

83
SK
Ct. No. 18
22.02.2021

**C.O. No. 3322 of 2010
CAN 1 of 2020
CAN 2 of 2020
CAN 3 of 2020
(Via Video Conference)**

**Minor Subarna Mullick
Vs.
Dolphin Club, represented by its Secretary, Sri
Chandan Chakraborty and Members**

Mr. Debjit Mukherjee,
Mr. Anujit Mookherji ... For the petitioner.

Affidavit of service filed in Court today be kept with the record.

None appears on behalf of the parties either virtually or physically to oppose the revisional application in spite of service.

The petitioner filed a suit for eviction of the opposite party from the suit property being Title Suit No. 10 of 2002 before the 7th Court of learned Civil Judge, (Junior Division), at Howrah.

The defendant appeared in the said suit but ultimately did not contest, as a consequence thereof, the suit was decreed ex parte on July 5, 2006.

The defendant thereafter filed an application under Order IX Rule 13 of the Code of Civil Procedure for setting aside the said ex parte decree along with an application for condonation of delay in filing the said application.

The application for setting aside the said ex-parte decree has been registered before the learned trial Judge as Miscellaneous Case No. 20 of 2008.

The learned trial Judge by the order impugned has allowed the said application for condonation of delay on the ground that opportunity should be given to the opposite party to contest the suit.

On perusal of the said application for condonation of delay, it appears that the opposite party entered appearance in the suit which prima facie signifies service of summons upon it but the opposite party is claiming that the ex-parte decree came into its knowledge on August 01, 2008 when the notice of the Misc. Case No. 18 of 2008 filed by the petitioner for police assistance to execute the decree was served upon it.

Article 123 of the Limitation Act, 1963 mandates filing of an application for setting aside the ex parte decree within thirty days from the date of such decree, therefore, the opposite party is required to explain the delay in filing the Misc. Case No. 20 of 2008 from the date of the said decree not from the date of its alleged knowledge of the said decree. The learned Trial Judge is therefore required to revisit the issue of limitation in filing the said application for setting aside the said ex-parte decree and the explanation thereof.

The order impugned is set aside with a direction upon the learned Trial Judge to decide the said

application filed by the opposite party under Section 5 of the Limitation Act, 1963 afresh in accordance with law.

The Misc. Case No. 20 of 2008 is pending for a pretty long time. The learned trial Judge, therefore, is requested to make all endeavour to dispose of the said application for condonation of delay within a period of four weeks from the date of communication of this order and in doing so shall not grant any unnecessary adjournment to either of the parties.

C.O. 3322 of 2010 is disposed of with the above terms.

In view of the disposal of the main application, the connected applications are also disposed of accordingly.

No order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)