

32 08.06.
AG 2022
M/R
KB
Ct
07

C.O. 1233 of 2022

**Fazlur Rahman Khan & Ors
Vs
Jully Begum & Ors**

Mr. Piush Chaturvedi,
Mr. Abdul Murshid,
... For the Petitioners.

Mr. Narayan Ch. Ghosh,
... For the Opposite Parties.

The petitioners/defendants are aggrieved with the impugned order, dated 22nd February, 2022 and 20th April, 2022 passed by learned Civil Judge (Senior Division), 2nd Court, Alipore in Title Suit No. 59 of 2015 declining to accept written statement belatedly filed with a delay of three years (Approx), and subsequently refusing to accept the show cause, after the suit has been set for ex parte hearing.

Admittedly, petitioners/defendants are promoters/developers with whom, there has been a developing agreement entered between the parties about 25 years before.

Learned advocate appearing for the petitioners alleging infractions of the provisions of law pertaining to the service of summons upon the defendant as per amended provisions of the Code of Civil Procedure, proceeded to challenge the same disputing with the maintainability of the suit filing application one after

another.

Subsequently, a prayer for rejection of the plaint was filed, which was rejected.

A review application though filed was also rejected by the Court below.

Interference of this High Court would not however change the decision of the Trial Court rejecting the petition under Order 7 Rule 11 of the Code of Civil Procedure.

It is not in challenge that petitioners/defendants entered their appearance long before in the suit and the written statement could be filed within the time period provided under the Code of Civil Procedure under Order 8 Rule 1 of the Code of Civil Procedure.

Learned advocate appearing for the petitioners/defendants candidly submits that though there has been delay caused in submitting written statement, but the same should not be critically viewed so as to deprive him from contesting the suit, otherwise, there will be serious deprivation of his valuable right to contest the suit.

It is also submitted by the learned advocate for the petitioners that the show cause, though filed belatedly, the same should have been accepted by the Court below, even after setting the suit for ex parte hearing.

Per contra, learned advocate appearing for the

opposite parties/plaintiffs/landlord disputing with the submission advanced by the learned advocate for the petitioners submits that till date, the construction has not yet been completed giving effect to the developing agreement.

The opposite parties/plaintiffs has now been at the mercy of the petitioners/defendants.

The harrasive conduct of the petitioners/defendants must be taken in view, and the same should not be liberally construed showing latitude to petitioners /defendants so as to contest the same, learned advocate for the opposite parties argues.

Having considered the submission of both the sides, it appears that the conduct of the petitioners are highly revealing in nature and, it is sure to bring hardship undue harassment to opposite parties/plaintiffs.

Filing of show cause, subsequent to setting the suit for ex parte hearing would not automatically entitle the petitioners/defendants to contest the suit.

Since, there was huge delay caused in filing the written statement, which obviously caused to the undue harassment and hardship to the opposite parties/plaintiffs, the same must be taken in view, and must the saddled with exemplary compensatory costs.

The impugned orders are thus set aside subject to payment of costs of Rs. 25,000/- (Twenty Five

Thousand) C.P. to be paid by the petitioners within a fortnight from the date of this order.

Upon deposit of such cost within the period mentioned hereinabove, the show cause petition and the written statement already filed by the petitioners may be accepted thereafter.

Upon acceptance of the written statement subject to making compliance of the deposit of costs, as mentioned hereinabove, the Court below would however, free to dispose of the pending injunction application together with the other interlocutory applications, one after another, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournments, unless it is extremely unavoidable.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)