

S/L -7
17.03.2023
Court No.8

RVW 117 of 2022
CAN 1 of 2023
CAN 2 of 2023
IN
SA/55/2021

MALAY GHOSH
VS.
SMT SANDHYA MALLICK IN PLACE OF TAPAN KUMAR
MALLICK (DECEASED) & ORS.

Mr. Samir Kumar Dutta
Mr. Sovan Mukherjee

.....For the petitioner

CAN 2 Of 2023

This is an application seeking condonation of delay under section 5 of the Limitation Act in filing the review application. Petitioner contended that there is delay of 65 days in filing the present review application on the grounds stated in the petition and prayed for condonation of such delay. We are satisfied with the reasons shown in the application and accordingly the delay in filing the application is condoned. CAN 2 of 2023 is accordingly disposed of.

CAN 1 of 2023

Petitioner contended that the Respondents being the plaintiffs/ landlord filed suit for eviction being T.S 437 of 1993 and said suit was decreed on contest inter alia on the ground of reasonable requirement by the Trial Court on 31st. August 2000. Being aggrieved by the judgment and decree passed by Trial Court, defendant/Appellant preferred Title Appeal No. 164 of 2000, but said first appeal was also dismissed by the First Appellate court by a judgment and decree on 28th August, 2019.

Being aggrieved by the judgment and decree passed by the First Appellate court, the defendant/ Appellant preferred second appeal before this Court being SAT No. 399/2019. But the said second appeal was also dismissed by this High Court vide order dated 14th March, 2022.

Now the present review application has been preferred contending that the petitioner afterwards have discovered a new fact that Plaintiff/ respondents have suppressed before the learned trial court as well as before learned First Appellate court and also before this Hon'ble Court that in the year 2006 the Predecessors of Respondent No. 1(a) & 1(b) purchased a shop room at Serampore, being premises No. 150, Netaji Subhas Avenue, vide deed No. 05951 of 2006 dated 4th October 2006. The Respondents are in possession of the said shop rooms. He further contended that learned Advocate Commissioner during his commission work had identified the said shop room situated at the northern side of the G+3 building which is in possession of the plaintiff/ respondents. Accordingly the petitioner submits that the requirement of the plaintiff/ respondents as shown in the plaint is not actual at all and for which the petitioner has filed the present review application.

On perusal of copy of said deed of purchase dated 4th October 2006, it appears that said deed was executed in the name of original plaintiff Tapan Kumar Mallick along with two others namely Swapan Kumar Mallick and Tarun Kumar Mallick and accordingly it is apparent that said property is not the exclusive property of Opposite Parties/Respondents/Plaintiffs and accordingly there is hardly any scope to say that it's a new fact or that opposite parties have suppressed

any material fact or that by suppressing any material fact they have obtained any decree.

The settled principle of law is that a review is by no means an appeal in disguise whereby an erroneous decision can be heard or corrected but lies only for patent error. Under order 47 rule 1 of the code the review petition has to be entertained only on the ground of error apparent on the face of the record and not on any other ground. It refers to such errors which must strike on mere looking at the record and not required any long- drawn process of reasoning on points, where there may conceivably be two opinions. Learned counsel for the petitioner is not in a position to point out how the reasoning adopted and conclusion reached by this Division Bench can be altered within the narrow and limited scope under order 47 rule 1 of CPC. Right or wrong the earlier division bench judgment had become final so far as the High Court is concerned. It could not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged finding of new fact of purchase in the year 2006 by the predecessor of respondents / opposite parties. As there is no mistake or error apparent on the face of the record nor there is any error which is self-evident, we are not inclined to exercise power of review as there is a clear distinction between an erroneous decision and an error apparent on the face of the record. Accordingly we do not find any merit in the review application and as such CAN 1 of 2023 is dismissed.

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)