

20.2.2023
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Ct. no. 652
sb

**CO 1651 of 2020
With
CAN 1 of 2023**

**Sanjib Bose
Vs.
Debashis Gooptu & Anr.**

Mr. Manik Das
Mr. Aniruddha Sinha ...for the Petitioner

Ms. Fatima Hassan ..for the Opposite parties

Being aggrieved and dissatisfied with the order no. 15 dated 13.9.2019 and order no. 18 dated 3.2.2020 passed by the learned Judge, 6th Bench, City Civil Court, Calcutta in Title Suit no. 784 of 2018, present revisional application under Article 227 of the Constitution of India has been preferred.

The petitioner contended that the opposite party nos. 1 and 2 herein as plaintiffs filed aforesaid suit praying for recovery of khas and vacant possession of the suit premises and for permanent injunction restraining the defendants from making any constructions on the terrace and also for mandatory injunction to remove or dismantle the construction already made on the terrace along with other reliefs. He further contended that on 18.11.2019, the defendant filed his written statement and expressed his willingness to contest the suit by way of filing a petition praying for recalling the order dated

13.9.2019 by which court fixed the case in ex parte hearing board. He argued that In fact, the petitioner as defendant appeared in the said suit on 13.9.2019 and filed an application for allowing time for filing written statement. On 18.11.2019, the petitioner filed two applications with a prayer for recalling the order dated 13.9.2019 and for acceptance of written statement but the court below was pleased to reject the said two prayers on the ground that the petitioner failed to assign any reason as to the exceptional circumstances, which prevented the defendant to file written statement within statutory period. The petitioner further submits that the advocate on record of the petitioner after giving no objection to the present advocate of the petitioner/defendant he has entered appearance on 13.9.2019 and filed application for allowing time for filing written statement as the learned advocate did not have adequate instruction from the petitioner/defendant to file written statement. However, the court below was pleased to reject the same by fixing thereby the next date for ex parte hearing.

The petitioner, in this context, submits that the learned court below should have considered that the petitioner is the Secretary of the West Bengal Forum of the Deaf Society which is under the modern art and photograph society for deaf people and the same is registered under the Society Registration Act and the

society deals with all deaf and dumb people being its members who are not totally fit to give proper instruction and as such it is very difficult to understand them and to obtain necessary instructions from them to file the written statement and as such written statement could not be filed within this statutory period. He further submits that the court below should have considered the delay if any, for filing written statement by the defendants, are caused due to unintentional laches and the same should have been condoned by the court below.

Learned counsel for the opposite party raised strong objection and contended that the petitioner is trying to representing himself as deaf and dumb person but the facts remains that the secretary to the society himself who is the defendant, is not a deaf and dumb person and practically in his application for recalling the order and prayer for filing written statement he did not show any reason. In this context he referred judgment of the Supreme Court in Salem Advocate Bar Association vs. Union of India, 2005(5) Supreme 236 and contended that though order VIII rule 1 is directory in nature but the time for filing written statement can be extended only in exceptionally hard cases and while extending the time, it is to be borne in mind that the legislature has fixed the upper limit of 90 days and the discretion of the court to extend the time shall not be frequently and routinely exercised so as to nullify the period fixed by order VIII

rule 1. He further submits that the impugned order does not call for any interference and the court below was justified in rejecting the prayer of the petitioner herein. In reply, the learned counsel for the petitioner submits that there was only delay for 100 days in filing the written statement and as such the defendant may be given liberty so that the he can contest the suit.

I have gone through both the impugned orders. From the order impugned dated 13.9.2019, it appears that on that day, the defendant filed fresh vakalatnama along with two separate petitions praying for filing written objection and written statement. Such prayer was rejected and court was placed to fix the suit for ex parte hearing on 18.11.2019. On 18.11.2019, the petitioner herein as defendant filed show cause application and also filed written statement after serving a copy to the other side. Subsequently, on 20.1.2020, the defendant's application was taken up for hearing by the court below regarding acceptance of the written statement and for vacating the order regarding posting the suit in ex parte hearing board and the learned court passed the second impugned order on 3.2.2020. From the said impugned order, it appears that learned court was pleased to reject the said application on the ground that the same court which has rejected earlier the prayer for extension of time to file written statement by the defendant, cannot review its own order, not being a revisional court. Furthermore,

the defendant could not satisfy the court that he was prevented by any exceptional circumstances to file the written statement within the statutory period.

