

15.07.2025
Item no. 12.
Court No.6.
AKG

C. O. 2457 of 2025

**Chinmoy Mondal & Ors.
Vs
Bithendra Nath Dey**

Mr. Chittapriya Ghosh,
Ms. Maitrayee Chatterjee

.....for the Petitioners

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being no. 15 dated 8th May, 2025, passed by the learned Civil Judge (Sr. Division), Kandi, Murshidabad in Money Suit No. 82 of 2018.

By the order impugned, the application for recalling of the order dated 16th of May, 2024 stood rejected.

Mr. Ghosh, learned advocate appearing for the petitioners submits that the written statement was filed long after the statutory time limit for filing of the written statement and the same was accepted without assigning any reasons therefor. Mr. Ghosh further submits that no application explaining the delay in filing the written statement was also filed by the defendant/opposite party herein.

Record reveals that 16th of May, 2024 was fixed for hearing of the application under Order 8 Rule 1 of

the Code of Civil Procedure. On that day, the defendant filed the written statement and the learned advocate for the plaintiff submitted that the defendant has filed the written statement after the statutory period and further submitted that if the same is accepted, there should be a cost.

On the basis of the submission made by the learned advocate for the plaintiff, the learned trial Judge accepted the written statement, subject to payment of costs.

Challenging the order dated 16th of May, 2024, the petitioner approached this Court by filing a civil revisional application being no. C.O. 2704 of 2024. When the matter was taken up for hearing by the co-ordinate Bench of this Court, a submission was made by the learned advocate appearing for the petitioner/plaintiff that the plaintiff never consented to the acceptance of the written statement, subject to payment of costs.

In the light of the aforesaid submission, the co-ordinate Bench of this Court by an order dated 1st August, 2024 in C.O. 2704 of 2024 reiterated the well-settled proposition of law that if any, consession and/or agreement is recorded in an order, to dispute the correctness of such recording, the concerned Court is to be approached.

Thereafter the petitioners filed an application praying for recalling of the order dated 16th of May, 2024. In the application for recalling, it has not been stated specifically that the learned advocate for the plaintiff did not make submission that if the written statement is to be accepted, there should be a cost.

It also does not appear from the order-sheet that when the recalling application was taken up for hearing, learned advocate denied having made such submission. When the order was passed on 16th of May, 2024, it was submitted by the learned advocate for the plaintiff that if the written statement is accepted, there should be a cost.

The order dated 16th of May, 2024 was passed in the presence of the learned advocates for the respective parties and on the basis of the submission made by the learned advocate for the plaintiff.

For such reason, this Court is of the considered view that the learned trial Judge was right in rejecting the application for recalling.

Accordingly, C. O. No. 2457 of 2025 stands dismissed.

However, there shall be no order as to costs.

(Hiranmay Bhattacharyya, J.)

