

22.02.2022
(S/L-32)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 2910 of 2019

Sandhya Dwibedi & Ors.

-Vs-

Nityananda Manna & Anr.

Mr. Nilanjan Bhattacharjee,
Mr. Arpan Guha,

.... For the Petitioners.

Mr. Nilanjan Bhattacharjee, learned advocate for the petitioners submits that service of the notice of the present revisional application has already been effected upon the opposite parties but affidavit-of-service is not ready.

He undertakes to file the said affidavit-of-service by tomorrow.

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

The instant revisional application under Article 227 of the Constitution of India is directed against the order dated April 16, 2019 passed by the 1st Court of learned Additional District Judge, Paschim Medinipur in Miscellaneous Appeal No. 79 of 2017 thereby affirming the order dated August 30, 2017 passed by the 2nd Court of Learned Civil Judge (Junior Division) Paschim Medinipur in Miscellaneous Case no. 29 of 2013.

The petitioners filed the Title Suit No. 23 of 2010 before the 2nd Court of Learned Civil Judge (Junior Division), Paschim Medinipur, inter alia, for decree of declaration of their right title and interest and confirmation of possession over the suit property.

In the said suit, the learned Trial Judge passed an ad interim order of injunction on August 9, 2011 on an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure filed by the petitioners.

The petitioners alleging violation of the said ad interim order of injunction filed an application under Order XXXIX Rule 2A of the Code which was registered before the learned Trial Judge as J. Misc. Case. No. 42 of 2011.

The said Misc. Case was dismissed for default on June 28, 2013.

The petitioners for restoration of the said Misc. Case filed an application under order IX Rule 9 read with Section 151 of the Code being J. Misc. Case no. 29 of 2013.

The petitioners in the said application for restoration stated inter alia, that the learned Trial Judge subsequently dismissed the application for injunction and they were under the impression that so long the appeal against the order dismissing their application for

injunction is not disposed of, they are not required to take any steps in the said Misc. Case, as a result, they omitted to inform the clerk of their learned advocate to take steps in the said misc. case and as a consequence thereof, no steps were taken in the said misc. case on June 28, 2013 resulting dismissal of it for default.

The learned Trial Judge did not accept the explanation offered by the petitioners in their said application under Order IX Rule 9 of the Code and dismissed the said application.

The Appeal Court in the appeal from the order of the learned Trial Judge found that the explanation offered by the petitioners is not believable and dismissed the said appeal.

The claim of the petitioners that their procedural misconception led to dismissal of the Misc case No. 29 of 2013 cannot be ruled out altogether inasmuch as the order of injunction for violation of which the said misc. case was initiated was ultimately vacated.

The explanation offered by the petitioners in support of their application under Order IX Rule 9 of the Code is based on the state of mind of the petitioners in a particular situation, which if assessed, in the facts and circumstances of the present case favours the petitioners.

That apart, record does not suggest that there were repeated defaults on the part of the petitioners in taking steps in the said misc. case.

This Court, therefore, for the interest of justice, set aside the order impugned.

The application filed by the petitioners under Order IX Rule 9 of the Code being J. Misc. Case No. 29 of 2013 is allowed, consequently, J. Misc. Case no. 42 of 2011 is restored to its original file and number.

C.O. 2910 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 parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)