

29.01.2021
Court No. 19
Item No.5
CP

C.O. 800 of 2020

Sri Santigopal Bag
vs.
Sri Pashupati Bag & ors.

Mr. Amit Baran Dash

.....for the petitioner.

This revisional application has been filed against an order dated January 7, 2020, passed by the learned Civil Judge (Junior Division), 1st Court, Contai, Purba Medinipur in J. Misc. Case No. 34 of 2014 arising out of Title Suit No. 73 of 2012.

By the order impugned, the learned court below allowed the application for condonation of delay in filing the J. Misc. Case No. 34 of 2014 upon payment of cost of Rs.1500/- to be paid by the opposite party no. 1 and thereafter allowed the application under Order 9 Rule 13 of the CPC being J. Misc. Case No. 34 of 2014 upon payment of Rs.3,500/- . The ex parte order passed on August 1, 2013 in Title Suit No. 73 of 2012 was set aside and the same was restored to its original file and number.

The petitioner/plaintiff is aggrieved by the said order on two grounds; first that the application under Section 5 of the Limitation Act ought to have been allowed first; and thereafter, by a separate order the

J. Misc. Case No. 34 of 2014 ought to have been decided upon contested hearing.

I find from the order impugned that the learned court below heard the arguments relating to J. Misc. Case No. 34 of 2014 on several dates. Evidence of the opposite party No.1, his witness and the doctor were recorded. The doctor identified and proved the medical certificate which was marked as Exhibit. 1. The learned court considered the medical documents which were all before the court as exhibits. One Gopal Dolui was also examined and cross-examined. The doctor was summoned by the court as a witness. Upon considering the entire evidence on record as also the exhibits, the learned court came to a finding that the opposite party no. 1 had been able to satisfy the court by showing sufficient ground as to why the opposite party no. 1 could not be represented when the suit was decreed ex parte. On the basis of the evidence, the learned court also came to a finding that the opposite party no. 1 had shown sufficient cause as to why the J. Misc. Case No. 34 of 2014 could not be filed within the statutory period of limitation.

I do not accept the contention of the learned advocate for the petitioner that the application under Section 5 as also the J. Misc. Case No. 34 of 2014 could not be disposed of by a single order as the same was not impermissible in law. The parties were

heard at length on previous dates on both the applications. Evidence was recorded. The petitioner did not raise any objection at that point of time. Upon considering the entire facts and evidence in totality on merits the learned court below being satisfied on the grounds of delay in filing the J. Misc. Case No. 34 of 2014 first allowed the application under Section 5 and thereafter, allowed the Order 9 Rule 13 of the CPC with reasons which are reflected in the order itself.

The decision relied upon by the petitioner in the matter of Sri Sri Kalachand Jew Thakur represented by Shebait Netai Charan Das Adhikary and another vs. Sankar Mohanti (C.O. No. 2198 of 2018), dated July 20, 2018, does not apply in the facts of this case, inasmuch as, in the said decision the learned court below while considering the application under Section 5 passed an order allowing the application under Order 9 Rule 13 of the CPC. In the said decision His Lordship held that the learned court decided the application under Order 9 Rule 13 of the Code prematurely instead of focussing on the application for condonation of delay.

The contention of the petitioner that the date when the summons were received was relevant is not accepted by this court, inasmuch as, first and foremost arguments were advanced on the application under Order 9 Rule 13 of the CPC.

Evidence of the doctor was recorded and the court was satisfied that the opposite party no. 1 was prevented from appearing before the court when the suit was taken up for ex parte hearing as he was seriously ill. The cross-examination, evidence as also the deposition of the doctor are on record which indicate that the learned court below had applied its mind and passed the order with sufficient reasons.

I do not find any reason to interfere with the order impugned. The fact remains that the date of service of summons is irrelevant in the case because the court was really called upon to consider as to whether the opposite party no. 1 was ill and could not attend the court when the suit was fixed for ex parte hearing and had been decreed ex parte.

The revisional application is dismissed. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)