

10.11.2022
Item No.23
Ct. No.7
CHC
(disposed of)

C.O.2264 of 2022
Sri Chaturbhuj Pandey & ors.
Vs.
Sri Hiralal Gupta

Mr. M. Ahmed,
Mr. Deborshi Das

...for the petitioners

Mr. D. K. Bhattacharya

...for the opposite party

Affidavit-of-service furnished by the petitioners be taken on record.

Petitioners assail order dated 28th June, 2022, passed by learned Civil Judge (Senior Division), 1st Court, at Alipore, South 24 Parganas, in Title Suit No.27 of 2001, rejecting the petition dated 3rd March, 2022, thereby declining to accept the written statement belatedly filed.

Admittedly, this is a suit for specific performance of contract, in which, defendants entered their appearance on 22nd February, 2017. Up to January, 2018, no written statement could be filed by the defendants even after service of the copy of the plaint upon the defendants. The matter was then posted for *ex parte* hearing, and lastly at the stage of argument, on 25th June, 2018. It is at the stage of argument of *ex parte* hearing, petitioners/defendants suddenly woke up and furnished written statement on 10th December, 2018 intending to contest the suit upon setting up his defence in the written statement.

Learned advocate appearing for the petitioners in such background of the case frankly admits that there are laches on the part of the petitioners/defendants, but that should not be treated to be fatal in the given circumstances of the case, and a chance to contest the suit may be allowed, upon accepting the written statement belatedly filed.

Mr. M. Ahmed, learned advocate appearing for the opposite party/plaintiff disputing with the submission of the petitioners strenuously argues that the conduct of the defendants/petitioners is highly harassive, and it is purely to cause delay to disposal of the case.

Admittedly, the suit was instituted in the year 2001, and even after being served with copy of the plaint defendants chose to file written statement on 10th December, 2018, i.e., with a delay of 17 years.

Supporting the order of the court below, learned advocate appearing for the opposite party submits that there lies nothing to be interfered with in the impugned order.

Having considered the submission of both sides, it appears that revealing conduct of the petitioners/defendants leaves no explanation as to why delay was caused in filing written statement, making departure of the provisions available under Order 8 Rule 1 C.P.C. The delay thus caused in filing written

statement could not be justifiedly explained even by putting blame on the law clerk of a particular advocate.

When written statement has already been filed revealing the intention to contest the case, though, there has been huge delay caused in filing the written statement, but that should not be critically viewed giving a hypertechnical approach. In order to put an end to the litigation, if petitioners are permitted to contest the case, upon accepting the written statement subject to the payment of cost to redress the harassment already caused to the petitioners, that would not cause any prejudice to either of the parties to this case, and rather it would subserve the purpose of justice.

For the reasons disclosed hereinabove, the impugned order is set aside. The written statement may be accepted by the court below subject to the payment of costs of Rs.30,000/- (Rupees Thirty Thousand only) to be paid by petitioners to the opposite party within fortnight from the date of communication of this order, failing which this order shall automatically become inoperative.

Liberty is given to the petitioners to furnish a show cause application explaining the delay, if there be any, in filing the written statement at a belated point of time, if not already submitted in the meantime before the court below.

Subject to the deposition of cost, the logical conclusion of the suit may be decided before the end of June, 2023, after adhering to the formalities as available under the law, without granting any unnecessary adjournment, unless it is extremely unavoidable.

Parties are directed to make communication of this order to the court below.

With this observation/direction, 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.)