

Item No. 17
11.07.2023
Court. No. 19
GB

C.O. 1662 of 2023

Lakhotia Infra Projects Pvt. Ltd.
Vs.
M/s. Nand Lal Bihani & Co.

Mr. Falguni Bandyopadhyay,
Ms. Riya Ballav,
Ms. Nandini Sharma

...for the Petitioner.

Mr. Dipankar Mullick,
Mr. Mritunjay Saha

...for the Opposite Party.

The revisional application is directed against an order dated August 3, 2022 passed in Money Suit No.44 of 2021 by the learned Judge, 12th Bench, City Civil Court at Calcutta.

Upon finding that one and half years had passed from the date of institution of the suit and no decision could be arrived at, the suit was fixed for ex parte hearing. At such juncture, the defendant appeared in the suit and filed an application for setting aside the order fixing the case for ex parte hearing. The said application was treated as an application for leave to defend as the defendant intended to contest the suit. However, the learned court passed a conditional order upon perusal of the documents, bills, correspondences and tax invoices, supplied by the plaintiff thereby directing the defendant to deposit 25% of Rs.8,54,736/-, that is, Rs.2,13,684/-. Aggrieved, this revisional application has been filed.

It is contended by Mr. Bandyopadhyay, learned advocate for the petitioner that the learned court below

ought to have passed a formal order by recalling the order by which the suit was fixed for ex parte hearing and the condition of payment of 25% should not have been imposed, without compliance of Order 37, Rule 3(4).

Upon perusal of the records and the order sheet, it appears that the petitioner appeared before the learned trial court six months after receipt of the summons. As per Sub-Rule 5 of Order 37, Rule 3, the defendant may at any time within then days from the service of summons for judgment by affidavit or otherwise, disclose such facts as may be deemed sufficient to entitle him to defend and apply on such summons for leave to defend the suit. The leave to defend may be granted unconditionally or upon such terms as may appear to the Court or Judge to be just.

In this case, the application for removal of the suit from the ex parte board was filed sometime in December 2022, that is, almost ten months after the Hon'ble Apex Court had extended all periods of limitation upto February 2022. The benefit of the COVID period was given to the petitioner and the delay was condoned.

However, when the law provides that the court may allow leave to defend upon imposition of some reasonable condition, this Court does not find any illegality in the order impugned, save and except that instead of depositing a cash amount of Rs.2,13,684/-, the petitioner shall secure the said amount by furnishing a bank guarantee which shall be deposited in the learned court below within July 31, 2023 and shall be kept renewed till the disposal of the proceedings.

The bank guarantee shall be subject to the final result of the proceeding. For the delay caused, the time to file the written statement is extended upto August 2, 2023, provided the petitioner pays further cost of Rs.20,000/- to the opposite party, as compensation. Such cost shall be paid to the plaintiff or the learned advocate for the plaintiff within July 31, 2023. A receipt shall be issued either by the plaintiff or by the learned advocate for the plaintiff.

This Court is of the view that the defendant should have been more diligent and sincere in proceeding before the learned court below and the plaintiff should not suffer on account of such delay.

The suit shall be expedited and concluded preferably within December 2023. The order impugned is modified accordingly and as the Court has granted leave to defend, the written statement shall be filed as per the direction of this Court. In case of default, the suit shall proceed ex parte.

This Court has not gone into the merits of the suit.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)