

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

**PRESENT:
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

CO. No.1609 of 2022

Sumitra Varma

....Petitioner

-Vs-

Ghanshyam Das Agarwal

..... Opposite Party

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Mr. Siddhartha Banerjee, Adv.
Mr. Iftekar Munshi, Adv.
Mr. Jyoti Rauth, Adv.

..... for the Petitioner

Mr. Probal Kumar Mukherjee, Senior Adv.
Mr. Tarak Nath Halder, Adv.
Mr. Sagnik Chatterjee, Adv.

..... for the Opposite Party

Heard On : 15.09.2022

Judgment on : 26.09.2022

Rabindranath Samanta, J:-

1. This revisional application under Article 227 of the Constitution of India has been preferred by the petitioner seeking setting aside of the Order dated 24th March, 2022 passed by the learned Additional District Judge, 1st Court, Sealdah in Misc Appeal No. 15 of 2021.
2. The facts which are necessary for adjudication of the instant revisional application may be adumbrated as under:

The opposite party Ghanshyam Das Agarwala filed a suit being Ejectment suit No. 99 of 2005 against the petitioner Sumitra Varma under the provision of West Bengal Premises Tenancy Act, 1997 in the Court of learned Civil Judge (Junior Division), Additional Court at Sealdah in order to evict her from the suit premises and to recover possession of the premises from her. The petitioner entered appearance in the suit and filed written statement to contest the suit.

3. The opposite party filed an application under Order 39 Rule 2A of the Code of Civil Procedure (for short the Code) registered as Misc. Case No. 10 of 2011 against the petitioner. While this Misc Case was pending for hearing, the learned Trial Judge by passing an Order dated 5th January, 2013 posted the suit on 9th April, 2013 after disposing of the Misc Case. The Misc. Case was disposed of ex parte on 4th March, 2013 and the learned Trial Judge posted the suit for peremptory hearing on 26th March, 2013 ignoring the fact that the hearing of the suit was fixed on 9th April, 2013. However, on 26th March, 2013 the learned Trial Judge adjourned the peremptory hearing of the suit and fixed the suit on 9th April, 2013 for ex parte hearing. The petitioner was under an impression that the Misc Case would be taken up first and thereafter the suit would be posted for peremptory hearing. However, the learned Trial Judge by order dated 9th April, 2013 decreed the suit ex parte against the petitioner.
4. Aggrieved by the ex parte decree dated 9th April, 2013 the petitioner filed an application under Order 9 Rule 13 of the Code along with an application under Section 5 of the Limitation Act registered as Misc Case No. 18 of 2013 against the opposite party praying for vacating the ex parte decree. The petitioner could not attend the Court on 09.04.2013 due to illness for her old age and for unbearable pains of arthritis in her legs. Such ailments made her immobile and she was bed ridden. For such reasons she could not contact either with her learned Advocate or with the concerned law clerk. Owing to antagonistic attitude of the sons of the petitioner the petitioner could not seek assistance from them.
5. However, on 20.05.2013, she after recovering from ailments partially, visited the Court and contacted her learned advocate. The concerned clerk informed

- her that due to her non-appearance the suit got decreed ex parte on 9th April, 2013. She engaged another learned Advocate and started proceeding in the suit. There was a delay of only 18 days in preferring the application under Order 9 Rule 13 of the Code and for which she sought for condonation of such delay.
6. By Order dated 9th March, 2017 the learned Trial Judge dismissed the application filed by the petitioner under Section 5 of the Limitation Act on the reason that she failed to exhibit the medical certificate to establish her illness and consequently the Misc Case stood dismissed. As against the order of dismissal of the Misc Case she preferred an appeal being Misc Appeal No. 54 of 2017 and the appeal was renumbered as Misc Appeal No. 6 of 2018 before the Court of learned Additional District Judge, Fast Track Court-II, Sealdah.
 7. Meanwhile, the opposite party put the ex parte decree dated 9th April, 2013 in execution by preferring an ejectment execution case No. 11 of 2013. On her prayer before the learned Appellate Court, the further proceeding of the execution case was stayed on the condition that the petitioner would have to pay Rs. 5,000/- per month to the opposite party for occupying the premises. But, ultimately, the learned Appellate Court by Order dated 25th July, 2018 dismissed the appeal and affirmed the Order passed by the learned Trial Court. Aggrieved by and dissatisfied with the Order dated 25th July, 2018 passed by the learned Appellate Court below the petitioner preferred a revisional application under Article 227 of the Constitution of India registered as C.O. No. 3620 of 2018 before this Court. By Order dated 4th July, 2019 a learned Single Bench allowed the revisional application preferred by her and set aside the order of the learned Appellate Court below. The learned Single Bench directed the learned Trial Court to examine the concerned Doctor who issued medical certificate to the petitioner and dispose of the application under Section 5 of the Limitation Act as well as under Order 9 Rule 13 of the Code on the basis of the evidence on record without resorting to pedantic and hypertechnical view.
 8. In compliance with the aforesaid Order of the learned Single Bench the petitioner examined Doctor Pradip Kumar Sharma as P.W. 3.

