

D/L - 4
19.11.2024
Court. No. 5
S.Kundu

C.O. 1632 of 2024

Smt. Indrani Ganguly
Vs.
Sri Shyamal Kumar Chatterjee

Mr. Debabrata Sen,
Mr. Arun Kumar Das

...for the petitioner.

Mr. Ayan Banerjee,
Mr. Gaurav Purkayastha,
Ms. Atasi Sarkar,
Ms. Meghna Dhar

...for the opposite party.

1. Challenging *inter alia*, Order no. 63 dated 25th January, 2024 passed by the learned Judge, 10th Bench, City Civil Court, Calcutta in Title Suit No. 1286 of 2016 whereby the written statement filed by the defendant was accepted and was taken on record, by rejecting the application filed by the plaintiff on 22nd February, 2021, the instant revisional application has been filed.
2. Learned advocate appearing in support of the instant revisional application would submit that the instant suit was presented before the learned City Civil Court in the year 2016. Although, the defendant had entered appearance in the suit on 23rd June, 2017, the defendant did not take any steps for filing of the written statement save and except filing an application under Order VII Rule 11 of the Code of Civil Procedure.

3. He submits that for more than five years from the date of filing of the suit, a written statement was filed with an application for extension of time for filing a written statement. Since there was no cogent explanation for the delay in filing the written statement the plaintiff had filed an application for return or rejection of the written statement filed beyond the statutory period of limitation.
4. By drawing attention to the order impugned, it is submitted that the learned judge by a cryptic order has accepted the written statement by rejecting the application filed by the plaintiff/petitioner.
5. According to him, the discretion exercised by the learned judge is not proper and judicious, as such this Court in the given facts should set aside the said order and return the written statement.
6. Mr. Banerjee, learned advocate appearing on behalf of the defendant/opposite party has placed before this Court, the application for extension of time for filing written statement. He would submit that since defendant's wife was suffering from cancer, adequate steps could not be taken to file the written statement. Later by reasons of the covid pandemic, the defendant was prevented from filing the written statement in time.
7. He would submit that the learned Court is empowered under the provisions of the Code of Civil Procedure read with the State amendment to condone the delay and

accept a written statement filed beyond time. The order does not suffer from jurisdictional error. In the facts noted herein above, this Court ought not to interfere with the order impugned. He, however, candidly submit that the learned judge at best could have imposed costs on the defendant which in the given facts has not been done.

8. Having heard the learned advocate appearing for the respective parties and having considered the material on records, I notice that admittedly, in this case although the defendant entered appearance on 23rd June, 2017 no effective step appears to have been taken by the defendant to file the written statement at least, up to January, 2021. Records would reveal that supported by an application for extension of time the written statement was filed. Though, the defendant has provided certain explanation as regards the delay in filing the written statement for the period between January, 2020 and January, 2021, the explanation provided by the defendant for the period between 23rd June, 2017 when he entered appearance and filed an application under Order VII Rule 11 till January, 2020 i.e. till outbreak of the covid pandemic, do not appear to be a adequate explanation for the period of delay. The only explanation provided by the defendant is that his wife was suffering from cancer, no specific particulars had been provided though, certain prescription and

certificate issued by Kokilaben Dhirubhai Ambani Hospital and Medical Research Institute has been appended thereto, the certificate is dated 18th September, 2019.

9. The order impugned reveals that the learned judge had accepted the written statement and as rightly pointed out by Mr. Banerjee that there was no jurisdictional error on the part of the learned judge in accepting the same.
10. I have been informed that the defendant's wife expired on 16th July, 2020. Having regard to the facts noted above, although, I do not find the order impugned to be without jurisdiction insofar as acceptance of written statement is concerned, however, in the facts of the case considering the length of delay it was only just, to compensate the plaintiff.
11. Having regard thereto, I am of the view that the plaintiff/petitioner be paid cost of Rs.10,000/- (rupees ten thousands) only. Such payment be made to the plaintiff or its advocate on or before the next date of hearing in the trial Court. Further taking into consideration the fact that the suit has been filed in the year 2016 and upon ascertaining from the advocates for the parties that no interlocutory application is pending, I direct the learned Court to hear out the suit as expeditiously as possible preferably, within a period of one year from the date of communication of this order.

12. With the above direction, the revisional application is disposed of.

(Raja Basu Chowdhury, J.)