

20.06.2023
Sl. No.4(DL)
srm

C.O. No. 309 of 2023
M/s. Capital Construction Co.
Versus
Pallab Kumar Nag & Ors.

Mr. Aritra Basu,
Mr. Souradeep Banerjee,
Mr. Abhijit Sarkar

...for the Petitioner.

Mr. Purnendu Das,
Mr. Meghanil Manna

...for the Opposite Party No.3.

The revisional application is directed against an order dated July 7, 2022 passed by the learned Chief Judge, Presidency Small Causes Court at Calcutta, in Ejectment Suit No.301 of 2017.

By the order impugned, the learned court below rejected an application filed under Section 151 of the Code of Civil Procedure by the petitioner/plaintiff dated February 27, 2022 upon payment of cost of Rs.100/-. The said application was filed for recalling of an order dated August 22, 2019 passed by the learned court below in Ejectment Suit No.301 of 2017. By order dated August 22, 2019, the learned court below upon payment of Rs.2,000/- had recalled an earlier order, by which the suit was fixed for *ex parte* hearing. The learned court below

was of the view that for the ends of justice, the defendants should be allowed to contest the suit on merits. While allowing the said application filed by the defendants, the learned court below also proceeded to allow the application filed by the defendants under Section 5 of the Limitation Act for condonation of the delay in filing the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997.

The learned Advocate for the plaintiff/petitioner submits that the order passed on August 22, 2019, ought to have been recalled by the learned court below as the written objection to the application under Section 5 of the Limitation Act as also another application praying for rejection of the application for condonation of delay on the ground that the same was hit by the principles laid down by the Hon'ble Apex Court, were not considered. Learned Advocate further submits that August 22, 2019 had been fixed for hearing of the application under Section 151 of the Code of Civil Procedure filed by the defendants praying for recalling of the order by which the suit had been fixed for *ex parte* hearing.

Having gone through the order dated August 22, 2019 this Court finds that the contention of the learned Advocate for the plaintiff/petitioner is correct. While deciding the

application under Section 151 of the Code of Civil Procedure filed by the defendants, the learned court below in the same breath allowed the application for condonation of the delay in filing the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act.

Aggrieved, the petitioner/plaintiff filed the application for recalling of the order dated August 22, 2019. According to the learned court below, the order dated August 22, 2019 did not merit any interference by way of exercise of the power of recalling, on the ground that few dates had passed since the order was passed and no revisional application has been filed. Rather, the court elaborated and clarified the order sought to be recalled by the impugned order dated July 7, 2022 thereby justifying and supplying the reasons as to why the application for condonation of the delay had been allowed.

In my view, the learned court below proceeded with material irregularity in allowing the application under Section 5 of the Limitation Act, by which the defendants had prayed for condonation of the delay in filing of the application under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act. First of all, August 22, 2019 had not been fixed for hearing of the said application. Secondly, the plaintiff had filed a written objection and another application praying for rejection

of the application for condonation of delay. Without considering this objection and the application of the plaintiff, the application for condonation of the delay could not have been allowed.

Accordingly, the order dated August 22, 2019 is set aside to the extent by which the application under Section 5 of the Limitation Act had been allowed by the learned court below. Rest of the order remains unchanged. The order dated July 7, 2022 is also set aside.

The application under Section 5 of the Limitation Act filed by the defendants for condonation of the delay in filing the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, shall be decided on its own merits upon consideration of the written objection filed by the plaintiff/petitioner as also the application seeking rejection of the application for condonation of the delay.

It is made clear that the learned court below will decide the issue involved on its own merits and dispose of the application, within a period of one month from the date of communication of this order. Parties are entitled to advance their arguments before the learned court below.

The revisional application is, thus, disposed of.

There will be, however, no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)