

(05)
24.02.2022
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

**(Via Video Conference)
CO No. 548 of 2019**

**Motovario Gear Solutions Private
Limited, represented by Mr. Prasenjit Pradhan
-versus-
R.V. Enterprises, represented by Mr.
Ramamurthy Venkatapathy**

Mr. Debasish Roy,
Mr. Debnath Mahata,
... for the petitioner.

Mr. Debasish Roy, learned counsel for the petitioner, files affidavit of service which is taken on record.

None appears on behalf of the opposite party in spite of service.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for recovery of money and is directed against the order dated December 24, 2018 passed by the 7th Court of learned Civil Judge (Senior Division), Alipore, District: 24 Parganas (South) in Misc. Case No. 187 of 2018 arising out of Money Suit No. 16 of 2015.

The plaint of the suit was rejected by the order dated February 23, 2017 for the failure of the plaintiff in depositing the deficit court fees, as directed by the order dated August 12, 2015.

The petitioner filed an application under Order IX Rule 4 read with Section 151 of the Code of Civil Procedure for recall of the said order being Misc. Case No. 187 of 2018.

The learned Trial Judge by the order impugned has dismissed the said application on the ground that the said application if allowed, the claim in the suit which by then has become barred by limitation would be revived and the defendant would be deprived of an accrued valuable right.

Mr. Roy, learned counsel, submits that although the application was captioned under Order IX Rule 4 of the Code but in fact the petitioner invited the learned Trial Judge to exercise his inherent power to allow the petitioner to deposit the deficit Court fees as the same could not be deposited as directed by the Court due to the fact that the parties were negotiating for amicable settlement.

He further submits that the learned Trial Judge wholly misdirected himself in dismissing the application for restoration on the ground that if the suit is restored, the claim in the suit would be time barred since on restoration, the suit would relate back to the date of filing.

Having heard Mr. Roy and on perusal of the records, it appears that the claim in the plaint prima facie is not barred by limitation, the said claim will not be barred by limitation merely because of the fact that period of limitation for making the said claim has expired during the pendency of the application for restoration, nonetheless on restoration the suit will relate back to the date of its filing.

The order impugned, therefore, is not sustainable and is accordingly set aside.

The application for restoration is, therefore, allowed, the order dated February 23, 2017 is recalled and Money Suit No. 16 of 2015 is restored to its original file and number subject to the condition the plaintiff depositing the deficit Court fees within two weeks from date.

C.O. 548 of 2019 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the party subject to compliance of all requisite formalities.

(Biswajit Basu, J.)