

19.09.2023
Sl. No.9(DL)
srm

C.O. No. 3293 of 2022
Faruk Mallick & Anr.
Versus
Sri Trinanjan Banerjee @ Banerji

Mr. Chandra Sekher Banerji
...for the Petitioners.

Mr. Debabrata Acharyya,
Mr. Sital Samanta,
Mrs. Chinmoyee Bhattacharya (Roy)
...for the Opposite Party.

This revisional application has been filed challenging the orders dated July 28, 2022 and September 12, 2022, passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah, South 24-Parganas, in Title Suit No.310 of 2020.

By the orders impugned, the learned court below rejected the applications filed by the petitioners/defendants praying for recall of the order by which the suit was fixed for *ex parte* hearing and for acceptance of a belated written statement. The reasons given by the petitioners are inability to contact the learned Advocate during the Covid-19 pandemic period and non-service of the copy of the plaint.

The learned court below did not accept such contentions on two grounds. First, that the explanation that somehow the plaint was obtained later on and the written statement had

been prepared belatedly, was not believable and secondly the prayer for recall of the order fixing the suit for *ex parte* hearing, had already been negated earlier.

This Court is of the view that the problems which were being faced by litigants during the lockdown and during the pendency of the pandemic, cannot be completely ruled out. Moreover, the Hon'ble Apex Court and the High Court had passed several orders by extending the period of limitation for filing suits, proceedings, applications, etc. The benefit of such orders should be given to the petitioners. Hence, an opportunity ought to have been given to the petitioners to contest the proceeding, upon payment of cost. The learned trial Judge erred in dismissing the applications and in fixing the suit for *ex parte* hearing . The orders impugned are set aside.

The written statement, which is already on record shall be accepted upon payment of cost of Rs.10,000/- to the plaintiff within a period of two weeks from the date of communication of this order. If such cost is paid and the learned court below is satisfied with the payment thereof, the suit shall proceed, in accordance with law on contest. The suit shall be expedited and disposed of preferably within a period of one year from the next date fixed. In case of default in payment of cost, the suit shall proceed *ex parte*.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)