

(2011) 06 CAL CK 0062

Calcutta High Court

Case No: C.O. No. 1319 of 2010

Mukul Mitra

APPELLANT

Vs

Chinmoy Nandy and Others

RESPONDENT

Date of Decision: June 14, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 1
- West Bengal Premises Tenancy Act, 1997 - Section 7(1), 7(2)

Hon'ble Judges: Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** Kartick Kumar Bhattacharyya, for the Appellant; None appeared, for the Respondent

Judgement

Prasenjit Mandal, J.

This application is directed against the Order No. 19 dated March 11, 2009 passed by the learned Civil Judge (Junior Division), 2nd Court, Howrah in Title Suit No. 83 of 2009 thereby accepting the written statement filed by the Defendants /opposite parties at the belated stage.

2. The short fact is that the Plaintiff instituted a suit being Title Suit No. 83 of 2009 against the opposite parties for eviction, recovery of possession, damages and main profits etc. on the ground of reasonable requirement and guilty of causing, waste and damages. In that suit, the Defendants/opposite parties entered an appearance and they filed an application u/s 7(1) and 7(2) of the W.B.P.T. Act, 1997 and the application u/s 7(2) is still pending. The Defendants/opposite parties herein prayed for time to file a written statement from time to time and it was granted. Ultimately, the written statement was filed by the Plaintiff along with show-cause beyond the statutory period and the same was accepted. Being aggrieved, this application has been preferred by the Plaintiff.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned advocate for the Petitioner and on going through the materials on record, I find that the Plaintiff instituted the suit for eviction on April 28, 2009 and summons was issued accordingly. The Defendants entered an appearance on August 30, 2009 and they filed an application u/s 7(1) of the 1997 Act. But, the written statement was not filed by them till November 3, 2009 and as such, the learned Trial Judge fixed the next date for ex parte hearing on January 12, 2010. Then, on January 12, 2010, the Defendant filed an application for adjournment on the grounds stated therein. It was kept in the record but the learned Trial Judge fixed the next date on March 4, 2010 for ex parte hearing. Then, on March 4, 2010, the evidence was adduced by the Plaintiff as P.W.1 and some documents were marked exhibit. On that date, the Defendants filed a written statement along with a show-cause application. Therefore, the written statement was filed beyond the period of 90 days from the date of first appearance on August 3, 2009. The Defendants failed to file written statement within 90 days, that is, permissible as per Order 8 Rule 1 of the CPC If the Defendants want to pray for further time, they are to state the special grounds for not filing the written statement within the period of 90 days.

5. In this regard, I have considered the decision of Anukul Chandra Das v. A.B.S. Builders Pvt. Ltd. and Ors. reported in 2011 (1) CLJ (CAL) 292 passed by this Bench and this judgment is based on several decisions of the Apex Court such as [Kailash Vs. Nanhku and Others](#), and [Mohammed Yusuf Vs. Faij Mohammad and Others](#),

6. Therefore, in view of the aforesaid decisions, if the Defendants want to file a written statement beyond 90 days, they are to assign the special reasons.

7. Upon perusal of the show-cause filed by the Defendant as appearing from Annexure "A" to the application, I find that Defendants have simply stated in their show-cause that due to her illness and some personal problems, the Defendants could not contest their advocate for preparation of the written statement and so, the written statement could not be filed earlier. This is, I hold, cannot be construed as a special ground for filing the written statement beyond the period of 90 days. Therefore, the show-cause filed by the opposite parties is not sufficient for extension of time beyond 90 days. The learned Trial Judge was not justified in passing the impugned order thereby accepting the written statement filed beyond the period of 90 days from the of appearance. The impugned order cannot be supported. It should be set aside. The revisional application succeeds. It should be allowed.

8. In this regard, it may be noted herein that the learned Trial Judge is proceeding with the matter 7(2), framing of issues etc. At the same time, he is proceeding with the suit for ex parte hearing. He did not vacate the order of ex parte hearing of the suit.

9. In view of the above findings, the further hearing on the application 7(2) and hearing on framing of issues become redundant and those matters have become in fructuous. The learned Trial Judge shall proceed with the ex parte hearing of the suit. The written statement filed by the contesting Defendants, shall be treated to have been rejected. The revisional application is disposed of with the above observations.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.