

04.02.2021
(S/L-23)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 1430 of 2020

Remendra Kumar Rai
-Vs-
Bimal Kumar Goel & Ors.

Mr. Abhisek Banerjee,
..... For the Petitioner.

Mr. Animesh Pal,
Ms. Fatima Hassan,
Ms. Shalomi Basu,
..... For the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for ejectment being Title Suit no. 1257 of 2016 pending before the 4th Court of Learned Civil Judge (Junior Division), Howrah.

The said suit was decreed ex parte on August 11, 2017.

The defendants/opposite parties filed an application under Order IX Rule 13 of the Code of Civil Procedure registered as Miscellaneous Case no. 7 of 2019.

The said Misc. Case was filed out of time, as such an application for condonation of delay was also filed.

The learned Trial Judge by the order impugned has allowed the said Misc. case after condoning the delay.

The defendants/opposite parties in the application under Order IX Rule 13 of the Code claimed that the summons of the said suit was not served upon them and they came to know about the ex parte decree when the said decree was sought to be executed on November 14, 2018 but immediate steps to set aside the said ex-parte decree could not be taken for the illness of the opposite party no. 1.

The learned Trial Judge on scrutiny of the records found that the summons of the suit which was sent through registered post returned to the Court with the postal endorsement "INTIMATION SERVED" and the summons which was sent through Court returned with the report "LOTKE JARI".

The learned Trial Judge did not accept such service as good service and held that the summons was not duly served upon the defendants/opposite parties.

The learned Trial Judge being satisfied with the explanation offered by the defendants/opposite parties for not filing the said Misc. Case within the prescribed period of limitation condoned the delay.

This Court in exercise of jurisdiction under Article 227 of the Constitution of India is not inclined to re-appreciate the evidences on record to upset the findings of the learned Trial Judge based on the said evidences.

C.O. 1430 of 2020 is, therefore, fails.

There shall be 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.)