

23.2.2024
17
Ct. no. 652
sb

CO 1543 of 2017

**Sheikh Neyazuddin
Vs.
Abdul Hamid**

Mr. Partha Pratim Roy
Mr. Anirban Das ...for the Petitioner

Mr. Amit Baran Dash
Ms. Ankana Sarkar ...for the Opposite party

An order dated 23.2.2017 passed by the learned Civil Judge (Senior Division), 5th Court, Alipore, in Title Suit no. 133 of 2015, is the subject matter of challenge in the present application.

The petitioner herein as plaintiff filed aforesaid suit for declaration and injunction against the opposite party herein contending that the plaintiff became absolute owner of the property by virtue of two registered sale deeds executed by his vendor Md. Safi, who obtained the same by way of a compromise decree dated 22nd January, 1977 passed in Title Suit no. 154 of 1976. His further case is that other brothers of the vendor of the petitioner sold out their respective share of land obtained by way of said compromise decree, to other persons for valuable consideration and as such they have no right, title or interest over the said property. Since defendant is claiming right title interest

in the suit property, the plaintiff filed aforesaid suit *inter alia* for declaration of his title. After receiving the summon, the defendant appeared in the aforesaid suit on 03. 07. 2015. Thereafter, they did not file written statement though contested plaintiff's prayer for local inspection commission. On 23.2.2017, the defendant suddenly filed written statement without making any prayer for condonation of delay.

However, learned court below by the impugned order accepted the said written statement filed beyond the statutory period, without recording any satisfaction regarding condonation of delay in filing written statement.

Being aggrieved by the said order Mr. Anirban Das learned counsel for the petitioner submits that the court below has passed the impugned order without complying the provision as laid down in Order VIII Rule 1 of the Code of Civil Procedure and he has passed the order impugned without considering the fact that defendant has not made any prayer for condonation of delay, in filing the written statement and thereby the court below acted illegally in accepting the written statement filed by the defendant. Accordingly, the petitioner has prayed for setting aside the order impugned.

Ms. Ankana Sarkar, learned counsel for the opposite party submits that there was no intentional

delay or latches on the part of the defendant in filing written statement and the defendant wants to contest the suit and wants to get it disposed of on merit and as such the court below was justified in giving him an opportunity to contest by accepting the written statement. In such view of the matter, the order impugned does not call for interference by this court invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made by both the parties. I am not unmindful to the fact that the order of acceptance passed by the court below, is not based on reason and also a cryptic one, which shows that he accepted the written statement subject to payment of cost of Rs. 100/-.

However Supreme Court observed in ***Shaikh Salim Haji Abdul Khayumsab Vs. Kumar & others, (2006) 1 SCC 46*** that Order VIII, Rule 1 does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record, though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural and it is not part of the substantive law. Said provision has been introduced to curb the mischief of unscrupulous defendants adopting dilatory tactics

delaying disposal of cases, causing inconvenience to the plaintiff.

In the present Application petitioner has not alleged of adopting unnecessary dilatory tactics by the defendant to cause delay in disposal of case. Their main allegation is defendant has not prayed for condonation of delay but court below indiscriminately accepted the delayed written statement, ignoring provision of Order VIII, Rule 1 of the Code.

In ***Kailash Vs. Nankhu & others*** reported in **(2005) 4 SCC 480** Apex Court made it clear that the time limit for filing of the written statement under Order VIII Rule 1 of C.P.C is not mandatory. Accordingly delay in filing of the written statement can very well be compensated by cost. However, it appears that the cost imposed by the court below in accepting of the written statement, is a meagre one.

Last but not the least the jurisdiction of the High Court under Article 227 of the Constitution of India, the order of the court below can be interfered mainly on the grounds of illegality, irrationality and procedural impropriety. I do not find in the order impugned that there has been any substantial failure of justice or that the order impugned contained any error apparent on the face of the record warranting interference by this court in exercise of its supervisory jurisdiction.

In such view of the matter, C.O. 1543 of 2017 is disposed of with a direction that the defendant/opposite party shall pay a cost of Rs. 2000/- to the plaintiff within ten weeks from the date of communication of the order and in the event of showing payment of said amount of cost by the defendant, the court below will accept the written statement and will frame issue within a fortnight and shall make every endeavour to conclude the entire proceeding of the suit within a period of eight months thereafter. However, if the defendant fails to pay the amount of cost within the period mentioned herein, the impugned order shall be liable to be set aside and the suit will be posted for exparte hearing.

C.O. 1543 of 2017 is accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)