

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

***C.O. 3739 of 2024
Rushiya Bibi & Ors.***

VERSUS

Md. Roushan Ali Mondal & Ors.

For the Petitioners:

Mr. Ashim Kr. Routh, Adv.
Ms. Manishka Dhar, Adv.
Ms. Ananya Mondal, Adv.
Mr. Subhayam Banik, Adv.

For the O.P. No.1:

Mr. Partha Sarathi Das, Adv.
Mr. Sormi Dutta, Adv.

Last Heard on: November 07, 2025

Judgment on: November 17, 2025

Biswaroop Chowdhury,J:

The petitioners before this Court are the plaintiffs in a suit for pre-emption and is aggrieved by the Order dated 23-09-2024 passed by Learned Civil Judge Junior Division 1st Court Barasat North 24 Parganas in allowing the petition filed by the opposite party No-1 to allow him to contest the suit by

filing written statement and setting aside the order fixing the case for exparte hearing.

On the application filed by the opposite party no-1/Defendant no-1 before the Learned Trial Court for setting aside Order fixing T.S. 431 of 2010 for Exparte hearing against opposite party no-1 by Learned Civil Judge (Junior Division) 1st Court Barasat North 24 Parganas the Learned Judge decide the same by observing as follows:

In the light of the above deliberation, it is evident that an opportunity of hearing is a quintessential feature of a fair trial.

The function of a processual law is to facilitate justice and further its ends, and therefore it must be construed liberally and in such manner as to render the enforcement of substantive rights effective. The denial of relief on the score of mistake and negligence is abdominal to the rules of procedure.

The Court should adopt a liberal approach in interpreting civil processual law. It is also limpid that costs may be imposed to provide to cut short the inconvenience caused to the adversary. It goes without saying that cost is the best medicine that cures every problem in litigation.

Thus it can be safe to conclude that in the present case defendant no-1 can get an opportunity to participate in the proceeding, however, by paying a cost of Rs. 10,000 (Ten thousand) as the defendant should not be punished for the act and conduct of his lawyer.

In the light of the above reasoning prayer of the defendant is allowed with the cost of Rs. 10,000/- (Ten thousand). The defendant no-1 is entitled to contest this case and written statement filed by defendant no.1 is accepted subject to the payment of cost of Rs. 10,000/- (Ten thousand) to the plaintiff. The order no. 11 dated 17-11-2011 is modified to the extent that defendant can participate in this suit and ex-parte order is hereby set aside subject to the payment of cost of Rs. 10,000/- (Ten thousand) to the plaintiff.

Fix 11.11.2024 for hearing of petition pertaining to Order 12 Rule 6 read with Section 151 CPC filed by defendants no. 11 to 12 and payment of cost of Rs. 10,000/- (Ten thousand) by defendant no-1 to the plaintiff.'

The petitioners/plaintiffs being aggrieved by the order passed by the Learned Trial Court has come up with this application under Article 227 of the Constitution of India.

The order of the Learned Trial Court is assailed on the ground that the said application dated 29th April 2024 for vacating the interim order was taken up for hearing on 23rd September without serving any copy and granting any opportunity to the petitioners to file their written objection, and that the Learned Trial Court did not consider that the defendant no-1 is trying to contest the suit by setting aside the ex-parte order against him almost after 12 years only to delay the suit, and that the Learned Judge did not consider that the defendant no-1 has already transferred the suit property to the defendant no. 11 and 12 and that the said defendants have agreed to transfer the same in

favour of the petitioners upon getting necessary consideration thereof as per the direction of Learned Court below.

Heard Learned Advocate for the petitioners and Learned Advocate for the opposite party no-1. Perused the petition filed and materials on record.

Learned Advocate for the petitioners submits that the relief sought for is primarily against the respondent no. 11 and 12 and no relief was sought against the opposite party no-1 or any other opposite parties but they have been made parties to the said suit being heirs and successors of the said Late Karim Box Mondal. Learned Advocate further submits that the opposite party no-1 was having his knowledge of the aforesaid suit for long 13 years but only when he came to know that on 23rd September 2024 that the said suit would be disposed of he filed application for leave to file written statement by recalling the order fixing the case for ex-parte hearing. Learned Advocate also submits that there would be no change of the situation if the opposite party no-1 is allowed to contest the suit but the suit would be never ending process in view of the fact that in spite of the order of this Hon'ble Court for early disposal of the said suit it is pending for filing written statement by opposite party no-1.

It is submitted by the Learned Advocate that the opposite party no-1 will be at liberty to argue the suit even without filing his written statement. It is further submitted that recalling ex-parte order of hearing of the suit is devoid of any substance and should not be allowed in any circumstances. It is also

submitted that the Learned Court below did not apply his Judicial mind while exercising his discretionary power.

Learned Advocate relies upon the following Judicial decisions.

