

October 3, 2023
Sl. No.81
Court No.19
s.biswas

CO 310 of 2023
With
CAN 1 of 2023

Abhiroop Roy
vs.
Arnabi Roy nee Dutta

Mr. Sounak Bhattacharya
... for the petitioner
Mr. Anjan Ray
Mr. Subhajit Chowdhury
... for the opposite party

In Matrimonial Suit No.548 of 2020, which is pending before the learned Additional District Judge, Fast Track, 4th Court, Barrackpore, the petitioner/husband, did not file the written statement within the statutory period and also within the time extended by the learned court below.

Mr. Bhattacharya, learned advocate for the petitioner/husband submits that the learned court below ought to have given a chance to the husband to file the written statement by condoning the delay and by accepting the reply to the show cause, thereby taking off the suit from the ex parte board.

Mr. Bhattacharya submits that the learned court below did not allow the husband any extension to file the written statement, although he was entitled to a period of 120 days. Moreover, the order of the Hon'ble Apex Court relating to extension of time to file all applications, petitions and institute

proceedings before all courts of law had been extended up to February 28, 2022.

The petitioner entered appearance in the said suit on January 13, 2022. March 22, 2022 was fixed for filing the written statement. Written statement was not filed. Instead, an application under Section 10 and Section 151 of the Code of Civil Procedure read with Article 20(3) of the Constitution of India, was filed by the petitioner. Again, April 12, 2022 was fixed for filing the written statement as a last chance, although the application filed by the petitioner was being heard. No written statement was filed and the suit was fixed for ex parte hearing. The above dates reveal that the petitioner failed to take steps to file the written statement, even after the pandemic was over. The Hon'ble Apex Court had extended the period of limitation and conditional orders upto February 28, 2022. The petitioner was asked to show cause why the suit should not proceed ex parte.

In the show cause filed by the petitioner, it was stated as follows:-

“6. That on closely perusing the Application for Divorce filed by the Petitioner/wife, and in relation to other cases filed by the Petitioner/wife, your Petitioner was prevented from filing the Written statement immediately and your Petitioner was further constrained to file an application u/s 10 and Sec 151 CPC read with Article 20(3) of the Constitution of India, on 22/3/2022, hereinafter denoted as ‘Said Application’ inter alia praying for time to file Written Statement (WS) in this instant Matrimonial Suit till disposal of criminal case

(which is pending in the Court of Ld. 5th JM at Barrackpore) filed by this selfsame Petitioner-wife against your Petitioner and Petitioner's aged/ailing parents.

7. That Said application filed on 22/3/2022, in this instant Matrimonial Suit, inter alia praying for time to file Written Statement (WS), was within the limitation period and included grounds and reasons which prevented your Petitioner from filing Written statement and which are not detailed here for the sake of brevity, and that this Learned Court, inter alia, was pleased to fix 8-April-2022 for hearing of the said application.

8. That your petitioner states that on 8-April-2022, Petitioner-wife was unable to file objection to Said Application and Learned Court, inter alia, was pleased to fix 7-7- 2022 for hearing of Said Application and also pleased to fix 12-4-2022 for filing of the Written Statement (WS) by your Petitioner as last chance.

9. That your petitioner states that on 12-April-2022, your Petitioner filed an application u/s 151 CPC stating reasons which prevented your petitioner from filing the written statement, inter alia praying for additional time for filing Written Statement till after the disposal of the said application dated 22-March-2022, failing which your petitioner would be subjected to grave prejudice and harm.

10. That your petitioner states that on 12-April-2022, this Learned Court considered the application filed u/s 151 CPC on 12-April-2022, inter alia praying for additional time for filing Written Statement and was pleased to reject the same without any opportunity of hearing, holding that statutory time for filing written statement is overed and no W/S was filed on behalf of respondent and fixed 06/06/2022 for ex- parte hearing.

11. That your petitioner states that till 12-April-2022, despite only 42 days being passed from start of limitation period, Learned Court was pleased to ignore the 'Said Application' which was filed with clear reasons regarding why your petitioner was unable to file Written Statement inter alia with prayers for additional time for filing Witten Statement and Learned Court was pleased to hold that statutory time for filing

written statement is over and in view of such circumstances, the suit deserves to be restored to regular hearing after setting-aside/vacating of the order for ex-parte hearing dated 12/04/2022.

12 That your petitioner states that above points and facts have been brought to notice of Learned Court vide Put-up petition/application filed on 21-05-2022.

