

Ct. 19.05
No. 2025
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C.O. 3901 of 2024
Ajoy Ghosh
Vs.
Smt.Chandra Ghar & Ors.

Mr. Amitava Pyne
Mr. Arabinda Bhattacharjee
Ms. Sujata Saxena **...For the Petitioner**

Mr. Akash Dutta **...For the Opposite Parties**

The application has been preferred by the petitioner/defendant against order dated 15.9.2024 passed by the learned Civil Judge (Senior Division), Burdwan in Title Suit No. 460 of 2022.

The petitioner's contention is that the instant suit is a suit for partition and recovery of possession where the petitioner as defendant No. 3 made a prayer before the Court for acceptance of the written statement filed by him. However, learned Court below by the impugned order refused to accept the written statement on the ground that the delay in filing the written statement has not been properly explained and as such the written statement, which has been filed by the defendant No. 3, beyond the statutory period, cannot be accepted.

Being aggrieved by that judgment Mr. Pain, learned Counsel appearing on behalf of the petitioner submits that the time prescribed in the statute is not mandatory but it is directory. Moreover, he has assigned reason for causing delay in filing the written statement,

which the Court below failed to consider. In support of his contention he relied on the decisions in the cases of *Shoraj Singh Vs. Charan Singh*, reported in 2022 SAR (Civ) 256 and *Kailash Vs. Nanhku and Ors.*, reported in (2005) 4 SCC 480. Accordingly, he prayed for a direction upon the Court below for acceptance of the written statement.

Learned Counsel appearing on behalf of the opposite party opposed such prayer contending that the defendant No. 3 got sufficient time for filing written statement but he did not care to file the same within the statutory period and as such Court below is justified in refusing to accept the written statement and the order impugned does not call for any interference by this Court invoking this Court's jurisdiction under Article 227 of the Constitution of India.

General Rule is that the time limit contained in the aforesaid provision is to be followed as a rule and extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant.

However, the nature of the provision contained in order VIII, Rule 1 is procedural and not part of substantive law. In an old judgment in *Sangram Singh Vs. Election Tribunal, Kotah*, considering the provision of the Code dealing with the trial of the suits, Supreme Court opined :-

“Now a code of procedure must be regarded as such. It is

procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of inter-pretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.

In the instant proceeding defendant has already placed his written statement in record and as such principles of natural justice demands that before reaching final decision of the suit, the defendant who wants to make contest in the suit, should not be precluded from participating in the suit, only on the ground that he failed to place his written statement in record within the statutory period. Trial Court ought to have accepted the written statement imposing cost and if it could have done, it could have shorten time in disposal of the suit, which is also one of the principal object for incorporating Rule 1 of Order VIII in the statute.

Having considered the aforesaid facts and circumstances of the case, the order No. 7 dated 5.9.2024 passed in connection with the Title Suit No. 460 of 2022, whereby Court below refused to accept written statement is hereby set aside. Prayer for acceptance of written statement

filed by the defendant No. 3 is hereby allowed subject to payment of costs of Rs. 2,000/- by the defendant No. 3 to the plaintiff. If such cost is paid by the petitioner/defendant No. 3 within a period of thirty days from the date of communication of this order, the Court below will accept the written statement filed by the defendant No. 3.

The application, being C.O. 3901 of 2024 thus stands disposed of.

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

(Dr. Ajoy Kumar Mukherjee, J.)