

EJECTMENT SUIT NO. 443 OF 2017
C.N.R No. WBPS01-001128-2017

IN THE COURT OF 4TH BENCH, PRESIDENCY SMALL CAUSE
COURT, CALCUTTA.

PRESENT: SMT. ARCHITA SEN, JUDGE, BENCH-4, PRESIDENCY
SMALL CAUSE COURT.

ORDER NO- 46
DATED 06.11.2025:

Today is fixed for hearing of the petition dated 13.09.2024 under section-151 of the C.P.C, filed by the plaintiffs. Both the parties file separate attendance through their respective Ld. Advocates.

The record is taken up for hearing of the petition dated 13.09.2024 under section-151 of the C.P.C.

Heard both sides in full. Perused the record including the petition and the written objection.

Considered.

The said petition contemplates an order of the Court fixing the suit on exparte mode by rejecting the written statement filed by the original defendant which was not filed in prescribed time limit. It is stated by the plaintiffs that the summons was served upon the original defendant on 21.02.2018. But in spite of receiving summons, the original defendant neglected to appear before the Court, for which the suit was fixed on exparte mode. On 05.07.2018 the original defendant appeared and prayed for an Order directing the plaintiff to serve copy of the plaint. On 26.11.2018 the copy of the plaint was served upon the defendant. But he failed to file the written statement within 90 days from the date of receipt of the summons. The defendant filed the written statement on 18.12.2019. The plaintiffs further stated that the original defendant admitted that he came to know about the suit from the local people on 02.07.2017. In spite of that he did not file the written statement in time. So the same should not be accepted. Not only the written statement, the original defendant failed to file the petitions under section-7(1) and 7(2) of the Act. Thereafter on 19.12.2020 original defendant died and the present defendants were substituted. The substituted defendants appeared before the Court and filed additional written statement and petitions under section-7(1) and 7(2) of the Act. So the plaintiffs submitted that as the written statement filed by the original defendant is liable to be rejected and the additional written statement can not be accepted as well as the petitions under section-7(1) and 7(2) of the Act can not be entertained because the original defendant never filed those petitions during his lifetime.

On the other hand the defendants, by filing the written objection against the aforesaid petition denied all the contentions of the plaintiffs. The defendants admitted that the original defendant came to know about the suit from local people on 02.07.2017. But thereafter he went to the Ld. Advocate and after thorough search the original defendant came to know about the suit on 04.07.2018. After considering these facts the Court allowed the original defendant to file the written statement. It is also stated that the provision of Order VIII Rule 1 of the C.P.C is not directory. In sum the defendants prayed for rejection of the instant petition.

Ld. Advocate for the defendants relied on the precedent in **Sanil Chandran Vs. Suroth Ghosh Mazumder and another, AIR 2025 Calcutta 228.**

On careful perusal of the record this Court did not find any service returns of summons, neither through Court nor through post, showing that the summons was served upon the original defendant on 21.02.2018. Rather it is found that the process server of the Court attempted to serve summons upon the defendant on two occasions and in both the attempts were unsuccessful due to the reasons “defendant is out of station” and

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“defendant does not reside at the premises” respectively. But on 05.07.2018 the original defendant appeared before the Court and filed a verified petition stating that on 02.07.2017 he came to know from some local people that the plaintiffs have filed an eviction suit against him. So the existence of one eviction suit against him was within the knowledge of the original defendant. According to the original defendant, he contacted with the Ld. Advocate and after one year he came to know about the suit through online. He never mentioned in any petition as why it took one year to get the details of the suit. As he had the knowledge of the suit, he could have come before the Court immediately after 02.07.2017 and searched for the particulars. But the original defendant did not do that. He came up with the written statement on 18.12.2018 in spite of having knowledge of the suit since 02.07.2017. Though no specific Order was passed till date accepting or rejecting the said written statement, but the said written statement can not be accepted.

Accordingly, the written statement filed by the original defendant on 18.12.2026 is rejected.

So far as the additional written statement filed by the substituted defendants is concerned, it is argued on behalf of the plaintiffs that if the written statement filed by the original defendant is not accepted, then there is no question of additional written statement. So the additional written statement shall also be rejected. In this regard this Court is inclined to deliberate that if the original defendant died during the pendency of the suit, it is open to all the legal heirs of such deceased defendant to defend themselves in the suit as permissible in law. Right to defend is a basic right of all persons. Ld. Advocate for the defendants cited the precedent in the case of *Sanil Chandran Vs. Suroth Ghosh Mazumder and another, AIR 2025 Calcutta 228*. Though the factual matrix of the said case is not identical with the facts of the instant suit, but it was held that considering the provision contained under Order VIII Rule 9 of the C.P.C it is clear that the Courts have discretion to permit filing of additional written statement by either of the parties. Order XXII Rule 4(ii) of the C.P.C also states that the heirs and legal representatives could raise all contentions which the deceased could have urged except only those which were personal to the deceased. It was also observed by the Hon’ble High Court, Calcutta that all reasonable opportunity should be given to a person to defend his case which is available to him under the Law. In view of the above discussion and the fact that no person can be denied the basic right to defend any action brought against him, this Court thinks that the additional written statement, filed by the substituted defendants shall be accepted as their written statement.

Accordingly it is

O R D E R E D.

That petition dated 13.09.2024 under section-151 of the C.P.C, filed by the plaintiffs is rejected.

The petition dated 13.09.2024 under section-151 of the C.P.C is thus disposed of on contest and without any order as to cost.

The written statement filed by the original defendant on 18.12.2028 is rejected.

The additional written statement, filed by the substituted defendants is accepted as the written statement of the defendants.

To 19-12-2025 for hearing of the petition under section-7(2) of the W.B.P.T Act.

Typed,corrected and printed by me:

Judge, Bench-4
P.S.C.C, Calcutta

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