9. Though the learned Trial Court was sermoned by the learned Single Bench not to resort to pedantic and hypertechnical view, the learned Trial Court on analysing the evidence on record including the evidence of P.W. 3 Dr. Pradip Kumar Sharma observed that the petitioner failed to establish sufficient cause by which she was prevented from filing the application under Order 9 Rule 13 of the Code. Accordingly, the learned Trial Court by Order dated 3rd March, 2020 dismissed the Misc Case No. 18 of 2013. Aggrieved by such order the petitioner preferred an appeal being Misc Appeal No. 15 of 2021 in the Court of the learned Additional District Judge, 1st Court, Sealdah. By Order dated 24.03.2022 the learned Appellate Court below dismissed the appeal and affirmed the Order of the learned Trial Court. Challenging this Order this revisional application has been preferred.
10. Mr. Siddhartha Banerjee, learned Counsel appearing for the petitioner submits that a Single Bench while disposing of the revisional application being C.O 3620 of 2018 directed the learned Trial Court to examine the doctor who treated the petitioner. The learned Single Bench further directed the learned Trial Judge to dispose of the application under Section 5 of the Limitation Act as well as under Order 9 Rule 13 of the Code on the basis of the entire evidence on record without resorting to pedantic and hypertechnical view causing enormous loss and irreparable injury to the party against whom the lis terminates ex parte. Learned Counsel citing a decision in the case of **N. Balakrishnan -Vs- M. Krishnamurthy** reported in **(1998) 7 SCC 123** submits that while disposing of an application under Section 5 of the Limitation Act the words “sufficient cause” should be construed liberally. By citing an another decision in the case of **Balwant Singh (Dead) -Vs- Jagdish Singh and Others** reported in **(2010) 8 SCC 685** learned Counsel submits that for the purpose of setting aside abatement of a suit and bringing the legal representatives on record the words “sufficient cause” should be construed liberally. Highlighting these principles learned counsel submits that the learned Trial Court as well as the learned Appellate Court below ought to have allowed the application under Section 5 of the Limitation Act as well as the application under Order 9 Rule 13 of the Code with liberal view. Learned counsel submits that this

Court in exercise of power under Article 227 of the Constitution of India may interfere with an Order passed by a learned Court below to ensure that there is no miscarriage of justice.

11. Mr. Probal Kumar Mukherjee, learned Senior Counsel appearing for the opposite party submits that the learned Trial Court dismissed both the applications on appreciation of the evidence on record and the learned Appellate Court below dismissed the appeal preferred by the petitioner also on appreciation of the evidence on record. Learned counsel submits that supervisory jurisdiction of this Court under Article 227 of the Constitution is very narrow and should not be exercised like an Appellate Court to set aside order or orders passed by the learned Courts below on appreciation of evidence. In support of his contention learned Counsel has cited a decision in the case of **Jai Singh and Others -Vs- Municipal Corporation of Delhi and Another** reported in **(2010) 9 SCC 385** and another decision in the case of **Garment Craft-Vs- Prakash Chand Goel** reported in **(2022) 4 SCC 181**.
12. Admittedly, the opposite party brought the Ejectment suit No. 99 of 2005 against the petitioner and the petitioner entered appearance in the suit and filed written statement to contest the suit. But, owing to her non-appearance before the learned Court below the learned Trial Court by Order dated 9th April, 2013 decreed the suit ex parte. It is not in dispute that the petitioner being aggrieved by the Order dated 9th April, 2013 filed an application under Order 9 Rule 13 of the Code along with an application under Section 5 of the Limitation Act registered as Misc Case No. 18 of 2013 praying for setting aside the ex parte decree. The Misc Case brought by the petitioner was delayed by 18 days only. The petitioner examined two witnesses to prove her case. But, the learned Trial Court dismissed the application under Section 5 of the Limitation Act on the reason that the petitioner failed to examine the doctor who treated her and consequently the Misc Case stood dismissed. The Misc Appeal preferred by the petitioner as against this order of the learned Trial Court was also dismissed.
13. As stated above, the petitioner, feeling aggrieved by the aforesaid Orders of the learned Courts below preferred the aforesaid revisional application being

CO No. 3620 of 2018 and the learned Single Bench passed the Order as above.

