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28.06.2023
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C.O. 1667 of 2023
Kolkata Municipal Corporation & Ors.
vs.
M/s Ananda & Arati Trust

Mr. Alope Kr. Ghosh
Mr. Nilanjan Chatterjee
.... For the Petitioners
Mr. Debjit Mukherjee
Mr. K. Bhattacharya
.... For the Opposite Party

The revisional application arises out of an order dated April 3, 2023 by which the learned Civil Judge (Senior Division) 4th Court at Alipore, South 24 Parganas. The learned court had refused to accept the explanation to the show cause given by the defendant in the suit, for delayed filing of the written statement and consequentially denied to accept the written statement. According to the learned Court below, unless specific prayer was made for removal of the suit from the ex-parte board and proper explanations were given for removal of the suit which was running in the *ex parte* board, the answer to the show cause notice was incomplete and could not be accepted. The court proceeded to hear the suit *ex parte*.

Mr. Ghosh, learned advocate appearing on behalf of the petitioner submits that due to

miscommunication between the different departments within the Corporation, the learned advocate was not properly briefed in the matter. Thereafter, the pandemic set in. The Corporation became occupied with emergency services, vaccination work, cremation etc. between February 17, 2020 to February 28, 2022. There was complete lock down for some time and thereafter, partial lockdown. The Corporation had become totally involved with battling Covid and its effects. Thus, unintentionally, the delay occurred. Ultimately, the written statement along with an answer to the show cause was filed on May 18, 2022. Learned Court below was not happy with the answer and was of the view that unless a prayer to recall the order by which the suit had been fixed for *ex parte* hearing was made, the Court was incapable of accepting the explanation to the show cause as also the written statement.

This Court finds that there has been delay, owing to which the suit could not proceed for a year. Thereafter pandemic hit. All things came to a standstill. However, this Court cannot be unmindful of the insurmountable pressure which the Corporation was going through for two years when the pandemic hit. The Hon'ble Apex Court had also extended the period of limitation in all suit, proceedings. For the same reasons, this court deems

it fit to condone the delay in filing the written statement. The fact that a specific prayer was not made to recall the order by which the suit was fixed for *ex parte* hearing, is only a technical fault, which can be remedied by this Court sitting in superintending jurisdiction.

Mr. Debjit Mukherjee, learned advocate appearing on behalf of the plaintiff/opposite party submits that for more than one whole year, after receiving the summons, the Corporation had not taken any steps in the court below. Mr. Mukherjee, relies on a decision of the Hon'ble Apex Court in the case of ***Desh Raj vs. Balkishen (DEAD) through proposed legal representative Ms. Rohini*** reported in ***(2020) 2 Supreme Court Cases 708***.

It is next submitted by Mr. Mukherjee that unless a proper prayer was made for recalling the order by which the suit was fixed for *ex parte* hearing, learned court below could not have accepted the answer to the show cause and the written statement. The said order had attained finality.

Having gone through the explanation given by the Corporation and having considered the emergency service which the Corporation had to impart for a long period, this Court is of the view that one last chance should be given to the Corporation to contest the suit by filing the written statement. Of course, as the

plaintiff has suffered for the delay, the Corporation has to compensate. The answer to the show cause and the written statement, shall be accepted by the learned court below, upon being satisfied that a sum of Rs.10,000/- has been paid to the plaintiff directly by the Corporation or to the learned advocate on record of the plaintiff. This order will stand automatically recalled in case of default. Such cost shall be paid by the Corporation/petitioner within 19th July, 2023, that is, the next date fixed in the suit. Necessary receipt shall be given by the plaintiff or the learned advocate for the plaintiff upon receipt of such cost. The said receipt shall be filed in the court by the Corporation and the suit shall be removed from the *ex parte* board. The order fixing the suit for *ex-parte* hearing is, thus, recalled.

The suit shall continue on contest from the appropriate stage by affording the parties to take appropriate steps with regard to the issues and evidence. In case of failure of the Corporation to comply with the order, learned court below shall proceed *ex parte*. As the suit is of 2017, the same shall be disposed of expeditiously preferably, within a period of one year from the date of communication of this order.

In the decision of ***Desh Raj vs. Balkishen (DEAD) through proposed legal representative Ms.***

Rohini (supra) as cited above by Mr. Mukherjee, the Hon'ble Apex Court declared that the purpose of fixing a time line within which the written statement should be filed, was to ensure that a litigation is disposed of in a time bound manner. But exceptions were also made by the Hon'ble Apex Court, namely, extreme hardship, factors beyond control despite proactive diligence and other just and equitable considerations. In view of the said facts and circumstances, as the Kolkata Municipal Corporation was the sole defendant and pandemic had hit the city, I am of the view that the advantage of 'extreme hardship' as pointed out in the decision shall be available to the Corporation. It will be just and equitable to allow the revisional application.

The order impugned is set aside.

The revisional application is thus disposed of.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)