

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 3717 OF 2024

THE UNION BANK OF INDIA

VS

NARENDRA MANSATA & ORS.

**For the Petitioner : Mr. Dipanjan Datta, Adv.
Mr. Subhajit Chowdhury, Adv.**

**For the Opposite
Parties : Mr. Suvadeep Sen, Adv.**

Last heard on : 14.07.2025

Judgement on : 18.07.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This revisional application is directed against an order dated 20 August 2024 passed by the learned Judge Bench XII, City Civil Court at Calcutta in Title Suit number 986 of 2020, whereby the application filed under Section 151 of the Code of Civil Procedure filed by the plaintiff has been allowed and the written statement filed by the present petitioner being the defendant which was accepted earlier has been rejected.

Heard the submission of both the learned advocates.

2. The case of the petitioner /Bank is that a title suit was originally filed by the Opposite Parties/defendant number 1 to 12 being the landlords of the suit building along with one late Kiran Dhiren Kopart who expired on August 13,

2009 for recovery of khas possession with damages and mesne profits. The proforma Opposite Parties/defendant number 13 and 14 did not join as plaintiffs but they were made parties to the suit for proper adjudication of the issues involved with no relief claimed against them. The parties entered into a lease agreement on May 9, 2006 in respect of the suit premises being the branch address of the petitioner Bank and the said agreement was expired on 31 August 2019. The petitioner bank was always ready to execute a fresh lease deed and to pay the rent at the old rate, which has already enhanced substantially from time to time during the subsistence of the earlier deed of lease, and in terms of which lastly, paid rent aggregated to ₹1, 14, 998, which is claimed as an enhanced rate of ₹1, 81, 600 by the opposite party. The petitioner entered appearance in the suit and prayed time to file written statement which was allowed on 15.2.23 directing the bank to file the written statement on 9.8.23.

- 3.** The Opposite Parties/defendants moved an application under Section 151 of code of Civil Procedure before the Learned Trial Court to recall its order passed on 15.2.2023, whereby the petitioner was allowed to file the written statement on 9.8.23. Thereafter, the bank petitioner filed their written objection to the said application and on 17.7.2023, the said petition under Section 151 of the Code of civil procedure was taken up for hearing by the learned court and after considering the submission, the learned court was pleased to accept both the written statement as well as the written objection and fixed 9.10.23 for framing of issues.
- 4.** On 21.5.2024, the application under order 21, rule 10, read with Section 151 of CPC filed by one M/s Baikuntha enterprises was served upon the learned

advocate of the petitioner bank seeking substitution in place and instead of the original opposite parties/original plaintiff on the ground that a deed of lease dated 1st July 2022, in respect of the suit property that is branch bank premises has been executed between the present opposite parties figuring as lessors and lessee.

5. On August 20, 2024, the learned Court again heard the application for recall under Section 151 of Code of Civil Procedure filed by the plaintiffs along with the written objection of the bank in terms of the direction of the Hon'ble court dated 15/5/23 passed in CO number 1471 of 2023 and observed that inordinate delay caused in filing the written statement by the petitioner/ bank could not be explained properly and hence the petition for recall was allowed on contest fixing January 3, 2025 for ex-parte hearing of the suit.

6. The case of the opposite party on the other hand is that the petitioner/ bank was a lessee in respect of commercial space about 1100 ft.² on the first floor and 1100 ft.² on the second floor at the suit premises under a registered deed of lease dated May 9, 2006. The suit was filed for recovery of possession by evicting the defendant/petitioner bank from the suit premises which was registered as title suit number 986 of 2020 on the ground of default. The bank/ petitioner is a defaulter since September, 2019 and aggregate amount of rent and other charges be payable as on February 1, 2023 was to the tune of ₹48, 29, 916 in respect of the suit premises.

7. The plaintiff /opposite parties also moved before the Hon'ble court against the order dated March 15, 2023 and by an order dated May 15,, 2023, the direction was given to request the learned trial Court to hear the application under section 151 of the code of civil procedure, preferably within 15 days after

summer vacation. However, in the order dated July 17, 2023, that order was not considered and for that reason, the matter regarding acceptance of the written statement was not taken up by the learned trial court on July 17, 2023 and before August 20,, 2024, since other interlocutory proceedings were being considered.