14. As it appears from the Order dated 3rd March, 2020 passed by the learned Trial Court in Misc Case No. 18 of 2013, the learned Trial Court disbelieved the evidence adduced by the petitioner and dismissed the Misc Case. The learned Appellate Court below dismissed the Misc Appeal No. 15 of 2021 preferred by the petitioner against the Order of the dismissal of the learned Trial Court and affirmed the Order of the learned Trial Court.
15. The Hon'ble Apex Court in the decision in the case of **Garment Craft-Vs-Prakash Chand Goel** reported in **(2022) 4 SCC 181** has held that a reasoned decision of a Trial Court on elaborate consideration of relevant facts cannot be interfered with by High Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. However, in the decision in the case of **Jai Singh and Others -Vs- Municipal Corporation of Delhi and Another** reported in **(2010) 9 SCC 385** the Hon'ble Apex Court at paragraphs 15 and 16 has held as under:

“15. We have anxiously considered the submissions of the learned Counsel. Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great

care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

16. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it cannot substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice."

16. In the decision in the case of **Jai Singh and Others** (supra) it has been held by the Hon'ble Apex Court at paragraph 16 that the power to reappreciate evidence would only be justified in a rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on peculiar facts of each case with a sole objective of ensuring that there is no miscarriage of justice.
17. It is a settled principle of law as reiterated by the Hon'ble Apex Court in the decision in the case of **N. Balakrishnan -Vs- M. Krishnamurthy** reported in **(1998) 7 SCC 123** and in the case of **Balwant Singh (Dead) -Vs- Jagdish Singh and Others** reported in **(2010) 8 SCC 685** the words "sufficient cause" arising in Section 5 of the Limitation Act and Order 22 Rules 9(2) and (3) of the Code of Civil Procedure should be construed liberally. Similarly, the words "sufficient cause" appearing in Order 9 Rule 13 of the Code of Civil Procedure should also be construed liberally. The evidence of the Doctor P.W. 3 Pradip Kumar Sharma as referred to by both the learned Courts below clearly shows that the petitioner was suffering

from fleeting ploy-arthritis and such disease may confine her to bed. The petitioner is now aged about 72 years. She was aged about 63 years while the suit was decreed ex parte. Her old age, her age related ailments and the other ailments as reflected in the medical certificate evince that she was physically incapacitated due to ailments to appear before the learned Court below from 09.04.2013 till she filed the application under Order 9 Rule 13 of the Code. It is astonishing that ignoring this aspect and further resorting to pedantic and hypertechnical view in utter disregard of the direction passed by the learned Single Bench discarded the evidence, especially the medical certificate adduced on the part of the petitioner. It appears that by the Orders passed by the learned Courts below grave injustice has been caused to her. It is an admitted fact that the petitioner entered appearance before the Court and filed written statement to contest the suit. This demonstrates that she never fostered an avoiding attitude to contest the suit from the very beginning. As the facts brought by the petitioner indicate, delay of only 18 days in preferring the Misc Case is condonable bearing in mind the principle that substantial justice should be rendered avoiding the avoidable technicalities. In such view of the matter, this Court in exercise of its supervisory power under Article 227 of the Constitution of India should interfere with the Orders passed by the learned Courts below by which justice was denied to the petitioner.

18. Accordingly, the revisional application is allowed.

19. The Order dated 24.03.2022 passed by the learned Additional District Judge, 1st Court, Sealdah in Misc Appeal No. 15 of 2021 arising out of the Order dated 03.03.2020 passed by the learned Civil Judge (Junior Division), Additional Court at Sealdah is hereby set aside. Consequently, the Order dated 9th April, 2013 by which the suit was decreed ex parte by the learned Trial Court also stands set aside. The learned Trial Court is directed to dispose of the suit expeditiously and preferably within ten months from the date of communication of this judgment.

20. With the aforesaid direction the revisional application and the connected application stand disposed of. No order as to costs.

21. Let a copy of this judgment be communicated to both the learned Courts below immediately for information.
22. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta, J.)