

Ct. 13.03
No. 2024
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C.O. 4211 of 2019
Shalimar Tenneries Pvt. Ltd.
-Versus-
Sowkat Ali Sardar & Ors.

Mr. Asit Baran Raut
Ms. Ishita Raut
Mr. Tuhin Subhra Raut **...For the Petitioner**

Mr. Debapriya Majumdar
Mr. S.N. Islam **...Opposite Parties**

Affidavit-of-service filed on behalf of the petitioner is taken on record.

Opposite parties as plaintiffs instituted suit being Title Suit No. 879 of 2017, inter alia, seeking recovery of khas possession of the suit property as described in the schedule to the plaint along with damages against petitioner/defendant.

Petitioner herein/ Defendant in the said suit contended that he received summon on 28th November, 2017 and entered appearance by filing Vakalatnama and also filed an application praying for time to file written statement. On the next day, learned Advocate for the defendant took adjournment for drafting the written statement as the documents which are necessary for drafting the written statement could not be handed over by the defendant to their learned Advocate. Defendant further states that on the next date, the defendant handed over all the relevant documents to their learned Advocate with necessary instruction to draft

written statement and to file it on the next date, and such instruction was given well within the statutory period. Despite having all the relevant documents and necessary instruction lying with the learned Advocate, on the next two occasions he took time on his personal ground, while at the same time he assured the defendant that the said written statement will be filed within the statutory period.

Petitioner submits that they being the laymen, having no knowledge about the statutory period fixed for filing written statement, were sitting idle over the matter solely relying upon the assurance, given by their lawyer who was entrusted not only to look after the said suit but also to take all necessary steps to be taken as per direction of the Court. Thereafter when the petitioner came to know about the statutory period to file written statement from one of his friends, he met with his Lawyer, who told him that the written statement has not yet been filed. After understanding about the non-professional conduct of his conducting Lawyer, the defendant decided to engage a new Lawyer, and accordingly, they appointed a new Lawyer who filed the written statement on 29th May, 2018.

In the above background, delay occasioned for 59 days in filing the written statement. However, the Court below by the impugned order refused to accept the written

statement on the ground that the statutory period for filing the written statement has already expired.

Being aggrieved by that order Mr. Asit Baran Raut, learned Counsel appearing on behalf of the petitioner submits that the Court below has acted illegally and with material irregularity in disposing the application for acceptance of the written statement under Order VIII, Rule 1 of the Code of Civil Procedure. He ought to have appreciated that the defendant/petitioner despite of his best endeavour could not file written statement within the statutory period. He further submits that the provisions under order VIII, Rule 1 of the code having been held to be directory in nature by Supreme Court in *Kailash Vs. Nanhku and others* reported in (2005) 4 SCC 480, the substantive right of the petitioner should not have been curtailed mechanically and accordingly he has prayed for setting aside the order impugned and for acceptance of the written statement, duly filed by the defendant.

I have considered the submissions made by the learned Counsel appearing on behalf of the petitioner. I am not unmindful to the fact that in view of **Kailash Case (Supra)** the extension of time beyond statutory period is not automatic and not to be accepted in routine matter unless court satisfied about sufficient justification for departing

from the time limit fixed by the statute. It appears that in the present case defendant has indicated reasons in his application to justify the acceptance of written statement. Amended order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics delaying the disposal of cases.

On perusal of order impugned, it appears that there is no finding of the court below as to why explanations given by the defendant is not trustworthy. His mechanical observation is since “it is filed long after the limitation period, so written statement filed by defendant cannot be accepted”. Such reasoning of the court below for non-acceptance of written statement with the help of processual law is clear obstruction for substantial justice. In the absence of an explanation as to why reason shown by defendant cannot be accepted, I find the order passed by the court below suffers from impropriety and also from unreasonableness.

Considering the aforesaid facts and circumstances of the case, C.O. 4211 of 2019 is allowed. The order impugned dated 14th November, 2019, so far it relates to non-acceptance of the written statement is hereby set aside.

The Court below is directed to accept the written statement filed by the defendant and to fix a date for

settlement of the issue at the earliest.

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.)