

01.10.2024
Item No.6, DL
Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 3916 of 2023

**Dream Bake private Limited
-Vs-
Saurabh Kumar Khulita**

Mr. Ayan Banerjee,
Ms. M. Ghosh,
Mr. Dhiman Banerjee.
.....for the petitioner.

Affidavit of service and a notice of mentioning served upon the opposite party and his learned Advocate in the Court below are filed on behalf of the petitioner; let those documents be kept with the record; despite service, none appears on behalf of the opposite party.

The plaintiff in *Money Suit No. 175 of 2016* is the petitioner of the instant application under Article 227 of the Constitution of India.

The said suit got dismissed for default; for restoration of it, the petitioner took out an application under Order IX Rule 9 of the Code of Civil Procedure registered as *Misc. Case No. 68 of 2022*.

The 1st Court of the learned Civil Judge (Senior Division) at Baruipur, District: 24-Parganas (South) by the impugned Order No. 32 dated September 27, 2023 passed in the said Misc. Case has dismissed an application filed by the petitioner for amendment of the said application under Order IX Rule 9 of the Code and

the application for condonation of delay thereto on the ground that the averments made in those applications since are not pleadings, the provision under Order VI Rule 17 of the Code has no manner of application.

In the event Order VI Rule 17 of the Code cannot be made applicable; to determine the real question or issue raised in the proceeding, apart from Section 151 of the code, the provision of Section 153 thereof can be applied for amendment of the statements made in the said applications.

The order impugned, therefore, is set aside.

The applications filed by the petitioner are allowed. The petitioner is required to file the amended application under Order IX Rule 9 of the Code and the application for condonation of delay thereto **within a period of two weeks from date.**

C.O. 3916 of 2023 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)