

06.05.2022
Item No.11
Court No.18
AJ.

C.O. 3448 of 2019

M/s. B.C. Chowdhury
-Vs-
Smt. Namita Sarkar

Mr. Saptangshu Basu
Senior Advocate,
Mr. Ramesh Dhara,
Mr. Gourav Banerjee.
....for the petitioner.

Affidavit-of-service filed on behalf of the petitioner be kept with the 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 directed against Order No. 60 dated August 27, 2019 passed by the learned District Judge, Alipore in Misc. Case No. 159 of 2017 arising out of Title Suit No. 1952 of 2008.

The suit, under Section 9 of the Arbitration and Conciliation Act, 1996, was dismissed for default on 1st February, 2016.

The petitioner filed an application for restoration of the said suit under Order 9 Rule 4 read with Section 151 of the Code of Civil Procedure being connected Misc. Case No. 159 of 2017.

The said Misc. case was filed out of time, as such, it was accompanied by an application under Section 5 of the Limitation Act, 1963.

The learned Trial Judge by the order impugned has dismissed the said application for condonation of delay holding that the delay has not been properly explained.

In the application for condonation of delay, it has been stated that the proprietor of the petitioner firm became seriously ill on and from December 11, 2015 and was admitted in hospital as such he could not instruct his lawyer to file the application for restoration of the said suit immediately after its dismissal, medical papers were filed in support of the said illness.

The illness of the said proprietor of the petitioner firm cannot be disbelieved in the absence of any contrary evidence. That apart the learned Trial Judge unnecessarily laboured to attach extra weight to the offered explanation for the inertness of the petitioner to refer the dispute between the parties in arbitration inasmuch as it is not relevant consideration in deciding an application under Order IX Rule 4 of the Code.

The order impugned is not sustainable and is accordingly set aside. The delay in filing the connected misc. case therefore is condoned.

The ground for restoration of the said suit and condonation of delay in filing the said misc. case are same as such when the said delay has already been condoned, no fruitful purpose would

be served by sending the said misc. case back to the Court below for adjudication of it again.

The said misc. case is therefore also allowed, consequently the Title Suit No. 1952 of 2008 is restored to its original file and number.

The learned Trial Judge is requested to expedite the disposal of the said suit in accordance with law.

C.O. 3448 of 2019 is disposed of 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.)