

17.12.2020
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C.O. 3294 of 2018

Lakshmi Promoters & Developers(P) Ltd.
Vs.
Smt. Shakuntala Shaw & Anr.

Mr. Dhananjay Tribedi
... For the Petitioner.

The decree holder has filed the instant application under Article 227 of the Constitution of India challenging the order No.37 dated August 4, 2018 passed by the learned Judge, 4th Bench, City Civil Court at Calcutta in Misc. Case No.3520 of 2017 arising out of Title Suit No. 3084 of 2008.

By the order impugned the learned Judge of the court below allowed the application under Section 5 of the Limitation Act for condonation of delay in filing the Misc. Case under Order 9, Rule 13 of the Code of Civil Procedure.

Mr. Tribedi, learned Advocate appearing for the petitioner submits that the learned Judge of the court below ought not to have allowed the application under Section 5 of the Limitation Act as the opposite party herein failed to prove that he was prevented by sufficient cause for not filing the Misc. Case within the prescribed time limit. He submits that there is a huge delay of about 620 days. He further submits that the

opposite party is trying to delay the execution of the decree.

After hearing the learned Advocate appearing for the petitioner and after going through the materials-on-record and the order impugned, I am satisfied that the petitioner was prevented by sufficient cause for not filing the Misc. Case within the stipulated time limit. The learned Judge of the court below after taking into consideration the fact that Raj Kumar Shaw was suffering from several diseases and finally died on October 30, 2016 and also that the present petitioner was not informed by his father about the original suit, the opposite party herein has satisfactorily explained the delay in filing the Misc. Case.

The learned Judge assigned cogent reasons for allowing the application under Section 5 of the Limitation Act. The impugned order does not suffer from any infirmity.

However, this court appreciates the anxiety of the decree holder that he is unable to enjoy the fruits of the decree passed on 9th February, 2016. Mr. Trivedi submits that the evidence in the Misc. Case has proceeded to a considerable extent and the same could not proceed further due to the pandemic. He further submits that the learned courts below have already

started taking up the Suits and Misc Cases for final hearing including witness actions.

In view thereof, the learned Judge IVth Bench, City Civil Court at Calcutta or the learned Judge-in-Charge, in case the presiding officer is not available, to dispose of the Misc. Case by the end of July, 2021 without granting any unnecessary adjournment to either of the parties.

C.O.3294 of 2018 is disposed of with the above directions.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

(Hiranmay Bhattacharyya,J)