

22.12.2022
Item No.9
Ct. No.7
CHC
(disposed of)

C.O. 3773 of 2022

Subhasis Roy
Vs.
Kartick @ Fela Hazra & ors.

Mr. Tarak Nath Halder
...for the petitioner

Mr. Rwitendra Banerjee,
Mr. Shibasis Chatterjee,
Mr. Devdutta Pathak
...for the opposite parties

Mr. Halder, learned advocate appearing for the petitioner, while assailing the impugned order dated 16th November, 2022, passed in Title Suit No.16 of 2014 of learned Civil Judge (Senior Division), Ghatal, submits that in a pending suit for partition, the share claimed by the petitioner may be a disputed question of fact, but when he is an admitted co-sharer of suit property, he should not be deprived of, from setting up his defence upon filing written statement, though belatedly.

Mr. Halder further submits that there has been delay admittedly caused for about three years in filing the written statement, and in the show cause application, petitioner has explained the delay to the extent possible, preventing the petitioner from filing

the written statement within the period of time, as prescribed under Order 8 Rule 1 C.P.C..

It is thus submitted by Mr. Halder that the delay in filing the written statement should not be critically viewed giving precedence to the technicalities of law.

Mr. Banerjee, learned advocate appearing for the opposite parties submits that presently the suit has been posted at the argument stage, after the collection of evidence adduced by the contesting parties to this case. There has been summons served in accordance with the law upon the petitioner, but for the reasons best known to the petitioner, he preferred remain away from the litigation.

It is thus purposive delay, and such delay would be treated as a fatal for all purposes.

Having considered the submission of both sides, it appears that admittedly there has been delay of six years in filing the written statement. It is a suit of 2014 basically for partition, wherein petitioner was impleaded as one of the defendants, out of six defendants.

The court below was not satisfied with the explanation provided in the show cause application so as to accept the written statement belatedly filed.

True there is inordinate delay in filing the written statement, but more significant it is that there has to

be an end of litigation in the process of dispensation of justice, particularly in a suit for partition, when question of share is only disputed one. If technicalities is considered in its true spirit giving precedence to it, that will serve no practical purpose to subserve the purpose of justice.

There has been unwanted hardship, harassment caused to the opposite parties for the delay being caused in filing written statement. Such harassment suffered by the opposite parties needs to be saddled with sufficient cost, otherwise there may not be a balance ensured between the parties in the process of dispensation of justice.

The revisional application stands disposed of upon setting aside the impugned order dated 16th November, 2022, directing the court below to reconsider the written statement coupled with show cause, belatedly filed, upon its acceptance, subject to the payment of cost of Rs.40,000/- (Rupees Forty Thousand), to be paid by the petitioner to the opposite parties within one week after reopening of Winter Vacation of the court below for the year 2023.

Subject to the deposition of the cost, as ordered hereinabove, the written statement may be accepted, if necessary upon giving a hearing for the purpose to the other sides.

The logical conclusion of the suit may however, be reached before the end of summer vacation of the court below for the year 2023.

This would not, however, prevent the court below to frame additional issue, if any required in accordance with law.

Petitioner may be given liberty to adduce evidence subject to cross-examination to be undertaken by the opposite parties. The witnesses already examined by the plaintiffs may be recalled, on the prayer of the petitioner upon filing a required petition for the purpose, to face cross-examination at the instance of the petitioner.

While endeavouring expeditious disposal of the suit, there may not be any unnecessary adjournment granted by the court below, and Mr. Halder assures that there will be every cooperation extended to the court below to ensure expeditious disposal of the suit.

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.)