

26.06.2023
Court No. 19
Item no.02
CP

C.O. 853 of 2022
With
CAN 3 of 2023

Zee Entertainment Enterprises & ors.
Vs.
Pradip Kumar Bardhan & ors.

Mr. R. K. Mitra
Ms. Debisree Adhikary

....for the petitioners.

Mr. Narayan Chandra Ghosh

.....for the opposite party nos. 1 & 2.

Mrs. Pampa Dey Dhabal
Mr. Nikhil Kr. Gupta

....for the opposite party no. 3.

The revisional application has been filed against an order dated November 25, 2021, passed by the learned Civil Judge (Senior Division) 5th Court, Alipore in Money Suit No. 334 of 2018. By the order impugned, an application for review filed by the defendant nos. 1 to 3 was taken up and disposed of. The review was filed against rejection of the prayer for acceptance of the belated written statement and refusal of the learned court to remove the suit from the ex parte board.

The review application was heard after several adjournments as the lock down period had intervened. The order dated March 12, 2020 was not

reviewed as the learned court below found that once the law had prescribed a period of limitation to file the written statement, review of the order was not permissible.

The defendants/petitioners received the summons in April, 2019. On March 12, 2020, the written statement along with an application for acceptance thereof, was filed. The learned court rejected the same on the ground of delay.

The defendant no. 1 is a company and the defendant nos. 2 and 3 are the principal officers of the said company. It is alleged that due to personal difficulty of an officer who was dealing with the litigation and the records, it was not possible for the defendants No. 1 to 3 to file the written statement.

In the decision of *Kailash vs. Nanhku & ors*, reported in (2005) 4 SCC 480, the Hon'ble Apex Court condoned delay in filing the written statement when there were exceptional circumstances which prevented the defendant from filing the written statement within the statutory period.

Having perused the records, this court finds that the reason for non-filing of the written statement within the statutory period, is the personal difficulty of the officer who was dealing with the records and the documents necessary for preparation of the written statement. There was no intentional delay.

The defendants did not stand to gain in any way by causing such delay. In any event, the written statement was filed and prayed to be accepted, which the learned court refused to do.

Thus, this court is of the opinion that the written statement already filed shall be accepted by the learned court below upon being satisfied that Rs.5000/- as cost is paid either to Mr. Narayan Chandra Ghosh, learned advocate who appears on behalf of the plaintiffs before this court and also before the learned court below or to the plaintiffs directly. Upon acceptance of the written statement, the suit will proceed and be concluded within a period of one year from the date of acceptance of the written statement. The suit shall be removed from the ex parte board, after acceptance of written statement. Failure to comply with this order will result in the revival of the order passed by the learned trial judge.

The orders impugned are set aside and quashed.

The revisional application is accordingly disposed of. The connected application being CAN 3 of 2023 is also disposed of.

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

(Shampa Sarkar, J.)