- 8.** The submission advanced by the learned advocate of the opposite parties is that there is an inordinate delay of more than 800 days in filing the written statement, which under the eye of law cannot be accepted and thereby the learned court was right in refusing to accept such written statement. In this regard, he has relied upon a decision reported in¹ (Atcom Technologies Limited versus Y. A. Chunawala and Company and others.
- 9.** On perusal of the materials on record, the undisputed fact which is apparent is that the suit was filed by the plaintiff / Opposite Parties against the present petitioner being the union Bank of India for recovery of possession on the ground of default and the summons of the said suit was duly served upon them by registered post with AD card on 28 December 2022, and through the court bailiff on January 18,, 2021. The defendant /petitioner appeared in the suit on April 6, 2022 i:e after 441 days from the date of service of summons and on that day, the court fixed the date for filing written statement, firstly on May 7, 2022, and lastly on 15th February 2023 for filing written statement as last chance. The law is clear on this subject as the proviso to Order 8 Rule 1CPC enables the court to extend the period of 30 days as prescribed under Rule up to 90 days from the date of service of summons for filing written statement for sufficient reason .In view of the various judicial pronouncement

¹ (2018) 6 SCC 639

it is settled law that the provision is directory and not mandatory and Court is empowered to accept written statement beyond the time but such extension can be given only in exceptionally hard cases and with a valid reason for not filing the written statement within the statutory period.

10. In this case, the court from the date of the appearance of the defendant did not fix the matter for ex-parte hearing and practically extended the time to file written statement automatically .No application was also filed on behalf of the plaintiff to fix the matter under ex-parte hearing. The learned Court allowed the Bank/Defendant to file the written statement vide the order dated February 15, 2023 by August 9, 2023 as last chance. At that point of time, the opposite parties took out the application under Section 151 of the code of civil procedure for recalling such order intimating the court about the existing delay of more than 700 days in filing the written statement and if the defendant/Bank is allowed to file the written statement on the date fixed, that is on August 9, 2023, it would further increase the number of days in filing the written statement and prayed for recalling of such order and to prepone the date for filing the written statement .

11. Meantime the opposite parties further moved before the High Court against the order of the learned trial court extending time to the defendant to file the written statement and the order passed by a co-ordinate bench of this Court on May 15, 2023 directing the court to hear the application filed under Section 151 of the code of civil procedure preferably within 15 days after summer vacation. However, the copy of the said order or the intimation regarding passing of such direction has never placed before the trial Court when the in the month of July, the application filed under Section 151 of the Code of Civil

Procedure was taken up for hearing. The photocopy of the certified copy of the order dated 17 July 2023, clearly shows that on that day the case was taken up for the purpose of hearing the application filed under Section 151 of CPC and the order clearly reflects that the submissions made before the court by the plaintiffs to accept the written statement with exemplary fine which was considered by the learned court before passing the order accepting the written statement with the direction that “we can proceed with the suit”. Accordingly fixed October 9, 2023 for framing of issues. This order was not challenged before any forum.

12. On August 20, 2024 the record was taken up for hearing the application under Section 151 of CPC when in the previous order no such date was reflected. The learned Court in the order impugned after expressing concern about the long delay in filing the written statement, allowed the prayer of the plaintiff/Opposite under Section 151 of Code of Civil Procedure and refused to accept the written statement which was previously accepted by the learned Court in the order dated 17.7.23 as discussed above.

13. It is not in dispute that the learned court while accepting the written statement in the order dated 17th July, 2023 failed to assign any reason as to why such written statement was accepted despite having an inordinate delay in filing the same more so when there is a clear bar in the statute to accept written statement beyond the statutory period excepting in exceptional circumstances to be explained by the defendants, but once the order is pronounced and the next date is fixed for framing of issue, the delay in filing the written statement and the issue touching the same was set at rest. So in absence of any other application or direction to reopen such order or to review

the order of the court, the court cannot pass any further direction on the self-same application which has been disposed of with a speaking order.

14. More so whisper was found in the petition filed under Section 151 of CPC regarding the direction passed by the Hon'ble Court in the Civil Revision application. However, such order was passed on 15 May 2023 for expeditious hearing when on 17 July 2023, the application was disposed of and by no stretch of imagination it can be expected that in order to comply with such direction, the learned Court Suo motu heard the matter again in the month of August 2024 for disposal. The court also did not assign any reason for rehearing a disposed application without having any application for review or recalling of the previous order.

15. Having regard to the principles of law as also the factual background of the present case I am of the opinion that the order passed by the learned court is liable to be set aside.

16. In view of the above facts and circumstances the instant revisional application stands allowed. The order passed by the Learned Court is hereby set aside. The application filed by the opposite party stands disposed of. It is now pertinent to mention herein that the present petitioner caused delay in disposal of the case which is apparent from the record and thereafter the Learned Court is directed to dispose of the case as expeditiously as possible.

17. No order as to the costs.

- 18.** Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS,J.)

