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08.12.2022
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C.O. No. 4272 of 2017
(Assigned)

Subhash Chand Bagra
-vs.-
Mrinalini Das

Mr. Falguni Bandyopadhyay,
Ms. Riya Ballav
...for the petitioner

Despite service, none appears for the opposite party when the matter is called on for hearing. As such, the revisional application is taken up for hearing in the absence of the opposite party.

The scope of the revisional application is a challenge against an order whereby an application captioned under Order IX Rule 4 read with Section 151 of the Code of Civil Procedure, which, in turn, had been filed for restoration of an application under Order IX Rule 4 of the Code, was rejected.

In principle, as such, the impugned order was one passed under Section 151 of the Code of Civil Procedure, since Order IX Rule 4 is applicable with regard to a suit only.

Upon hearing learned counsel for the petitioner, it is seen from the impugned order that the learned Judge of the court below proceeded on a hyper-technical approach by rejecting the petitioner's application for

restoration on the ground that the name of the concerned lawyer's clerk and licence number had not been depicted in the miscellaneous case petition or diary of the learned advocate for the petitioner/plaintiff to verify whether such type of lawyer's clerks along with proper licence are actually working with the learned advocate for the petitioner/plaintiff.

It is well-settled that a lenient approach, by default, is adopted for adjudication of applications for restoration, in particular, under Order IX Rule 4 of the Code of Civil Procedure, since at the initial stage, both the parties were absent when the matter was dismissed for default.

Thus, the premise on which the learned Trial Judge proceeded was contrary to the settled legal position.

Hence, the impugned order cannot be sustained in law.

Accordingly, C.O. No. 4272 of 2017 is allowed, thereby setting aside order No. 15 dated August 22, 2017 and restoring Miscellaneous Case No. 1279 of 2017 to its original file and number.

The petitioner shall communicate this order to the court below as well as to the opposite party and/or the learned advocate, who had been appearing for the opposite party in the court below previously.

It is expected that the Miscellaneous Case, upon being revived by virtue of this order, shall be decided as expeditiously as possible.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)