

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 2376 of 2022

Smt. Usha Das
Vs.
Mita Kundu & Ors.

Mr. Siva Prasad Ghose
... For the petitioner

Mr. Bharat Chandra Simai
Ms. Sanchayita Das
... For the opposite parties

1. This revisional application under Article 227 of the Constitution of India has been filed assailing the Order No.4 dated 20th July, 2022 passed in connection with Misc. Case No.44 of 2018 wherein the learned Civil Judge (Senior Division), 2nd Court, Barasat disposed of an application under Section 5 of the Limitation Act along with an application under Order IX Rule 13 of the Code of Civil Procedure (hereinafter referred to as 'CPC').

2. The Miscellaneous Case was filed under Order IX Rule 13 of the CPC praying for setting aside of the decree passed vide order dated 23rd November, 2017 and, admittedly, the application under Order IX Rule 13 of the CPC was filed beyond the statutory period for which delay in filing the application for restoration has to be considered subject to condonation of delay within the meaning of Section 5 of the Limitation Act.

3. Learned counsel appearing on behalf of the petitioner has shown the order passed by a co-ordinate Bench of this Court in connection with CO 3945 of 2018 vide order dated 10th June, 2019 whereby the learned Trial Judge was directed to dispose of the application for condonation of delay in filing the application under Order IX Rule 13 of the CPC.

4. Learned counsel appearing on behalf of the opposite parties has drawn my attention to the impugned order wherein the learned Judge disposed of the application under Section 5 of the Limitation Act.

5. On careful scrutiny of the entire order impugned, I find that the learned Trial Judge took up both the applications under Section 5 of the Limitation Act as well as the application under Order IX Rule 13 of the CPC for hearing, but unfortunately, the learned Trial Judge condoned the delay in filing the application under Order IX Rule 13 of the CPC without assigning any reasons whatsoever.

6. Learned Judge is duty-bound to decide as to whether there is sufficient cause for delay in filing the application under Order IX Rule 13 of the CPC. But, here in this case, the learned Trial Judge did not take up the issue of sufficient cause for delay, far to speak of record any decision thereon and allowed the application under Order IX Rule 13 of the CPC.

7. In the aforesaid view of the matter, I am of the humble opinion that the order impugned suffers from illegality and liable to be set aside.

8. The impugned Order No.4 dated 20th July, 2022 passed in Misc. Case No.44 of 2018 stands set aside.

9. Learned Civil Judge (Senior Division), 2nd Court, Barasat is requested to dispose of the application under Section 5 of the Limitation Act dated 15th September, 2018 first and then also the application under Order IX Rule 13 of the CPC within two months from date of communication of a copy of this order.

10. With the aforesaid observation, the revisional application, being CO 2376 of 2022, stands disposed of.

11. Learned counsel appearing on behalf of the parties are at liberty to bring this order to the notice of the learned Civil Judge (Senior Division), 2nd Court, Barasat, forthwith.

10. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

11. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)