

Title (Partition) 01/2024 (CIS 01/2024)

(WB 00934)

Order No. 04 dated 13.05.2024.

Plaintiffs file hazira. Defendants 1 & 3 also file hazira. Defendants 1 & 3 file a petition seeking time to file written statement. Copy served. Proforma defendant no. 2 files written statement along with a list of documents. Copy served. This day is fixed for S/R and A/D.

It appears that proforma defendant no. 1 is yet to enter appearance. Record shows that summonses were served upon defendants 1 & 3 on 28.12.2023 and 18.12.2023. More than four months have lapsed.

Order 8 rule 1 of C.P.C. postulates that written statement has to be presented by the defendant within 30 days of the service of summons upon him. Such period shall not be later than 90 days from the date of service of summons upon the defendant.

The time limit has been extended up to 120 days by the Hon'ble Calcutta High Court Notification No. 4681-G dated 06.12.2006. Court can extend the time beyond 90 days if it is proved to the satisfaction of the Court that defendant was prevented from filing written statement due to unforeseen circumstances beyond his control.

It is settled law that the provision is directory and not mandatory. Be there as it may, the legislative intent would be frustrated if such time limit is extended beyond 90 days on mere asking and without justifiable and cogent reason.

Defendants 1 & 3 are therefore, directed to file written statement/s by the date fixed failing which necessary order shall be passed.

Record shows further that summons was served upon defendant no. 2 on 08.01.2024. None appeared for defendant no. 2.

The suit will therefore, proceed ex parte against defendant no. 2.

To 29.05.2024 for S/R and filing of W/S by defendants 1 & 3.

Plaintiffs to take fresh steps upon proforma defendant no. 1.

Requisites at once.

D/c by me,

Sd/-

C.J (Sr. Div.), Kalimpong.

Sd/-

*Civil Judge (Sr. Div.),
Kalimpong.*