

ORDER SHEET

APOT/336/2024
WITH
CS/203/2011
IA No.GA/1/2024

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

SMT. PRATIMA BHAR
VS
DHANANJAY BHAR

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date : 16th July, 2025.

Appearance:

Mr. Sagar Bandyopadhyay, Sr. Adv.
Mr. Debdatta Saha, Adv.
Mr. Tapas Saha, Adv.
Mr. S. Dewanji, Adv.
..for the appellant

Mr. Sabyasachi Choudhury, Sr. Adv.
Mr. Sayantan Bose, Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Ms. Manisha Das, Adv.
..for the respondent

Dictated by Arijit Banerjee, J.

The Court: This appeal is directed against a judgment and order dated August 22, 2024, whereby two applications being GA/512/2013 and GA/4/2024 filed by the present appellant who is the defendant in the suit, pending before the Learned Single Judge, were dismissed by the Learned Single Judge.

The respondent herein is the elder son of late Dulal Chandra Bhar who was a well-known and highly successful businessman and earned good

reputation in the business of palm candy. The appellant herein is the wife of the younger son of Dulal Chandra Bhar. The respondent, Dhananjay, is the elder son of Dulal Chandra Bhar.

It appears that the appellant herein, i.e., Pratima, filed a suit in the City Civil Court at Calcutta against Dhananjay, being TS/1526/2010, for evicting Dhananjay from a portion of the family dwelling house. That suit is still pending.

It appears that the wife of Dulal Chandra Bhar executed a gift deed in favour of Pratima in respect of the family dwelling house. Dhananjay has filed the present suit in this Court challenging such deed of gift.

Pratima filed an application being GA/512/2013 for extension of time to file written statement in the present suit. She sought for four weeks' time. Although the time for filing written statement was mentioned as 21 days in the writ of summons that was admittedly received by Pratima and such time expired on October 31, 2011, Pratima filed the application for extension of time only in the year 2013. It appears that Pratima took no steps for having GA/512/2013 heard out. The application remained pending.

Dhananjay filed an application under Clause 13 of the Letters Patent for transfer of the City Civil Court suit to this Court being ALP/10/2012. By an order dated December 13, 2012, a Learned Judge of this Court disposed of such application without ordering transfer of the suit and by granting liberty to Pratima to file her written statement with counter-claim in the High Court suit, by January 7, 2013. That order was carried in appeal by Dhananjay being APO/54/2013. The Appeal Court did not

interfere with the order and disposed of the appeal by an order dated February 26, 2013.

It appears that a further application was filed by Pratima being GA/4/2024 wherein she prayed for leave not to press GA/512/2013 and also for extension of time to file her written statement with counter-claim. The Learned Judge by the order impugned dismissed both GA/4/2024 and GA/512/2013. The operative portion of the order impugned before us reads as follows:

*“In **Pic Departmentals Pvt. Ltd.’s** case, referred to by Mr Bag, it was observed that power to extend time for filing written statement should not be employed as a matter of course but with a great caution so that the purpose of procedural statute is not defeated and unscrupulous litigants, do not abuse the process of the Court by adopting dilatory tactics. The Supreme Court of India, in that case, allowed written statement to be filed, upholding the order of the Division Bench, observing the fact that the respondent cannot be said to be solely at fault. Factual aspects of other cases are also different.*

In this case the suit appeared in the list on a number of occasions. The Defendant was not present on earlier occasion. Even though the Defendant blames the Learned Counsel, yet the pleading shows that the Defendant was very much conscious of pendency of the instant suit and GA 512 of 2013. From averments made in the Petition it is clear that the Defendant was conscious. The parties are litigating against each other another forum, namely, in City Civil Court at Calcutta. They must be conscious of their legal positions. The conduct of the Defendant very clearly indicates that a dilatory tactics has been adopted. Nothing is there in the pleading to show that the Defendant instructed his Learned Counsel to expedite hearing and disposal of the applications, seeking to file written statement.

It took more than ten years from the Defendant to change mind that counterclaim should not be filed leading them to file GA 4 of 2024. It is manifest that the Defendant adopts dilatory tactics. Therefore, both the applications, namely, GA 512 of 2013 and GA 4 of 2024 stands dismissed.”

