

S/L 2  
16.01.2023  
Court No.652  
SD

CO 742 of 2018

Sree Sree Guru Gouranga Gandherbika Giridhari Jew & Anr.  
Vs.  
Sree Bhakti Bikash Sajjan Maharaj

*Mr. Pradip Kumar Dutt*  
*Mr. Chanchal Kumar Dutta*  
*Ms. Krishna Mallick*

*...for the Petitioners.*

*Mr. Somnath Roy Chowdhury*  
*Mr. Siddhartha Sankar Mandal*  
*Ms. Arunima Das Sharma*

*...for the Opposite Party.*

Being aggrieved and dissatisfied with the Order No.24 dated January 18, 2018 passed by the learned Civil Judge (Senior Division), 1<sup>st</sup> Court at Krishnagar, Nadia in Title Suit No.6 of 2016, present revisional application has been preferred.

The petitioner contended that the plaintiff/opposite party filed a suit against the petitioner herein praying for decree for permanent injunction against the petitioner from disturbing the peaceful possession of the plaintiff over the suit property. The writ of summons of the said suit was duly served upon the defendant in March 2016.

The petitioner further submits that the petitioner is a religious person and all the time was busy with the religious activities in the Math and had no knowledge about the procedure to be followed in filing the written statement within the prescribed period and accordingly fully relied on the learned advocate. The petitioner was sometimes called upon by the learned advocate that the written statement could not be filed and accordingly, an application requires to be filed for

extension thereof. The petitioner on the basis of such advice signed few applications on different occasions. In the meantime, the written statement was made ready and it was filed before the learned trial judge for acceptance but the learned Trial Judge by the impugned order dated January 18, 2018, was pleased to reject the application for extension of time to file written statement and refused to accept the written statement which had already been filed.

Mr. Pradip Kumar Dutt, learned counsel appearing on behalf of the petitioner, submits that the learned Trial Judge had acted illegally and with material irregularity by not exercising his discretion vested on it. The petitioner is a religious person engaged with religious institution and busy in performing their religious activities and should not be treated with general and/or private litigant and the trial court ought to have exercised its jurisdiction in favour of allowing application for extension of time. Accordingly, he prayed for setting aside the order impugned and prayed for acceptance of written statement and for giving the petitioner an opportunity to contest the suit.

In this context, he has relied upon a judgment *Shaikh Salim Haji Abdul Khayumsab vs. Kumar and Others* reported in (2006) 1 SCC 46 and another judgment *Bharat Kalra vs. Raj Kishan Chabra* which was passed on 09.5.2022.

Mr. Somnath Roy Chowdhury, learned counsel appearing on behalf of the opposite party, submits that the defendant/petitioner had not assigned any reason as to why he could not file the written statement within the statutory period.

From the impugned order, it is clear that the petitioner/defendant had taken several adjournments for filing written statement but he did not file the written statement in time nor has assigned any reason for that.

He further submits that when no reason has been assigned by the petitioner for causing delay, it would not be prudent to accept the written statement and in view of the statutory provision, if the written statement filed by the defendant is accepted at a belated stage, then ignoring statutory provision, such acceptance would become automatic and it will open a floodgate.

In this context, he relied upon paragraph 9 of the judgment of *Mohammed Yusuf vs. Faij Mohammad & Ors.* reported in (2009) 3 SCC 513.

He further submits that in the present case, though the defendant/petitioner has not assigned any reason but even if a different view on facts elicited is possible, such approach does not permit interference in exercise of revisional jurisdiction by this court under Article 227 of the Constitution of India.

In this context, he has referred paragraph 4 of the judgment of *Bhojraj Kunwarji Oil Mill and Ginning Factory and Another vs. Yograjsinha Shankarsinha Parihar and Others* reported in 1984 AIR (SC) 1894.

I have considered the submissions made by both the parties.

I am told that before the trial court the evidence on behalf of plaintiff by P.W.1 and P.W.2 has been completed and

the case is fixed for hearing ex parte argument before the court below.

It is true that under Order VIII Rule 1 the written statement will have to be filed within 30 days from the date of service of summons and the time for filing written statement shall not be extended beyond certain period. It is also well-settled that written statement filed after the expiry of the statutory period cannot be accepted in a routine manner. The opposite party in this case has also strenuously argued that the defendant/petitioner has not assigned any reason as to why he could not file the written statement in time. He further stated though it has been agitated on behalf of the petitioner that being a Sannasi he is not aware of the procedural aspect but it is settled principle of law that ignorance of law is of no excuse.

However, considering the facts and circumstances of the case, it appears that the defendant has ultimately filed the written statement and the delay in filing of the written statement can be compensated with costs but if the court denied to accept the benefit of filing the written statement that would be unreasonable in view of the fact that the defendant will never get an opportunity to place his case for adjudication.

On the contrary, if the defendant has given an opportunity to contest the suit by acceptance of the written statement, the highest prejudice that may be caused to the plaintiff would be that the suit will be decided after contested hearing on merit. However, since the matter has already been delayed for a considerable period of time, a time bound

direction should be passed for disposal of the issue involved in between the parties.

In view of the above, CO 742 of 2018 is allowed subject to costs of Rs.25,000/- which will be paid by the petitioner/defendant to the plaintiff/opposite party, within a period of four weeks from the date of communication of the order.

The trial court is directed to accept the written statement on payment of such costs by the petitioner/defendant to the plaintiff within the prescribed period, then after framing issue, learned court below will give opportunity to examine and/or to re-examine plaintiff's witness and will give opportunity to defendant to cross-examine plaintiff's witness and after that will give opportunity to defendant to examine his witness and plaintiff will also be given opportunity to cross-examine defendant's witness. The court below will make every endeavour to dispose of the suit preferably within a period of six months from the date of communication of the order. But if cost is not paid by the defendant/petitioner to the plaintiff as above, the order impugned will revive automatically.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

**(Ajoy Kumar Mukherjee, J.)**