13. That your petitioner further states that vide petitions filed by your petitioner on 22.3 2022, 12.04.2022 and 21-05-2022, your petitioner/respondent has explained reasons which prevented your petitioner from filing Written Statement and has prayed for a hearing of the petition dated 22/3/2022 (u/s 10 and Sec 151 read with Article 20(3) of the Constitution of India) inter alia praying for additional time to file written statement.

14. That your petitioner states that under such facts and circumstances as above, your Honor may be pleased to also consider Calcutta High Court proviso to notification no 4681-G dated 6-12-2006 published in Kolkata Gazette Extraordinary related to Order 8 Rule 1 CPC which states that 'Provided further that the Court should in no case extend such time beyond one hundred twenty days from the service of summons unless it is proved to the satisfaction of the Court that the defendant was prevented from filing the written statement earlier due to the circumstances beyond his control' thereby indicating that the time period is not mandatory.

15. That your petitioner states that the instant Matrimonial suit is not the one which is governed by the Commercial Court Act, 2015 and therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of judgment of Hon'ble Apex Court reported as 'Kailash V. Nankhu & Ors.' in Appeal (civil) 7000 of 2004 dated 06/04/2005 reported in (2005) 4 SCC 480.

16 That your petitioner states that under such facts and circumstances as above, this Learned Court can grant additional time beyond 120 days under special circumstances and submits that the present situation of your petitioner be considered one such special circumstance beyond his control.

17. That in view of aforesaid, your petitioner submits that there is no negligence, intentional latches, omission on behalf of your Petitioner and that the suit deserves to be restored to regular hearing after recalling/set-aside/vacating of order for ex-parte hearing dated 22/03/2022 (u/s 10 and Sec 151 read with Article 20(3) of the Constitution of India) deserve to be heard/adjudicated prior to filing of written statement.”

In the interlocutory application, the petitioner prayed for the following reliefs:-

- “1. Direct both parties herein to attend reconciliation sessions to settle mutual differences amicably and
2. Grant time to the Respondent Husband to file Written Statement (WS) against the application of Petitioner-wife in this instant Matrimonial Suit till the disposal of the GR-3033/2020 u/s 498A/406/323/34 IPC in the Court of Ld. 5th JM at Barrackpore and
3. Stay proceedings of instant Matrimonial Suit till disposal of the GR-3033/2022 u/s 498A/406/323/34 IPC pending in court of Ld. 5th JM at Barrackpore and
4. To pass further order/orders as in law & equity as your Honor may deem fit and proper.”

In my opinion, the approach of the petitioner is a reflection of his resistance to a smooth continuation of the suit. There has also been lack of due diligence. The interlocutory applications with the prayer for stay of Matrimonial Suit was filed. The opposite party must be adequately compensated for the delay. There is no plausible explanation for the delay in filing the written statement apart from the plea that the statutory period of limitation would run from February 28, 2022 and the criminal case should be disposed of before the matrimonial suit

progresses. The petitioner was contesting the proceeding by filing an interlocutory application, but chose not to file the written statement.

The contention of Mr. Bhattacharya does not impress the court with regard to the bona fide of the petitioner. The petitioner has filed the application before the learned court below seeking interim reliefs which are not tenable in law. Especially, the relief with regard to stay of the matrimonial suit during pendency of the criminal proceedings, is prima facie unfounded.

However, this is a matrimonial suit and the impact is far reaching. It has a social impact as also an emotional impact. Such a suit cannot proceed ex parte.

Under such circumstances, for the ends of justice, one last opportunity should be given to the petitioner/husband to file the written statement, upon payment of exemplary cost to the wife. The written statement shall be filed within two weeks from the date of communication of this order. Cost of Rs.1 lakh to be paid to the wife within such date. The quantum of cost has been determined on the basis of the harassment caused to the wife. The petitioner entered appearance on January 13, 2022. Till date, no written statement has been filed. The petitioner was already participating in the proceeding

by filing interlocutory applications. There is no reason why he could not file the written statement as per the direction of the learned Court. The cost shall be tendered either to the wife or to the learned advocate on record for the wife in the learned court below, by demand draft or direct bank transfer to the account of wife.

The learned court below, upon being satisfied that the payment of cost as directed above, had been paid, shall accept the written statement. The suit shall be disposed of positively within eight months from the date of acceptance of the written statement, without allowing unnecessary adjournments to either of the parties. In case of failure to comply with the order, the suit shall proceed ex parte. The observations made in this order are tentative and shall not influence the pending suit and other proceedings between the parties.

The order impugned as also the order by which the suit was fixed for ex parte hearing are set aside.

The revisional application is thus disposed of. With the disposal of the revisional application, the application being CAN 1 of 2023 also stands disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)