

March 12, 2024
Sl. No.18
Court No.19
s.biswas

CO 1365 of 2023

Sk. Jahangir and others
vs.
Munni Begum and others

Ms. Shohini Chakraborty
Ms. Prajaaini Das

... for the petitioners

Mr. Biswajib Ghosh
Md. Hanif
Mr. Sk. M. Ali

... for the opposite party nos.1 to 5

The revisional application arises out of an order dated February 23, 2023 passed by the learned Civil Judge (Senior Division), 3rd Court at Alipore, District South 24 Parganas.

By the order impugned, the learned court rejected an application under Section 151 of the Code of Civil Procedure filed by the petitioner dated January 16, 2023. The learned court was of the view that all the details of the evidence were not required to be pleaded and the application for striking out some of the deposition, was rejected.

In the application under Section 151 of the Code of Civil Procedure, the petitioners prayed that paragraph 2, 2(a) to 2(j) of the affidavit-in-chief of the PW1 in relation to the application for condonation of delay in filing the misc. case should be struck off, as those submissions were not part of the pleadings.

Mr. Ghosh, learned advocate for the opposite parties, submits that those statements and evidence related to the documents of the petitioners. As such,

the question of striking off such evidence would not arise.

In my opinion, the issue raised by the petitioners are matters to be decided at the final adjudication of the application filed under Section 5 of the Limitation Act. The petitioners can raise such question of law at any time, even at the final hearing of the said application. Thus, there was no requirement for the court to strike off those statements as prayed for by the petitioners. The contention of the petitioners that the evidence in the affidavit-in-chief were beyond the scope of the pleadings, can be raised during the hearing of the Section 5 application and the court will accordingly decide the corroborative value of such statements.

This court has not gone into the merits of the issue involved. The learned court shall independently decide the application for condonation of delay, in accordance with law.

The order impugned does not call for any interference. However, the issues raised in this revisional application can be raised at the final hearing of Section 5 application.

The revisional application is accordingly disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)