

27.07.2023
Court No. 19
Item No.75
CP

C.O. 187 of 2023
Sri Ashok Kumar Bhattacharya
Vs.
Subrata Bhattacharya

Mr. Samiran Giri
...for the Petitioner.

Mr. Tapas Kr. Ghosh
Mr. Tanmay Choudhury
.....for the opposite party.

The revisional application has been filed challenging an order dated December 3, 2019, passed by the learned Civil Judge (Junior Division), 1st Court at Hooghly, in Title Suit No. 412 of 2018.

In a suit for eviction, the defendant failed to file the written statement despite repeated opportunities. On December 3, 2019, two applications were filed.

The defendant explained the cause for not filing the written statement within the date fixed by the learned court below and submitted that on account of illness the delay had occurred. The defendant prayed for acceptance of the written statement. The learned court below rejected the applications and did not accept the written statement filed by the defendant. The suit was fixed for ex parte hearing.

Challenging the aforesaid order, the petitioner filed a revisional application under Section 115A of the Code of Civil Procedure, before the learned District Judge, Hooghly. The learned District Judge, Hooghly did not find any irregularity in the order passed by the learned Trial Judge, but also held that the revision was not maintainable.

Having considered the submission of Mr. Giri, learned advocate for the petitioner, this court is of the view that as the ground pleaded for the delay was illness of the defendant, one last chance should be given to the defendant to contest the suit and the written statement should be accepted.

Mr. Choudhury, learned advocate appearing for the plaintiff/opposite party, submits that on several occasions, the court had permitted the defendant to file the written statement. Subsequent illness of the defendant, would not be a ground for failure of the defendant to file the written statement on earlier occasions.

Mr. Giri relies on the following decisions:

1. Zolba v. Keshao & ors, reported in AIR 2008 SC 2099.
2. Shankar Lal Rajgaria v. Harish Chandra Shaw & anr. in C.O. No. 3212 of 2008.

Rules of procedure are handmaid of justice. Procedural law should be applied in order to do

complete justice. It should be used as a shield and not a sword. If the petitioner is not allowed to contest the suit, he will lose his valuable right to stay in the property, without being able to put up a fight. Such a situation would cause irreparable loss and injury to the petitioner. Hence, irrespective of the outcome of the suit, the petitioner should at least be allowed an opportunity to contest the proceeding.

However, the written statement cannot be accepted after such a prolonged delay, without compensating the plaintiff in some way. Cost of Rs.10,000/- be paid to the plaintiff within two weeks from date. The cost is being awarded for the suffering caused to the plaintiff on account of the delay.

The learned court below shall accept the written statement upon satisfying itself that the cost has been paid.

The learned court below is directed to dispose of the suit within a period of one year from date.

The revisional application is accordingly disposed of.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)