It is true that the statutory period has been prescribed in the order VIII rule 1 of the Code to file written statement and it is also settled proposition of law that such time to be extended only in exceptionally hard case and it should not be granted frequently and routinely. In the present case, the defendant's contention is that due to change of brief, the newly appointed advocate could not take instruction properly within time and it is further case of the petitioner that the petitioner is representing as secretary of a society created in the interest of the persons belonging to deaf and dumb class and the society deals with all deaf and dumb persons who are not totally fit to give instruction and it is very difficult to understand them and to obtain necessary instruction.

The court while rejecting the prayer for filing the written statement ought to have kept in mind the background of the party, social structure and the disability attached to the party. Of course there is no disagreement with the settled proposition of law that extension of time can be allowed, if it was needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time be not extended. The contents of unaccepted draft

written statement filed as annexure, discloses that the specific defence of the defendant is that defendant is a honorary secretary of the West Bengal Forum of the deaf society under modern art and photographic society, whose members are mainly deaf and dumb and suit property allegedly used by such physically challenged persons and the management of the society works through it's secretary. Such aspect of the issue has not at all been dealt with in the order impugned. Court below observed that after receiving copy of plaint, defendant filed application praying time to file written statement after a lapse of about 100 days and court below was not satisfied that defendant was prevented by exceptional causes for not filing statement within statutory period. In my opinion, court below overlooked these special circumstances of the case and that on 13.9.2019, defendant's newly appointed advocate filed Vakalatnama who sought for time to file written statement and on 18.11.2019, defendant placed the written statement for acceptance. Apparent conduct of the defendant does not suggest, there was any intentional latches in not filing written statement within statutory period of receipt of notice. In such circumstances court below ought to have passed order to provide opportunity to defendant concerned to participate in the process of justice dispensation fairly. Such opportunity if given must not

have caused prejudice to the plaintiff concerned to such an extent, that it would not be compensated by cost.

Time limit given in order VIII rule 1 curbs to intend the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of the case, causing inconvenience to the plaintiff and its object is not to scuttle the hearing, nor does it impose an embargo on the power of the court to extend the time. I have gone through plaintiff's written objection against defendant's prayer for acceptance of written statement and in that written objection plaintiff has not put a single word alleging that 100 days delay caused by defendant in filing written statement was intentional or mischievous or mala fide or has been designed to delay legal proceeding, so that he can be called as unscrupulous litigant whose only object is to cause delay in disposal of the suit.

Having considered the facts and circumstances of the case and the reasons assigned by the petitioner herein, I find that learned court below was not justified in observing that the recalling of the earlier order for ex parte hearing would amount to review of his own order. In the ends of justice if the written statement is accepted and the defendant is given an opportunity to contest the suit, the highest prejudice that might be caused to the plaintiff, would be that the suit will be disposed of after contested hearing on merit and nothing more. As such learned court would have given an opportunity to the

defendant to contest the suit after accepting the written statement.

In view of above, C.O. 1651 of 2020 is allowed. The impugned orders dated 13.9.2019 and subsequent order dated 3.2.2020 are hereby set aside. However, the learned court below is directed to accept the written statement on payment of cost of Rs. 1000/- to be paid by the defendant to the plaintiff within a period of two weeks from the date of communication of the order. In default of the payment of cost the impugned orders shall revive. On such payment, the trial court will accept the written statement and will frame issue within a period of four weeks and to expedite the trial of the suit and shall make all endeavour to conclude the entire proceeding of the suit preferably within a period of ten months from the date of communication of the order.

Pending application, if any, also stands disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)