thus, accepted their written statement and allowed them to contest the suit, since the time period for filing written statement as prescribed in the statute is basically directory in nature.

In view of such, this Court considers that justice would be sub-served if the present opposite party nos. 1 to 3 are directed to pay cost of Rs. 5000/- to the plaintiff and/ or their learned advocate appearing in this case before this Court and such cost is to be paid within a fortnight from the date of passing of this order and the receipt of such payment of cost shall have to be filed

before the learned trial court within a month from the date of passing of this order.

It is made clear that time limit as prescribed by this Court is mandatory and in the event, such cost is not paid, learned trial court will not allow the defendant nos. 1 to 3 to contest the Title Suit No. 252 of 2019 and shall not accept their written statement.

With the aforesaid observation, the instant revisional application being **C.O. No. 1036 of 2022** stands **disposed of**.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Partha Sarathi Sen, J.)