

18.11.2024
Ct. No. 22
Sl. No.38
KB

**In The High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

CO 473 of 2020

**Suksham Singh
-versus-
Nand Kumar Poddar & Ors.**

**Mr. Chayan Gupta
Mr. B. M. Jashi
Mr. Debashri Mukherjee
... For the petitioner.**

1. Affidavit of Service filed in Court today is taken on record.
2. In spite of service, none appears on behalf of the opposite parties.
3. The challenge in this revisional application is order dated 10th December, 2019 passed in connection with Title Suit No. 1041 of 2018 whereby Learned Civil Judge (Senior Division), 1st Court, Alipore has refused to accept the written statement filed by the defendant no.1/petitioner herein.
4. Learned counsel appearing on behalf of the petitioner has submitted that written statement was filed squarely in compliance with the order passed by the Trial Court and there was no delay in filing the written statement. In support of his contention he

referred to the copy of the orders filed along with the supplementary affidavit.

5. From the order impugned, I find that Learned Judge relied on the provision of Order 5 rule 1 of the Code of Civil Procedure and recorded his order that written statement was not filed within the time period prescribed by the provisions itself.

6. The orders passed by the Trial Court particularly the orders dated 31.05.2019, 31.07.2019, 9.9.2019 and 3.10.2019.

7. On careful scrutiny of those orders, I find that copy of the plaint was not served upon the defendant to file written statement and by the order dated 9.9.2019 it is found that copy of the plaint was served for the first time upon the defendant no.1/petitioner herein only on 9.9.2019.

8. Learned Trial Court allowed him the defendant no.1 to file written statement on 3.10.2019.

9. From the order dated 3.10.2019, it is found that the written statement was filed by the defendant no.1 after serving copy thereof. So therefore, regard being had to the order, I do not find any delay of filing written statement either in view of the provision of Order 5 or Order 6 of the Code of Civil Procedure.

10. As a sequel the order dated 10.12.2019 passed by the Learned Civil Judge, 1st Court, Alipore in

connection with Title Suit No. 1041 of 2018 stands set aside.

11. The written statement filed by the defendant no.1 in compliance with the order dated 10.09.2019 be accepted.

12. Learned Trial Judge is requested to dispose of the suit in accordance with the provision as expeditiously as possible.

13. With the aforesaid observations, CO 473 of 2020 stands disposed of.

14. Interim order, if any, thereby stands vacated.

15. Connected application, if any, also stands disposed of.

16. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

17. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Bibhas Ranjan De, J.)