

22.02.2022
(S/L-25)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 2862 of 2019

Lalit Kumar Tulshyan

-Vs-

M/s. Reliance Industries Ltd. & Ors.

Ms. Pooja Jewrajka,

.... For the Petitioner.

Mr. U. S. Menon,

Mr. Avirup Chakraborty,

... For the O.P. No.1.

The revisional application under Article 227 of the Constitution of India is directed against order no. 26 dated April 21, 2018 passed by the learned Judge 7th Bench, City Civil Court, Calcutta in the said case being Misc. Case No. 2947 of 2017.

By the order No. 23 dated August 23, 2017, the suit filed by the petitioner being Title Suit No. 968 of 2010 was dismissed with costs of Rs. 5,000/- for failure of the plaintiff to put in requisites for service of summons upon the defendant.

The plaintiff took out an application under Order IX Rule 4 of the Code of Civil Procedure for restoration of the suit, registered as the connected Misc. Case no. 2947 of 2017.

The learned Trial Judge by the order impugned has dismissed the said Misc. Case for

non-payment of the costs of Rs.5,000/- imposed on the plaintiff in the order dismissing the suit with a further costs of Rs.2000/-.

Mr. U. S. Menon, learned advocate appearing on behalf of the opposite party no. 1 files photocopy of the orders passed in the suit/misc. case and drawing my attention to the said orders submits that there were huge laches on the part of the petitioner in conducting the suit and, in fact, the suit was dismissed earlier also but was restored.

The orders passed in the suit/misc. case, no doubt, demonstrate laches on the part of the petitioner in prosecuting the suit and the misc. case but the said laches since have been condoned, cannot be a consideration in the present case.

The plaintiff in his application under Order IX Rule 4 of the Code has prayed for recall of the entire order dismissing the suit including the costs imposed by the said order, as such, to maintain an application for recalling of the said order, the plaintiff is not required to pay the said costs.

The record demonstrates severe laches in the diligence of the petitioner in pursuing the matter, therefore, the order impugned is set aside and Misc. Case no. 2947 of 2017 is restored to

its original file and number but subject to payment of costs of Rs.20,000/- to be paid by the petitioner within two weeks from date in favour of the Juvenile Justice Fund, State Legal Services Authority, West Bengal.

C.O. 2862 of 2019 is allowed with the above terms.

Mr. Menon complains that the petitioner has not put in requisite for service of notice of the said Misc. Case upon all the opposite parties. The petitioner is required to put in the said requisite within three weeks from date, in default, the learned Trial Judge shall dismiss the said Misc. Case.

In the event the aforesaid requisite is put in within the aforesaid time, the learned Trial Judge is requested to expedite the disposal of the said Misc. Case in accordance with law.

The photostat certified copy of the order passed in the said connected Misc. Case filed by Mr. U.S. Menon be kept with the record.

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.)