

Item No.28
22.04.2024
Court. No. 19
GB

C.O. 948 of 2024

Maniklal Das
Vs.
Krishnendu Sarkar

*Mr. Debashis Roy,
Ms. Oisani Mukherjee*

...for the Petitioner.

*Ms. Sohini Chakraborty,
Ms. Falguni Majhi*

...for the Opposite Party.

1. The revisional application arises out of an order dated January 19, 2024, passed by the learned District Judge, Purba Bardhaman in Misc. Appeal No.1 of 2024.
2. By the order impugned, the learned court affirmed the order passed by the learned Civil Judge (Junior Division), 2nd Court at Bardhaman in Misc. Case No.7 of 2023. Both the learned courts rejected the application under Section 5 of the Limitation Act, seeking condonation of delay in filing the misc. case. The misc. case was filed praying for setting aside the ex parte decree. The said misc. case was filed beyond a period of 160 days from passing of the ex parte decree. Thus, the application for condonation of delay in filing the misc. case was preferred.
3. The learned trial judge was of the view that in a suit for eviction under the West Bengal Premises Tenancy Act, 1997 the defendant was required to seek protection from delivery of possession by filing appropriate application under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act), failing which the defence was liable to be struck off. With

such observations, it was further held that allowing the application for condonation of delay and registering the misc. case would be an empty formality, as the defendant would not have a defence. Admittedly, the defendant did not file the applications under Sections 7(1) and 7(2) of the said Act. Such view of the learned trial judge was also upheld by the learned appellate court.

4. Ms. Chakraborty, learned advocate appearing on behalf of the plaintiff/opposite party submits that in the meantime, the plaintiff had already taken possession by paying police cost. It is further submitted that if the orders impugned are set aside and the misc. case is directed to be heard, the plaintiff would suffer not only financial hardship, but also irreparable loss and injury. Referring to the application for condonation of delay, it has been stated that the grounds made out were illness, tension, non-cooperation and fault of the learned advocate which led to the delay in filing the misc. case. All these were subject to proof. No documents had been disclosed by the petitioner in support of such contention.
5. This Court does not agree with the findings of the learned court. The learned court ought to have decided whether sufficient cause had been made out for condonation of delay, instead of deciding the fate of a tenant who did not take steps under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997.
6. Mr. Roy's contention that at the stage of deciding the application for condonation of delay, the learned court

was not required to enter into an arena covered by Sections 7(1) and 7(2) of the Act, thereby adjudicating the fate of a tenant who had not taken steps under the said provisions of law, is correct. Further contention of Mr. Roy, that even assuming that the defence of a tenant was struck off, the right of cross-examination of such tenant could not be ruled out. He could demolish the plaint case through cross-examination.

7. Having heard the learned advocates for the respective parties, this Court is of the view that the application for condonation of delay discloses sufficient cause, inasmuch as, the defendant had explained that he was ill-advised by well-wishers and by learned advocates. This led him to trust their advice and he ended up in not taking appropriate steps in the suit, at the appropriate time. It has been further stated that the defendant was also suffering from several illnesses, for which he could not file the misc. case within the stipulated period of limitation.
8. Under such circumstances, the order impugned is set aside. The delay is condoned. The Misc. Case No.7 of 2023 is registered. The learned trial judge shall dispose of the misc. case on its own merits and on evidence, to be led by the parties. The observations made in this revisional application shall not be construed as a decision of the Court on the merits of the Misc. Case No.7 of 2023. The onus is on the defendant/petitioner to prove the facts pleaded in the misc. case, in accordance with law. The

Misc. Case No.7 of 2023 shall be disposed of within a period of three months from the next date fixed.

9. Accordingly, the revisional application is disposed of.
10. However, there will be no order as to costs.
11. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)