

19.03.2021
Court No. 19
Item No.10
CP

C.O. 1348 of 2020

Sri Soumendra Nath Gunin
vs.
Sri Prasanta Roy

Mr. Suman Chattopadhyay
Mr. Asis Kumar Das

.....for the petitioner.

This revisional application arises out of an order dated February 27, 2020, passed by the learned Additional District Judge, 1st Court at Alipore, in connection with Misc. Case No. 13 of 2008. Misc. Case No. 13 of 2008 arose out of an Insolvency Case No. 161 of 2001. The Insolvency Case was dismissed for non-appearance of the opposite party.

By the order impugned the learned court below allowed an application under Order 9 Rule 9 of the CPC along with an application under Section 5 of the Limitation Act, thereby condoning the delay in filing the restoration application and, thereafter, restoring the Insolvency Case.

It is the contention of the petitioner who is the debtor in the Insolvency Case, that the opposite party purposely allowed the Insolvency Case to be dismissed for default and only upon coming to know of the Money Suit filed by the petitioner, the

application for restoration of the suit was filed after one year from its dismissal. It is also submitted that the medical certificate was not supported by any medical examination reports and, as such, the same could not be accepted without proper proof.

From the order impugned, it appears that the Insolvency Case was filed in 2001. The evidence of the plaintiff/opposite party was going on and cross-examination of the opposite party was partially complete. The cross-examination was lastly held on April 12, 2006 and was deferred on the prayer of the petitioner. On the next date, i.e., June 14, 2006, the opposite party was present but the petitioner prayed for an adjournment. Thereafter, on July 29, 2006, the opposite party was absent and he was asked to show cause by the court and a date was fixed on August 31, 2006 for filing of the show cause. On August 31, 2006, the opposite party filed a show cause which was duly accepted by the learned court and a date was fixed on November 7, 2006 for further cross-examination of the opposite party (PW-1). On November 7, 2006, the opposite party prayed for an adjournment which was not opposed by the petitioner and the matter was adjourned till January 8, 2007 for further cross-examination of the PW-1. On January 8, 2007, there was a bandh and the matter was not taken up and the next date fixed was

February 21, 2007. On February 21, 2007, the opposite party failed to take steps and, thereafter, on April 23, 2007, the opposite party again did not take any steps and the matter was fixed on August 6, 2007. On August 6, 2007, no show cause was filed by the opposite party and the suit was dismissed.

The learned court below upon considering the facts and also the medical certificate issued by a doctor (since deceased), allowed the application under Section 5 for condonation of delay and also the restoration application upon being satisfied with the contentions of the opposite party and the contents of the medical certificate. The doctor who issued the medical certificate died before the application was taken up.

I do not find any reason to interfere with the order impugned. The above mentioned facts clearly show that the opposite party was not intentionally avoiding to contest the suit. Moreover, in an adversarial form of litigation, it is not in consonance with justice that a party will not be able to put forward his claims in a court of law and unless there is blatant negligence and disregard to the court, restoration should not be usually rejected. When the learned court below was satisfied with the medical certificate and the contents thereof, this court by exercising its superintending power does not find any

reason to interfere with the order impugned by re-appreciating the evidence.

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.)