

Ct. 21.03
No. 652
2024
130
akb

C.O. 735 of 2020
Palash Roy & Ors.
-Versus-
Tapati Ghosh & Anr.

Mr. Dipankar Aditya
Mr. Pinaki Bhattacharya
Mr. Saikat Pal **...For the Petitioners**

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal **...For the Opposite Parties**

Plaintiffs/opposite Party Nos. 1 and 2 herein filed a suit for recovery of money amounting to Rs. 10,72,106/-, being Money Suit No. 90 of 2017. Summons of the said suit were served upon the defendants/petitioners, who made appearance in the said suit on 13th June, 2017 and prayed for time to file written statement and at the same time prayed for direction upon the plaintiffs for supplying all annexures, being annexure “X” to the plaint.

It is alleged by the petitioners herein that in spite of repeated directions by the Court below, plaintiffs neglected to supply the annexures and for which the defendants/petitioner could not file written statement in time.

Petitioners further submit that there is no intentional negligence or laches on the part of the defendants/petitioners for not filing the written statement within time. Thereafter, the suit was posted for ex parte hearing for not filing written statement by the defendants.

However, defendants thereafter prayed for setting aside the said order by which suit was posted in the board of

ex parte hearing, under Order IX, Rule 7 of the Code of Civil Procedure, along with written statement.

Learned Trial Court by the order impugned was pleased to vacate the order of posting ex parte hearing of the suit but he has imposed cost of Rs. 10,000/- for acceptance of the written statement out of which Court below directed to pay Rs. 5,000/- to the plaintiffs and Rs.5,000/- to the DLSA, North 24-Parganas.

Being aggrieved by the amount of cost imposed for accepting the written statement, the petitioner herein contends that the Court below has mis-construed the fact that the defendants had not intentionally caused the delay and he failed to consider that no cause of action arose by the recital of the plaint against the defendants and for which the suit itself is not maintainable.

Mr. Partha Pratim Roy, learned Counsel appearing on behalf of the opposite parties has drawn my attention to order No. 5 dated 6th June, 2018 which shows that the defendant on that day prayed for filing the annexures and the plaintiffs on that very day served copy of the annexures upon the defendants. He further submits that even after receipt of the annexures, on the subsequent dates he unnecessarily prayed for time to file written statement on the ground of non-supply of annexures within statutory period by the

plaintiff. Accordingly, when he failed to file the written statement inspite of receipt of annexures, then the Court below posted the suit for ex parte hearing.

In the present context the defendants have already filed written statement and have expressed their intention to contest the suit. It is true that defendants could not file the written statement within the statutory period. The only question therefore involved herein is that whether the cost imposed by the court below is arbitrary or not.

Though the present suit is for realization of money but object of imposition of cost is to discourage parties to a suit from causing undue delay in the prosecution of the suit and is to secure to litigant the expenses incurred by him in prosecution of the matter and not to enable him to make profit out of litigation by having costs or not to punish the party against whom the cost is awarded.

Having considered the facts and circumstances of the case and when it appears that the defendants want to contest the suit, the present application, being C.O. 735 of 2020 is hereby disposed of with a direction that the Court below will accept the written statement of the defendants on payment of cost of Rs. 1,000/- to the plaintiff and Rs. 1,000/- to the DLSA, North 24-Parganas by the defendants.

The application, being C.O. 735 of 2020 is

accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)