

Ct. No. 652
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C.O. 1859 of 2019

RB Polyboards Ltd.

-Versus-

The Controller of Stores SWR & Anr.

Mr. Siddhartha Banerjee

Mr. Soni Ojha

Ms. Sambrita B. Chatterjee

Ms. Sonia Nandy

Mr. Anjan Bhandari

...For the Petitioner

Mr. Partha Chakraborty

...For the Opposite Party Railways

This is an application under Article 227 of the Constitution of India which has been preferred against Order No. 17 dated 19th March, 2019 passed by the learned Judge, VIIth Bench, City Civil Court at Calcutta in Money Suit No. 768 of 2016. By the order impugned, the learned Court below has been pleased to accept the written statement filed by the defendants after condoning the delay subject to payment of cost of Rs. 2,000/- in favour of the plaintiff.

Plaintiff/petitioner's contention is that he filed a suit for recovery of money against the opposite party claiming an amount of Rs. 9,08,992/- along with interest accrued thereon from the defendants on the ground mentioned in the plaint.

On November 16, 2017, defendant/opposite party No. 1 appeared in the said suit and prayed for adjournment for filing written statement. Thereafter the defendant / opposite party No. 1 failed to file written statement in spite of getting several opportunities and the Court below posted the suit for ex parte hearing against both the defendants. On May 3, 2018 a joint application was filed by both the defendants / opposite party Nos. 1 and 2 for bringing the said suit down from ex parte board.

Petitioner further contended that such application

filed by the defendant / opposite party Nos. 1 and 2 on May 3, 2018 was absolutely cryptic and no cogent reason or acceptable plea was put forth by the defendants, justifying as to what might have prevented them from filing the written statement within the statutory period. Furthermore, the defendants have not also made any application for recalling the earlier order dated 16th November, 2017 by which the Court below posted the suit in the ex parte board. Ultimately, on May 3, 2018 the defendants/ Opposite party Nos. 1 and 2 herein filed one written statement and the Court below without providing any opportunity to the petitioner to put in an objection in writing to the said application, hastily allowed such application for acceptance of the written statement subject to payment of cost of Rs. 2,000/-. Thereafter on 7th June, 2018 upon production of receipt evidencing deposit of cost by the defendants, the Court below accepted the written statement, filed by the defendants.

Being aggrieved by and dis-satisfied with the said order the plaintiff/petitioner herein preferred a revisional application before this Court, being C.O. 2320 of 2018 and this Court allowed the said revisional application by setting aside the said order and directed the opposite parties to file an appropriate application before court below explaining the cause for the delay in filing the written statement which was filed by the defendants on 3rd May, 2018 and in the event of filing such application, the court below was directed to dispose of such application in accordance with law within a particular period.

Subsequent to such order the opposite party herein / defendants took out an application on 7th March, 2019 where they have prayed for condonation of delay in filing

the written statement and acceptance thereof. Learned Court below by the impugned order was pleased to allow the said application and thereby accepted the written statement filed by the defendants.

Mr. Siddhartha Banerjee, learned Counsel appearing on behalf of the petitioner submits that in the application dated 7th March, 2019 the defendants / opposite parties did not explain as to what actually prevented them from filing the written statement in time. In fact, the reason given by them in support of delay is not acceptable in view of the fact that prior to February 16, 2018 they made contact with their Lawyer and filed one application before the Court below on 16th February, 2018 and as such there was no communication gap with lawyer as alleged. He further submits that the order impugned is absolutely cryptic and vague in nature.

Mr. Banerjee further contended that the Court below has accepted written statement illegally and has done material irregularity in condoning the enormous and inordinate delay on the part of the defendants / opposite parties in filing the written statement. In fact in terms of the order passed by this Court the defendants have failed to put forth any cogent reason or acceptance plea before the Court below justifying the delay on their part in filing the written statement. In spite of that the Court below mechanically condoned the delay and accepted the written statement and thereby he has exercised jurisdiction, which is not being vested to him by law.

In fact the Court below had exceeded its jurisdiction by taking a lenient view of the deliberate laches and unexplained failure on the part of defendants to file

written statement within statutory period which is apparent on the face of the record. Accordingly, petitioner has prayed for setting aside the order impugned.

Mr. Partha Chakraborty, learned Counsel appearing on behalf of the opposite parties submits that in their application for condonation of delay, Defendants have explained the reason in paragraph 5 of the application. He further submits that there is no intentional laches or delay on the part of the defendants in not filing the written statement within the statutory period. Delay was caused due to communication gap due to distance and also due to transfer of dealing officials, departmental procedure, inter departmental review and approval of written statement etc. Defendants accordingly prayed not to interfere the impugned order accepting the written statement and thereby prayed for giving them opportunity to contest the suit. In this context defendants relied upon a decision of the Hon'ble Apex Court in the case of *Ramesh Chand and Anr. Vs. Punjab National Bank & Ors.*, reported in AIR 1990 SC 1147.

I have considered the submissions made by both the parties. On perusal of the order impugned it appears that the Court below after considering the grounds shown in the application for condonation of delay in filing the written statement by the defendants, got satisfied to allow the said prayer but subject to payment of cost.

It is settled proposition of law that so far as practicable, a litigant ought not to be denied a hearing on merits. Though there cannot be a strait jacket formula for accepting or rejecting the explanations for causing delay in filing the written statement, but courts mindset must not be proceeded with the tendency of finding fault with the cause

shown and reject the petition in limini. Apex Court time and again reiterated that substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspect of law.

That apart order IX, Rule 7 of the Code of Civil Procedure empowers the court to allow the defendant to contest the suit on “good cause” for his previous non-appearance been shown, when at or before ex parte hearing, the defendant appears. Unlike order IX, Rule 9 and order IX, Rule 13 of the Code, the legislature have not used the term “sufficient cause” while drafting order IX, Rule 7 and thereby intention of legislature is that ex parte posting of hearing the suit may be set aside and the defendants can be allowed to contest the suit, if only “good cause” is shown. Procedure laid down to file written statement within the prescribed period is meant only to facilitate the administration of justice and not to defeat the same, presuming deliberate causation of delay.

Above all this is an application under Article 227 of the Constitution of India. The Trial Court, while dealt with the application for condonation of delay, got himself satisfied about the grounds shown in the application and accordingly condoned the delay. If the trial court has the jurisdiction to condone the delay on satisfying about the grounds of delay, I find no material for holding that there was any impropriety in exercising jurisdiction under Article 227. High Court’s interference under Article 227 arises when Trial Court acted without jurisdiction or in excess of jurisdiction and order impugned resulted in failure of justice. Accordingly I do not find any justification for interference with the conclusion of facts by the Court below. There is nothing in the order impugned so grossly wrong or unjust or shocking to the courts conscience that it is necessary for this

High Court to interfere in the interest of justice.

The revisional application, being C.O. 1859 of 2019 is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)