Salem Advocate Bar Association VS Union of India.

Reported in (2005) 6 SCC. P-344.

Bal Gopal Maheshwari and others VS Sanjees Kumar Gupta

Reported in (2013) 8 SCC-P-719.

ATCOM Technologies Ltd. VS YA Chunawala and Company and ors.

Reported in (2018) 6 SCC.P-639.

Learned Advocate for the opposite party no-1 submits that the application for vacating of ex-parte order filed by the opposite party no-1 was taken up for hearing on 23/09/2024 and upon hearing the Learned Counsels for the parties the Learned Court was pleased to allow the petition of the opposite party no-1 with cost of Rs. 10,000/-. Learned Advocate further submits that during pendency of the suit the plaintiff and defendant/opposite party no-1 arrived at verbal mutual settlement that the defendant/opposite party no.1 will purchase the schedule B. property from the opposite party no-11 and 12, and the plaintiff will withdraw the suit against them. In terms of the settlement by and between the plaintiff and defendant/opposite party no-1 the opposite party no-1 approached the opposite party no-11, and 12 for sale of the

said property to opposite party no-1. Thereafter agreement was entered into between the opposite party no-1 and opposite party no. 11 and 12 and earnest money was paid. Learned Advocate draws attention to copies of the agreement for sale and documents regarding payment made.

Learned Advocate also submits that after entering into agreement for sale the opposite party no. 11 and 12 in collusion with plaintiff filed application under Order XII Rule 6 of the Code of Civil Procedure.

Before proceeding to decide the material in issue it is necessary to consider the provisions contained in Order VIII Rule 1 of the Code of Civil Procedure.

Order VIII Rule 1 provides as follows:

Written Statement-The defendant shall within thirty days from the date of service of summons on him present a written statement of his defence.

Provided that where the defendant fails to file the written statement within the said period of thirty days he shall be allowed to file the same on such other day as may be specified by the Court for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

Upon perusal of the provision contained in Rule 1 it will appear that the prescribed time for filing written statement is within thirty days from the date

of service of summons but the Court has power to extend the time for reasons to be recorded in writing.

Thus it is clear that time may be extended by Court by giving its own reasons in the interest of Justice upto ninety days from the date of service of summons. Although the period of ninety days is prescribed under law but it is held in different Judicial decisions that the period is directory and not mandatory. Court if satisfied with reasons furnished by a defendant that he could not for sufficient cause file written statement within ninety days may allow further time to file written statement. Hence beyond ninety days sufficient cause must be shown by Defendant by filing application with service of copy upon the plaintiff.

Further when there is inordinate delay in filing written statement beyond the period of ninety days the plaintiff should be granted opportunity to file a written objection unless he chooses not to file the same.

In the instant case although Learned Trial Judge has based his findings on different Judicial Decisions, but has not considered the issue of delay of twelve years and have not given the opportunity to the petitioner/plaintiffs to file written objection to the petition.

Although it is held in different Judicial decisions that no party should ordinarily be denied the opportunity of participating in the process of justice dispensation but it is also held that time to file written statement should not be extended in a routine manner.

In the instant case the opposite party no-1 has brought some new facts alleged to have taken place during the pendency of suit regarding agreement for transfer of B. schedule property between opposite party no-1 and opposite party no. 11 and 12 and the allegation of collusion between plaintiffs/petitioners and opposite party no-11 and 12, but the same was not submitted before Learned Trial Court.

Although transfer during pendency of suit is governed by doctrine of Lispendens as per Section 52 of the transfer of property Act, but those facts are to be brought before the Learned Trial Court. In the facts and circumstances this Court is of the view that the matter should be remitted to the Learned Trial Court for reconsideration of the application for setting aside order fixing the suit for ex-parte hearing against defendant no-1 upon granting opportunity to the plaintiffs/petitioners to file written objection.

Hence this application under Article 227 of the Constitution stands allowed. Order dated 23rd September 2024 passed by Learned Civil Judge Junior Division 1st Court Barasat at North 24 Parganas in Title Suit no-431 of 2010 is set aside. The matter is remitted back to the Learned Trial Court to reconsider the application filed by opposite party/defendant no-1 for setting aside order dated 17th November 2011 fixing the case for ex-parte hearing against opposite party no-1, in accordance with law. The opposite party no-1 is permitted to file supplementary affidavit to the application filed by him within one week from the next date fixed before Learned Trial Court. The

petitioners/plaintiffs shall file Affidavit of objection within 3 weeks from the date of filing of supplementary affidavit and the Learned Trial Court shall thereafter decide the application as well the suit very expeditiously without granting unnecessary adjournments. Endeavour should be made to dispose the suit within one year.

It is however made clear that in the event the Learned Trial Court is of the view that there is chance of settlement in the suit, the suit may be referred to Mediation for settlement.

Urgent Photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)