

Ct.  
No.  
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**C.O. 4379 of 2018**  
**Smt. Juggan Devi @ Maitri Devi & Ors.**  
**-Versus-**  
**Sri Dewnath Shaw & Anr.**

**Mr. Sayan Sinha**  
**Mr. Soham Kumar**

**...For the Petitioners**

**Mr. Pinaki Ranjan Mitra**

**...For the Opposite Parties**

This application under Article 227 of the Constitution of India has been filed by the petitioners against the order dated 13<sup>th</sup> December, 2018 passed by the learned Civil Judge (Junior Division), 3<sup>rd</sup> Court at Howrah in Title Suit No. 145 of 2014. By the impugned order the application filed by the plaintiffs under order VIII Rule 10 seeking to pronounce judgment against defendant No.1, who failed to submit written statement nearly within four years from their appearance, was rejected on contest by the learned Court below and thereby accepted the cause shown for delay by the defendant No. 1, subject to payment of cost of Rs. 2,000/- to be paid by the defendant No. 1 to the plaintiffs.

Mr. Sayan Sinha, learned Counsel appearing on behalf of the petitioners submits that petitioners herein filed aforesaid suit for decree of declaration and permanent injunction against the defendant. The defendant/opposite party No. 1 entered appearance in the said suit on 13<sup>th</sup> June, 2014 and filed an application under Order VII, Rule 11 read with Section 151 of the Code of Civil Procedure seeking rejection of the plaint.

The petitioners herein filed written objection against the application under Order VII, Rule 11 and the Court below ultimately on 9<sup>th</sup> August, 2016 was pleased to reject the defendant's application under Order VII, Rule 11

of the Code.

The petitioners further submit, surprisingly since their appearance the defendant No. 1 willfully and deliberately did not file written statement in the said suit after long expiry of the statutory period. Finding no other alternative, the petitioners filed impugned application under Order VIII, Rule 1 and 10 read with Section 151 of the Code of Civil Procedure.

On 7<sup>th</sup> May, 2018 about four years after their appearance, the defendants / opposite parties filed written statement but they did not file any show cause explaining such prolonged delay in filing the written statement in the said suit.

On 7<sup>th</sup> August, 2018 the defendant / opposite party No. 1 filed a show cause petition allegedly explaining delay in filing such written statement. The petitioners herein filed written objection against the show cause petition / application filed by the defendant/opposite party No. 1 and the learned Court below by the impugned order has been pleased to accept the show cause filed by the opposite party No. 1 / defendant No. 1, subject to payment of Cost of Rs. 2,000/-.

Mr. Sinha, further submits that the Court below acted illegally and with material irregularity in not applying his judicial mind properly in passing the impugned order. Learned Court below erred in holding that it is an omission on the part of the Advocate for the defendant No. 1, who failed to inspect the case records and failed to ascertain whether the written statement was filed or not and for such omission on the part of the Advocate the litigant must not

suffer and he further erred in holding that the defendant No. 1 has a right to contest the suit which cannot be curtailed at this stage. In fact, the learned Court below allowed the said application filed by the petitioners, without any reason. Learned Court below did not consider that the amended proviso to Order VIII, Rule 1 of the Code of Civil Procedure was implemented for expeditiously trial and the defendant cannot take indefinite time to file written statement in order to cause delay in disposal of the suit. The learned Court below further committed mistake in observing that the provisions under Order VIII, Rule 1 of the Code is not mandatory. Accordingly, learned Counsel for the petitioners prayed for setting aside the order impugned.

Mr. Pinaki Ranjan Mitra, learned Counsel appearing on behalf of the opposite party No. 1 submits that it is an omission on the part of the learned Advocate of the defendant No. 1 to overlook the fact that written statement was not filed and it is not an intentional omission on the part of the defendant No. 1. He further submits that mere delay in filing the written statement will not take away the right of the defendant No. 1 to contest the suit. In fact defendant No. 1 earlier filed an application for rejection of the plaint which was disposed of on 9<sup>th</sup> August, 2016. Thereafter, the Court below had taken up the application for temporary injunction and the Court below never fixed the suit for peremptory hearing and as such learned Counsel appearing on behalf of the defendant No. 1 failed to inspect the case record and could not ascertain whether the written statement was filed or not. He further submits that the defendant No. 1 has right to contest the suit which cannot be curtailed for laches, if any, on the part of his learned Advocate. He further submits in compliance with the order impugned he has already

deposited the cost of Rs. 2,000/- by way of challan on 1<sup>st</sup> March 2019. A copy of such challan produced in Court today is taken on record.

Having heard the learned Counsel appearing on behalf of the parties and in view of the facts and circumstances of the case it appears that the defendant no.1 appeared in the suit on 13.06.2014 and filed application for rejection of plaint, which was disposed of on 9<sup>th</sup> August, 2016. It further appears that thereafter suit was posted for injunction hearing and impugned order even shows that prayer for temporary injunction has not yet been disposed of and next date is fixed for hearing application for temporary injunction, where defendant No.1 is duly contesting by filing written objection and apparently record does not reveal that delay in filing W.S is intentional to make any unlawful gain or due to acceptance of cause shown by defendant No.1, plaintiff got prejudiced to such an extent, which cannot be compensated by cost.

Rule 10 of order VIII though couched with the word “shall” to mean that it should be obligatory on the court to pronounce Judgment when defendant failed to present written statement within the time or time fixed by court but at the same time, the words “or make such order in relation to the suit as it thinks fit” gives wide discretion to court in the matter. In fact time limit fixed under order VIII, Rule 1 is not a substantive law but it is procedural law, legislated to cure the mischief of unscrupulous defendants adopting dilatory tactics, thereby delaying disposal of cases, causing in conveniences to the plaintiff. Facts and circumstances of the case herein does not suggest that the written statement filed by defendant at a belated stage,

caused delay in disposal of suit, since plaintiffs prayer for temporary injunction is still pending for disposal. It is well-settled that in an adversarial system a party should not ordinarily be denied the opportunity of participating in the process of justice dispensation, specially when by filing written statement, defendant has expressed his intention to have the suit disposed of on merit.

In such view of the matter I find nothing to interfere with the order impugned.

The revisional application, being C.O. 4379 of 2018 is accordingly dismissed.

However, the learned Court below is directed to pass formal order accepting the written statement in view of payment of the cost, within a period of one week from the date of communication of this order and he will frame issues within a period of three weeks thereafter. Upon framing such issues he will make every endeavour to dispose of the suit along with interlocutory application preferably within a period of ten months thereafter.

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

**( Ajoy Kumar Mukherjee, J.)**