

12.12.2022  
Item No.7  
Ct. No.7  
CHC  
(disposed of)

**C.O.2340 of 2022**

**Smt. Pratima Roy**

**Vs.**

**The Women's Co-operative Industrial Home Ltd.  
represented by Bikash Ranjan Neogi Special  
Officer appointed by the Hon'ble High Court**

Mr. Arijit Mahinder

...for the petitioner

Mr. Gobinda Chaudhuri,

Ms. Ananya Neogi

...for the opposite party

Mr. Arijit Mahinder, learned advocate appearing for the petitioner, while assailing the orders dated 13<sup>th</sup> January, 2022, and 26<sup>th</sup> November, 2021, passed by learned Civil Judge (Senior Division), 3<sup>rd</sup> Court, at Barasat, North 24 Parganas, in Title Suit No.616 of 2017 setting the matter for *ex parte* hearing, submits that there has been some mistakes committed by the petitioner/defendant to file written statement.

According to the petitioner, there has been some confusion created subsequent to the issuance of eviction notice prior to the institution of the suit, and as a result of which, steps could not be taken upon submitting written statement within the time provided under Order 8 Rule 1 C.P.C.

It is thus submitted by the petitioner that petitioner intends to contest the suit, as petitioner has

strong defence to put up in the instant eviction suit brought against him, and if the petitioner is not given a chance to contest the case, there will be prejudice caused to the petitioner.

Mr. Chaudhuri, learned advocate appearing for the opposite party submits that there has been flagrant violation of the provisions contained in Order 8 Rule 1 C.P.C. and as such, petitioner should not be favoured with an opportunity to file written statement at belated stage.

It is also contended by the opposite party that suit has been instituted in the year 2017, and as such there has been purposive delay caused by the petitioner to file written statement.

Upon perusal of the impugned order dated 3<sup>rd</sup> January, 2020, it appears that for non submission of the written statement, the suit was posted for *ex parte* hearing. Now we are at the end of 2022. The moment when the order was passed on 3<sup>rd</sup> January, 2020, setting the suit for *ex parte* hearing, the petitioner did not take any steps thereafter to vacate the *ex parte* hearing of the suit.

It is on 26<sup>th</sup> November, 2021, the petitioner suddenly woke up to vacate the *ex parte* hearing upon filing a petition, which has been rejected by the court below. During the interregnum period commencing from January, 2020 to November 25, 2021, there has

been no steps taken by the petitioner to vacate the *ex parte* hearing already fixed by the court below. There has been some laches on the part of the petitioner, which may not be allowed to be explained taking a plea that there has been confusion created subsequent to the issuance on eviction notice. Such explanation appears to be not sufficient enough and not at all encouraging at the moment.

But when petitioner wants to contest the case in simpliciter, putting up a defence in the written statement, though at the belated stage, but the same should not be repudiated upon strictly making adherence to the provisions available under Order 8 Rule 1 C.P.C.

The proposition of law is that, that ordinarily the provisions available under Order 8 Rule 1 C.P.C. must be strictly complied with. But when there has been explanation given behind the delay caused, the provisions incorporated in Order 8 Rule 1 C.P.C. may be taken to be directory, and not mandatory. The intention exhibited to contest, though at belated stage, may be the sole explanation, but same should not be ruled out, being not equal to explaining sufficient reasons, giving an hypertechnical approach.

Be that as it may, there has been some delay caused in submitting the written statement. In the given set of fact and for peculiarities of the

circumstances involved in this case, the technicalities should not be given precedence, thereby depriving the petitioner to contest the case. At the same time, the harassment and the hardship, that has been faced by the opposite party, must be adequately compensated by petitioner.

The revisional application thus disposed of upon setting aside those two orders, disclosed hereinabove, subject to the payment of cost of Rs.25,000/- (Rupees Twenty Five Thousand only) to opposite party, to be paid by petitioner within fortnight from the date of communication of this order, failing which this order shall stand automatically vacated without any reference to the parties.

Subject to the payment of cost, as mentioned hereinabove, the written statement may be filed within three days thereafter supported by show cause application disclosing the delay, upon supplying a copy of the same well in advance to the petitioner, if not already filed in the meantime.

The written statement if filed, may be considered in accordance with law, if necessary upon giving a hearing for the purpose.

The written statement, if filed, supported by show cause need not be resubmitted once again.

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

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

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.)**