

06.02.2023
Item No.9
Ct. No.7
CHC
(disposed of)

C.O. 99 of 2023

Sanjit Kumar Jha
Vs.
Shyamal Naskar & ors.

Mr. Devajyoti Barman,
Ms. Sanjukta Basu Mallick
...for the petitioner

Mr. Piush Chaturvedi,
Mr. Suman Basu,
Mr. Abdul Murshid,
Md. Mahfuz Takrim,
Ms. Debanwita Pramanik,
Mr. Gaurav Dutta
...for the o.p. nos.35 to
50, 56 to 61 and 74 and 88

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

Belated acceptance of the written statement is only
under challenge in this case.

Learned advocate appearing for the petitioner
submits that there has been no sufficient explanation
provided in the show cause, submitted by the
defendants filing written statement belatedly, but the
court below has erroneously accepted the same
without subscribing any reasons therefor.

Learned advocate further submits that some of the
defendants filing written statement belatedly even did
not put their respective signatures in the written

statement and that aspect could not be gone into by the court below while accepting the same.

Mr. Chaturvedi, learned advocate appearing for the opposite party no.35 to 50, 56 to 61 and 74 & 88 submits that delay has been appropriately explained in the show cause petition, though written statement has been filed with some delay, but that delay should not be treated to be vital, particularly when there has been explanation provided to the satisfaction of the court below.

According to the opposite parties, the order impugned does not require any interference.

Having considered the submission of both sides, it appears that the service of summons upon defendants filing written statement belatedly is a disputed question of fact, though there has been reflection in the ordersheet till 29th July, 2021 that no steps has been taken on the part of the plaintiff to secure attendance of the defendants in the pending suit upon issuing summons.

Non filing of written statement within the period available under Order 8 Rule 1 C.P.C. and the mischief therefor likely to apply is not attracted in the given circumstances of the case, as the dispute involved in this case is not relatable to commercial dispute. The proposition of law is quite settled that

the stipulation of period of time, contained in Order 8 Rule 1 C.P.C. is directory one, and not mandatory.

Be that as it may, there has been delay caused in filing the written statement, which has resulted unwanted hardship and trouble on the part of the plaintiffs. Though there has been some compensatory cost awarded, but in the perception of the Court, the same is not adequate, and as such, it is modified to Rs.12,000/-, instead of Rs.5,000/-.

The impugned order thus stands modified to the extent made hereinabove. The other portion of the order will however, remain unchanged. The point pertaining to non signing of the written statement by the defendants filing written statement belatedly is left to be decided by the court below at the appropriate point of time, and as such, the same is kept open for decision by the court below.

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.)