

08.04.2024
sayandeep
Sl. No. 44
Ct. No. 03

CO 241 of 2018
With
CAN 1 of 2022, CAN 2 of 2022

Siddik Khan & ors.
-Versus-
Sk. Assabuddin & anr.

Mr. Ramkrishna Roy

.... for the petitioners

In Re: CAN 2 of 2022

1. Heard learned counsel for the petitioners and learned advocate for the opposite parties.
2. By filing the instant application under Section 5 of the Limitation Act, the petitioner has prayed for condonation of delay in filing CAN 1 of 2022, i.e., petition for restoration of the instant revisional application.
3. On perusal of the petition under consideration and after hearing the learned advocates for the contending parties, this Court is satisfied that the petitioner is successful in explaining the delay in filing CAN 1 of 2022.
4. Accordingly, the prayer is allowed.
5. The delay in filing CAN 1 of 2022 is hereby condoned. Consequently, CAN 2 of 2022 is allowed and disposed of.

In Re: CAN 1 of 2022

1. Heard learned advocate for the parties. Perused the petition under consideration. By filing the instant

interim application, the petitioner has prayed for recalling of the order of dismissal as passed on 11.05.2022.

2. On perusal of the petition under consideration and after hearing the learned advocates for the contending parties, this Court is satisfied that the petitioner is successful in making out a case for recalling the order dated 11.05.2022. Accordingly, the prayer is allowed. The order of dismissal as passed on 11.05.2022 is hereby recalled. As a result, CO 241 of 2018 is restored to its original file along with all interim orders and connected applications, if there be any.

In Re: CO 241 of 2018

1. On consent of both the parties the instant revisional application is taken up for hearing.
2. The instant revisional application as filed under Article 227 of the Constitution of India arises out of order No. 102 dated 06.01.2018 as passed by learned Civil Judge (Junior Division), Additional Court, Tamluk, Purba Medinipur whereby and whereunder the said Court in a proceeding under Order XXXIX Rule 2A of the Code of Civil Procedure, namely, in J. Misc. case No. 06 of 2016 refused to take off the said misc. case from the *ex parte* board despite a petition filed by the opposite parties of the said misc. case.
3. In support of the instant revisional application, learned advocate for the petitioners submits before

this Court that J. Misc. case No. 06 of 2016 as filed under order XXXIX Rule 2A CPC arose out of title suit No. 25 of 2016 wherein the present petitioners are contesting the said suit by filing their written statements. It is contended that due to *bona fide* mistake, the present petitioners being opposite parties of J. Misc. case No. 06 of 2016 could not file their written objections in the said misc. case within the time specified by the Trial Court which is why the impugned order has been passed causing serious prejudice to the interest of the present petitioners who are the opposite parties of the said misc. case.

4. Per contra, learned counsel for the opposite parties herein submits before this Court that the learned trial Court is very much justified in passing the impugned order since the present petitioners being the opposite parties of J. Misc. case No. 06 of 2016 were not taking any steps for contesting the said misc. case. It is further submitted that the instant revisional application has been filed only with an intention to drag the proceeding of title suit No. 25 of 2016 which has already been fixed for argument.
5. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears to this Court that the present petitioners being the opposite parties of J. Misc. case No. 06 of 2016 must get an opportunity to contest the said misc. case by filing their written

objection, especially, when it has been alleged in the said misc. case that the present revisionist has violated the order of injunction as passed by the learned trial Court.

6. Such being the position, the instant revisional application is hereby allowed on contest. The impugned order No. 102 dated 06.01.2018 as passed in J. Misc. case No. 06 of 2016 by the learned Civil Judge (Junior Division), Additional Court, Tamluk is hereby set aside.
7. Liberty is given to the present revisionist to file their written objections in J. Misc. case No. 06 of 2016 within a fortnight from the day of passing of this order before the learned trial Court. Failing which, learned trial Court shall not accept such written objection and in that event, it would be presumed that no favourable order has been passed in this revisional application.
8. Considering the conduct of the present revisionist before the trial Court, this Court further imposes a cost of Rs. 5000/- upon the present revisionists which is also to be paid either to the opposite party No. 1 or to opposite party No. 2 herein within 10 days from the day of passing of this order. It is also made clear that payment of cost is a condition precedent for accepting the written objection by the present petitioners in J. Misc. case No. 06 of 2016 by the trial Court.

9. It is further directed that the trial Court that is learned Civil Judge (Junior Division), Additional Court, Tamluk shall dispose of title suit No. 25 of 2016 as well as J. Misc. case No. 06 of 2016 positively within a period of 3 months from the date of communication of this order.
10. All parties and the trial Court are directed to act in terms of server copy of the order downloaded from the official website of this Court.
11. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Partha Sarathi Sen, J.)