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C.O. 1807 of 2022

**Sri Sanatan Gharai
Vs
Smt. Mamoni Gharai**

Mr. Debdutta Raha, ... For the petitioner.

The subject matter of challenge in this revisional application is against an order dated 19th April, 2022 passed by Additional District & Sessions Judge, 5th Court, Alipore in Misc Case No. 11 of 2017 condoning the delay of 62 days, and thereby allowing application under Section 5 of the Limitation Act.

Mr. Debdutta Raha, learned advocate appearing for the petitioner/husband submits that the Court below has mechanically allowed the application under Section 5 of the Limitation Act, without considering the true purport of the petition filed in the instant case seeking condonation of delay.

It is also contended by the petitioner that the delay has not been successfully explained, and still then the Section 5 application has been allowed by condoning the delay.

It is also submitted that the opposite party/wife had sufficient knowledge about the pendency of suit leading to ex parte decision reached by the Court below against the opposite party.

The instant application, so filed, by the opposite under Order 9 Rule 13 of the Code of Civil Procedure

read with Section 5 of the Limitation Act is purely purposive and harrasive one, learned advocate for the petitioner argues.

The delay of 62 days in filing an application under Order 9 Rule 13 CPC is the only subject of challenge in this case.

No other point is raised requiring address by this Court.

In view of the nature of the order proposed to be made in this case, no prior notice is considered to be necessary upon the opposite party.

Service of notice of this application upon opposite party stands dispensed with.

Upon perusal of the impugned order, it appears that the Court below has gone into the explanation, offered by the opposite party/wife under Section 5 of the Limitation Act and allowed Section 5 application condoning delay of 62 days in exercise of discretion available to Court. Such discretion being lawfully exercised, simply to allow the opposite party to contest the case, in the given circumstances of the case, cannot be said to have been illegally exercised.

Such discretion being thus appropriately exercised would remain uninterfered with.

As the petitioner contends that opposite party/wife despite having sufficient knowledge of pendency of the suit, she preferred to remain away from

Court even after service of summons, such point may be raised at the appropriate point of time in connection with a Misc Case No. 11 of 2017 under Order 9 Rule 13 of the CPC filed by the opposite party/wife.

Since ex parte decree granted in this case is only under challenge in the pending Misc Case referred hereinabove, such Misc Case may be expeditiously disposed of, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournments, unless it is extremely unavoidable.

The Court below, as such is directed to give sufficient opportunity to petitioner/husband to challenge the Misc Case, preferred against him, after permitting the petitioner to produce all the documents so as to facilitate the decision to be returned by the Court in connection with Misc Case No. 11 of 2017.

Petitioner is directed to make communication of this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite party and the opposite party.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)