

21.02.2024
Ct. No. 19
Sl. No.01
Cp

C.O. 1175 of 2023

Madhai Koley
Vs.
Smt. Chaitali Bose

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das,

... for the Petitioner.

Mr. Shounak Mukhopadhyay
Mr. Sattik Rout

... for the Opposite Party.

1. The revisional application arises out of an order dated March 13, 2023, passed by the learned Civil Judge (Senior Division), 3rd Court at Howrah in Title Suit No. 401 of 2021. By the order impugned, the learned court refused to accept the written statement. The causes shown for belated filing of the written statement as also an application praying for vacating the order by which the suit was fixed for ex parte hearing, were also rejected.
2. Admittedly, the petitioner who is the defendant in the suit entered appearance sometime on September 16, 2021 and prayed for time to file the written statement and written objection. A date was fixed on July 1, 2022. The written statement was not filed. The court fixed the matter for ex parte hearing. Arguments commenced on August 18, 2022. The records suggest

that on August 31, 2022, the defendant/petitioner filed the written statement along with an explanation for the delay. The learned court rejected the said explanation and did not accept the written statement on the ground that the petitioner/defendant had been given adequate time to take proper steps, but the defendant had failed to do so.

3. Mr. Mukherjee, learned advocate appearing on behalf of the petitioner, submits that the suit is not maintainable. The proper remedy of the plaintiff would have been to file an application in the suit for specific performance of contract. The petitioner was always willing to pay up the decretal amount and get the deed of sale executed in his favour. Steps have already been taken for a loan from the bank.
4. On earlier occasions, such opportunity was given to Mr. Mukherjee's client by this court, but it is a matter of record that the application for loan which the petitioner was expecting to be sanctioned for purchase of the property in terms of the decree in the suit for specific performance, has been rejected.
5. Under such circumstances, this court does not find any reason to give further opportunity to the petitioner to drag the proceeding with the promise to pay up the decretal amount. Adequate lenience and opportunity has been given to the petitioner.

6. The present suit for recovery of possession has been filed by the plaintiff/opposite party. It is alleged that the property in respect of which the decree for specific performance of contract had been passed, was in possession of the petitioner on the basis of an agreement which did not have any value in the eye of law. The plaintiffs contentions is that in view of the failure of the petitioner to comply with his obligation as per the decree for specific performance, the petitioner had become a trespasser in respect of the property. After several opportunities having been given to the petitioner to obtain a loan and pay up the decretal amount pursuant to the decree for specific performance of contract, the petitioner has failed to do so. The decree was subject to payment by the petitioner and, as such, no title has passed in favour of the petitioner and the petitioner did not have any right to remain in the property. Hence the suit was filed. The petitioner did not take part in the suit with due diligence and the court rightly passed the order impugned.
7. This court finds that the petitioner appeared before the suit court on September 16, 2021 and prayed for time to file the written statement. Almost a year had lapsed and the petitioner filed the written statement on August 31, 2022. The ground for delay in filing the

written statement, was failure on the part of the learned advocate to take proper steps and to file the written statement within the date fixed by the court. Steps were not taken by the learned Advocate.

8. In my opinion, the petitioner, who had engaged a learned advocate, has complained of non-cooperation. The litigant can repose faith in his learned Advocate and expect that the needful will be done. Delay of 11 months in filing the written statement has occurred. This is a suit for recovery of possession. In an adversarial form of litigation, it is in the interest of justice that the defendant should be allowed to contest the suit, as a last chance.
9. The order impugned is set aside.
10. The learned court shall accept the written statement and continue with the adjudication of the suit provided cost of Rs.50,000/- is paid to the plaintiff by the petitioner, within a period of four weeks from the date of communication of this order. The suit shall be expedited in view of the time period consumed due to the pending litigation before this court. This court granted opportunity to the petitioner to avail of the loan facility and pay up the consideration money as directed in the suit for specific performance, so that his title could be perfected. The petitioner has failed.

11. The suit shall be disposed of within a period of eight months from the date of communication of this order, in accordance with law. The learned court shall not be influenced by any observations made in this order.
12. Failure to pay the amount as directed by this court, shall result in continuation of the suit, ex parte.
13. The revisional application is accordingly disposed of.

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

(Shampa Sarkar, J.)