

07.04.2021  
Court No. 19  
Item no.26  
CP

C.O. 2592 of 2018

Md. Yeasin  
vs.  
Alo Bewa & ors.

Mr. Sounak Bhattacharya  
Mr. Sounak Mandal

.....for the petitioner.

Mr. Partha Pratim Roy  
Mr. Dyutiman Banerjee  
Mr. Asif Dewan

...for the opposite parties 1 to 4.

Affidavit of service is taken on record.

Mr. Roy, leaned advocate, appears on behalf of  
the opposite parties.

This revisional application arises out of an  
order dated April 18, 2018, passed by the learned  
Civil Judge (Junior Division), 1<sup>st</sup> Court at Jangipur,  
District Murshidabad which was registered as Misc.  
Case No. 25 of 1995.

Misc. case was dismissed. Aggrieved, the  
petitioner preferred an appeal being Misc. appeal  
No.6 of 2004 before the learned Addition District  
Judge Court 1<sup>st</sup> Track 2<sup>nd</sup> Court at Jangipur,  
District Murshidabad. The appeal was allowed on  
contest and the order of the learned trial judge was  
set aside. The opposite parties preferred a revisional  
application challenging the order passed by the

learned lower appellate court being C.O. 276 of 2006. An order was passed in C.O. 276 of 2006, directing the parties to maintain status quo with regard to the nature, character and possession of the suit property till the disposal of the revisional application. The petitioner filed an application before the learned trial judge for delivery of possession of the suit property. In the meantime, C.O.276 of 2006 was dismissed for default. The application filed by the petitioner was also dismissed for default by an order dated March 3, 2009. The opposite parties filed an application for restoration of the C.O. 276 of 2006 which is still pending and no copy of the application was served upon the petitioner. On December 6, 2017, the petitioner filed an application under Section 151 of the Code of Civil Procedure with a prayer for recalling of the order dated March 3, 2009 upon condonation of delay and restoration of the application for delivery of possession. The learned trial judge by an order dated April 18, 2018 rejected the application under Section 151 of the Code of Civil Procedure which was filed by the petitioner. Aggrieved by the aforementioned order this revisional application has been filed. The learned court below came to the finding that after eight years from dismissal, the application could not be restored as the petitioner was not diligent and was sleeping

over his rights. Prior to the order of dismissal of the application an opportunity was given to the petitioner to show cause as to why the petition for delivery of possession shall not be dismissed for default. In spite of the said order, no steps were taken by the petitioner and on the next day the application was dismissed for default. The learned court rejected the application only on the conduct of the petitioner.

In the application for restoration filed by the petitioner it has been stated categorically that the petitioner was under the impression that as the status quo order had been passed with regard to the possession, nature and character of the suit property till disposal of the revisional application by the High Court, the application could not be proceeded with by the court below, as in view of the order passed by the High Court the application for delivery of possession could not be allowed, which would amount to violation of the direction of a higher forum. The petitioner did not come to know that the civil revision had been dismissed for default and the interim order had automatically stood vacated and thus did not enquire about the fate of the application for delivery of possession. Thus, only upon coming to know of the filing of the application being CAN 4691 OF 2013 for restoration of the civil revision before the said High Court, the petitioner enquired

about the fate of the application before the learned court below and came to know that the same had been dismissed for default on March 31, 2009. The explanation given by the petitioner for the delay in filing the application for restoration is reasonable and acceptable. In any event, if the application is restored it is not going to cause any prejudice to the opposite parties. The opposite parties have not yet got their civil revision restored, although, the same was dismissed for default way back in 2011 and the interim order in their favour had been vacated. The application for delivery of possession filed before the Learned Civil Judge (Junior Division) 1<sup>st</sup> court at Jangipur, District Murshidabad in Misc. Case no.25 of 1995 is restored to its original file and number. The order impugned is set aside. The revisional application is allowed.

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.)**