Learned Advocate for the appellant Pratima says that the written statement was prepared long time back. It was not filed because the application for extension of time to file written statement being GA/512/2013 was pending. Pratima enquired of her advocates at regular intervals about the status of the High Court proceedings and she was assured every time that all things are in order. However, when Pratima came to know that her erstwhile advocate was actually not protecting her interest and was not appearing in the High Court proceedings, she changed her advocate. She was immediately advised to file GA/4/2024. There is no laches on the part of Pratima. She was entitled to rely on her advocate. The Learned Single Judge should have allowed her application for extension of time to file written statement with counter-claim.

Mr. Choudhury, learned Senior Counsel representing Dhananjay submits that Pratima has indulged in diverse dilatory tactics. She has changed her set of counsel at least thrice. The suit is at the stage of argument before the learned Suit Court. Examination of the plaintiff has been completed on commission. Allowing Pratima to file her written statement at this belated stage would cause tremendous prejudice to Dhananjay which cannot be compensated by way of costs. Dhananjay is also not keeping good health and undergoes dialysis regularly because of his renal failure. Mr. Choudhury prays for dismissal of the appeal saying that

there is no such infirmity in the order assailed as should persuade the Appeal Court to interfere.

We have anxiously considered the rival contentions of the parties. For ten years Pratima kept her application for extension of time to file written statement pending. There is no material on record to show that she took any step for expediting the disposal of that application. Nothing has been shown to us to demonstrate that she asked her advocates to activate her application. She was blissfully dormant all throughout. Now she has woken up perhaps because on Dhananjay's application, by an order dated March 18, 2024, learned City Civil Court has stayed the trial of Pratima's suit for evicting Dhananjay pending disposal of the High Court suit.

We have gone through the petition that Pratima filed before the Learned Single Judge as also the stay petition filed in this appeal. The usual story of the advocate betraying the trust and confidence of the client has been run by Pratima. Two decisions were cited by Pratima's learned Counsel before the Learned Single Judge, i.e., *Rafiq and Another Vs. Munshilal and Another*, (1981)2 SCC 788 and *Pic Departmentals Pvt. Ltd. Vs. Sreeleathers Pvt. Ltd.*, [Special Leave Petition (Civil) No.14902 of 2024].

Learned Single Judge has rightly distinguished the decision in *Pic Departmental's* case. *Rafiq's* case would not apply since admittedly Pratima is not an uneducated rustic villager who had no option but to completely rely on her lawyer. In a very recent judgment delivered on November 21, 2024 in SLP (Civil) Nos.935-936 of 2021 (*Rajneesh Kumar & Anr. Vs. Ved Prakash*), at paragraph 10, the Hon'ble Supreme Court observed as follows:

"10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a

tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.”

In the same judgment at para 11, the Hon’ble Court extracted paragraph 8 of the decision in **Salil Dutta v. T.M. & M.C. Private Ltd.** reported in (1993) 2 SCC 185, which reads as under:-

“8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engage him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq [AIR 1981 SC 1400] must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not deposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally

unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.”

(Emphasis supplied)

Therefore, under the law of the land, a litigant is not permitted under all circumstances to try and justify the laches on his/her part by putting the entire blame on his/her lawyer. In the present case, Pratima has been litigating against Dhananjay in the City Civil Court at Calcutta since 2010. We are unable to believe that she was not abreast of the developments in the High Court suit. Nothing stopped Pratima from activating GA/512/2013 and obtaining leave to file the written statement. Even when the trial started, Pratima should have approached the Learned Single Judge with such prayer. The completely indolent conduct of Pratima does not entitle her to any indulgence from us.

Pratima could at least have appeared in the suit and prayed for leave to cross-examine the plaintiff. It does not appear she did that also.

While the Court is generally liberal in granting extension of time to file written statement, the conduct of the concerned defendant assumes great importance. In a *bona fide* case, where the Court finds there was good reason or even possible reason for the huge delay on the part of the defendant, very long delay can also be condoned. In fact, that was done by the Hon'ble Supreme Court in *Pic Departmentals's* case where delay of 17 years was condoned. However, everything turns on the facts of a particular case. In the facts of the present case, the Learned Single Judge has rightly come to the conclusion that Pratima has adopted dilatory tactics. She does not deserve any leniency from the Court.

We do not see any reason to interfere with the order under appeal. The appeal and the connected application accordingly stand dismissed.

There will be no order as to costs.

At this stage, Mr. Bandyopadhyay, learned Senior Counsel appearing for Pratima, says that Pratima should at least be allowed to cross-examine the plaintiff and advance arguments. Pratima will be at liberty to make such prayer before the Learned Single Judge, who is requested to decide such prayer in accordance with law.

(ARIJIT BANERJEE, J.)

(RAI CHATTOPADHYAY, J.)

bp.