

24.4.2023  
17  
Ct. no. 652  
sb

**CO 621 of 2021**

**Smt. Kamala Debi  
Vs.  
Smt. Binda Debi and Anr.**

Mr. Sukanta Chakraborty  
Mr. Zuber Ahmed  
...for the petitioner

Mr. Jayanta Kr. Mondal  
Mr. Sayantan Rakshit ...for the opposite parties

Affidavit of service filed by the petitioner is taken on record.

This is an application under Article 227 of the Constitution of India against the order no. 9 dated 16.8.2018, order no. 15 dated 27.6.2019 and order no. 23 dated 6.1.2021 passed by the learned Civil Judge, Junior Division, 2<sup>nd</sup> court, Serampore, Hooghly in Title suit no. 161 of 2018.

Learned counsel for the petitioner contended that the plaintiff/opposite party nos. 1 and 2 herein filed aforesaid suit praying for declaration, permanent and mandatory injunction against the defendant/petitioner herein. In the said suit, 16.8.2018, was fixed for filing written statement and written objection by the defendant/petitioner but the defendant/petitioner failed to file written statement and written objection as learned counsel for the defendant/petitioner in the court below,

could not prepare the written statement. Accordingly, on that date, i.e. on 16.8.2018, the defendant/petitioner filed petition praying for time to file her written statement and written objection but the court below observed that the statutory period of filing written statement is over and as such, the prayer for filing written statement was rejected. However, on the next date, i.e. on 17.9.2018, the petitioner submitted her written statement along with a petition under Section 151 of the Code of Civil Procedure for acceptance of the written statement. Subsequently, the court below was pleased to reject the defendant's application under Section 151 of the Code on 17.9.2018 on the ground that the contents of the application is not legible to read. On 10.7.2019, the petitioner/defendant had filed a put up petition along with two petitions, one for acceptance of written statement and another petition under Section 151 of the Code praying for setting aside the ex parte order. On 6.1.2021, learned court below had taken up both the petitions dated 10.7.2019 and after hearing both the parties, learned court below was pleased to reject the said petitions filed by the defendant/petitioner, by the impugned order and fixed the suit for ex parte hearing.

Learned counsel for the petitioner submits that the court below has acted illegally and with material irregularity in not considering the grounds mentioned in the application. The court below failed to consider that

delay if any caused in filing written statement by the defendant, occurred due to un-intentional latches and the same should have been condoned by the learned Judge. Learned court below has exceeded jurisdiction by not considering the fact that the amendment application was fixed for hearing after the written objection was taken on record. Accordingly, he has prayed for setting aside the order impugned.

Learned counsel for the opposite party submits that the defendant/petitioners have got sufficient opportunities to file written statement but they were intentionally dragging the matter and as such the court below had no other alternative but to fix the suit for ex parte hearing, after rejecting the defendant's prayer for accepting written statement, as the time for filing written statement was expired. He further submits that the defendant/petitioner has filed the application for acceptance of the written statement second time on 10<sup>th</sup> July, 2018 suppressing the material fact that earlier two applications filed by the defendant/petitioner for acceptance of written statement and condonation of delay has been rejected. He further submits that as the defendant/petitioner has suppressed the material fact and tried to misguide the court by making misleading statement, so he is not entitled to get any sort of relief from this court and accordingly, the orders impugned does not call for any interference.

In this context, he has relied upon two judgments of Supreme Court passed in **Ramjas Foundation and Another Vs. Union of India and others** reported in **(2010) 14 SCC 38** and **S.P. Chengalvaraya Naidu (dead) by L.R.s. vs. Jagannath (dead) by L.R.s and others** reported in **AIR 1994 SC 853**.

I have carefully considered the submissions made by both the parties. It appears from the materials available in the record that the defendants application under Section 151 of the Code, filed on 17.9.2018 was rejected by the court below on 27.6.2019 on the ground that the contents of the application are being totally illegible and for which the court was not in a position to read the contents of the said petition. In this context, learned counsel for the petitioner submits that the court below ought to have asked for filing fresh copy of the application but he ought not to have rejected the said prayer vide order dated 27.6.2019 on that ground. It also appears from the order-sheet that though the defendant's prayer for filing written statement was rejected on 16.8.2018 but on the next date i.e. on 17.9.2018, the defendant had made aforesaid prayer under Section 151 of the Code by submitting written statement. The defendant in his application under Section 151 of the Code has clearly mentioned that his lawyer could not prepare the written statement in time and for which he could not file the same before the court within the

statutory period. Accordingly, I find that a litigant should not suffer for the laches on the part of his lawyer. Without examining the lawyer as to whether he was at fault or not, in causing delay in filing written statement, there is hardly any scope to presume that the delay is occasioned deliberate on an account of culpable negligence or on account of malafidness. It is well settled that all the rules of procedure are the handmaids of justice. The language employed in a processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. When written statement is already on record, the court should ordinarily accept the same and decide the matter on merits, unless defendant's case is hopelessly without merit. Refusing to accept written statement and refusal to hear the suit on merit in a meritorious matter by throwing the defendants at the very threshold merely on the ground that written statement was not filed within the statutory period, may defeat the cause of justice. It appears that the written statement has already been filed and as such if the written statement is accepted, subject to payment of cost, the highest prejudice that may be caused to the plaintiff/opposite party herein would be that the suit would be disposed of on merit after contested hearing and nothing more.

Accordingly, C.O. 621 of 2021 is disposed of with a direction that the court below will accept the written

statement subject to payment of cost of Rs. 10,000/- to be paid by the petitioner to the opposite party herein within a period of two weeks from the date of communication of this order. On such payment by the petitioner, the written statement will be accepted by the court below and court below will proceed with the suit after framing issues, in default of making such payment, impugned order shall revive.

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

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