

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

CS/240/2022
IA GA NO./2/2022, GA NO./3/2023

ANUP JAISWAL & ORS.
VS
ROHIT KEDIA

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date: 02nd April, 2024.

Appearance:
Mr. Meghnad Dutta, Adv.
Mr. Arindam Paul, Adv.
Ms. D. Das, Adv.
...for the plaintiffs.

Mr. Gunjan Shah, Adv.
Ms. Shreya Agarwal, Adv.
...for the defendant.

The Court: The defendant has filed the present application being GA/3/2023 praying for allowing the defendant to contest the suit by filing written statement in connection with CS/240/2022.

The defendant says that the writ of summons was served upon the defendant on 4th November, 2022 and immediately the defendants had contacted the learned Advocate and on 5th December, 2022 the defendant has entered appearance through the learned Advocate.

Mr. Gunjan Shah, learned Advocate representing the defendant submits that the defendant was suffering from anxiety and hypertension due to which the defendant was not in a position to attend the office of the learned Advocate and give proper instruction to prepare the written statement and as such the defendant could not file the written statement. He submits that the defendant was under

continuous medical treatment. On 5th December, 2023 the defendant has contacted the learned Advocate and has informed about his prolonged medical treatment and also enquired about the status of the pending suit.

Mr. Shah, submitted that after getting the instruction from the defendant, he has enquired and found that this Court by an order dated 6th October, 2023 had fixed the matter as undefended suit. Immediately the defendant had filed the present application for allowing the defendant to contest the suit and to file the written statement.

Mr. Shah, submits that the non-appearance of the defendant and non-filing of the written statement by the defendant was beyond the control of the defendant as he was suffering from anxiety and hypertension since the month of November 2022 till the month of November 2023 and still he is under medical treatment. He further submits that unless and until the order dated 6th October, 2023 is recalled and the defendant is given an opportunity to contest the suit by filing the written statement, the defendant will be badly prejudiced.

Per contra, Mr. Meghnad Dutta, learned Advocate representing the plaintiff, submits that the application filed by the defendant is misconceived. He submits that the defendant has received the writ of summons on 04.11.2022 and after receipt of the writ of summons the defendant has entered appearance through learned Advocate on 5th December, 2022. The medical treatment which the defendant has relied upon is from 19th November, 2022 and how the defendant had

executed the Vakalatnama but has not come forward to file the written statement.

Mr. Dutta submitted that the document which the defendant has relied upon is a stereophonic medicine prescribed by the doctor but the document does not reflect that the defendant was so sick so he could not give any instruction to his learned Advocate to prepare written statement. Mr. Dutta submitted that after fixing the matter as undefended suit, the plaintiff has also examined one witness and documents were also marked as exhibit and the evidence is closed. Now, the suit is at the verge of disposal and only for the purpose of delay the suit had filed the present application.

Heard the learned Counsel for the respective parties. Perused the materials on record.

Admittedly, the defendant has received the summons on 04.11.2022 and had entered appearance on 5th December, 2022. The defendant has relied upon medical document from which it reveals that the defendant is suffering from headache, sleep disturbances, unable to concentrate in work, poor appetite and also anxiety and depression.

From the documents it reveal that the defendant is attending the concerned doctor for review and time to time medicines were prescribed. The plaintiff has filed the suit for eviction of the defendant from the suit property. The defendant has taken a specific ground that the defendant is suffering from anxiety and hypertension and is under continuous medical treatment. The documents relied upon by the defendant also support the contention of the defendant that the

defendant is unable to concentrate in work and is also suffering from anxiety and depression.

Considering the medical documents relied by the defendant, this Court finds that one opportunity should be given to the defendant to contest the suit for filing the written statement.

It is also found from the record that after the suit was placed as undefended suit, the plaintiff has examined one witness and his evidence is closed and at this stage if the defendant is allowed to participate in the proceeding by filing written statement, again the suit will come at the initial stage and as such taking into consideration of all aspects mentioned above, this Court is of the view that the defendant should be given an opportunity subject to payment of cost of Rs.15,000/- to the plaintiff within a week from date and after payment of the cost the department shall accept the written statement within a week thereafter.

As the suit was proceeded undefended and the plaintiff has examined one witness and, thus, if the defendant is able to file written statement after payment of cost as mentioned above within the specified period, the evidence led by the plaintiff shall be treated as expunged and the plaintiff is at liberty to adduce the evidence afresh after completion of all other formalities.

In view of the above, IA No. GA/3/2023 is disposed of.

(KRISHNA RAO, J.)