

D/L.64.
December 9, 2024.
MNS.

(Assigned)

C. O. No. 3943 of 2023

Ruma Dey
Vs.
Sri Raja Dutta

Mr. Siva Prasad Ghose

... for the petitioner.

Mr. Partha Sarathi Das

...for the opposite party.

1. The present revisional application has been taken out against an order of injunction passed in connection with an application under Section 5 of the Limitation Act for condonation of delay in preferring a Miscellaneous Case under order IX Rule 13 of the Code of Civil Procedure by the opposite party herein.

2. The opposite party, the defendant in a suit for partition, complains that the ex parte decree was passed behind the back of the opposite party, upon shifting back the date, which was previously fixed for acceptance of the Commissioner's report, without any notice to the opposite party.

3. Thereafter, the Commissioner's report was accepted without affording any opportunity to the opposite party to examine the Commissioner and the final decree was passed before the original date fixed for acceptance of the Commissioner's report. Hence, it is submitted that the opposite party has a strong

case in the application under Order IX Rule 13 of the Code and the connected application under Section 5 of the Limitation Act, which was preferred immediately upon coming to know of the *ex parte* decree.

4. It is submitted that, hence, the learned trial Judge was justified in passing the impugned order of injunction.

5. Learned counsel for the petitioner argues that despite having full knowledge of the shifting back of the date of acceptance of Commissioner's report, which is borne out by the receipt of notice and a copy of the shifting back application in that regard by the learned Advocate of the opposite party in the trial court, the opposite party chose to remain absent and as such, there was no option available before the learned trial Judge but to accept the Commissioner's report.

6. It is further argued that the opposite party is a habitual procrastinator and had on a previous occasion also challenged the earlier Commissioner's report.

7. As such, it is argued that the injunction order passed even prior to allowing the condonation of delay application was bad in law and ought to be set aside.

8. Upon hearing learned counsel for the parties, we find that the previous challenge to a

Commissioner's report by the opposite party could not be castigated; rather, such stand of the opposite party was vindicated by the said Commissioner's report ultimately being set aside on the objection of the opposite party.

9. That apart, it is the subject matter of adjudication in the Order IX Rule 13 application, in the event the condonation application is allowed, as to whether the opposite party had knowledge of the preponement / shifting back of the date of acceptance of the Commissioner's report.

10. It would be absolutely prejudging the issues involved in the main miscellaneous case at this premature juncture by this revisional court, while deciding a challenge against an order of injunction, that too passed in an application under Section 5 of the Limitation Act filed in connection with the main miscellaneous case, and this Court does not have any intention to enter into such fact-finding exercise but prefers to leave the same for the trial court to decide in connection with the miscellaneous case itself.

11. It is well-settled that there is no absolute bar in passing an injunction order even at the stage of the pendency of an application for condonation of delay, in the event the court is satisfied of the parameters for grant of injunction.

12. We find from the impugned order that the learned trial Judge was satisfied that in the event third party interest is created, it might render the main challenge under Order IX Rule 13 infructuous.

13. We do not find any reason to interfere with such exercise of discretion by the learned trial Judge in the facts and circumstances of the case as, undoubtedly, in the event any third party interest is created, there would be an unnecessary multiplicity of proceedings and complications in the matter in the event the application for setting aside the *ex parte* decree is ultimately allowed on condonation of delay.

14. Hence, we leave it to the trial court to consider the application under Section 5 of the Limitation Act and, if allowed, the application under Order IX Rule 13 on merits and restrain ourselves from entering into the merits of the same.

15. In such view of the matter, we do not find any reason to interfere with the impugned order of injunction.

16. Accordingly, C.O. No. 3943 of 2023 is disposed of without interfering with the impugned order but requesting the learned trial Judge to dispose of the pending application under Section 5 of the Limitation Act in connection with Miscellaneous Case No. 78 of 2023 at the earliest, positively within four working weeks from the date of communication of this order to the learned trial Judge.

17. In the event the application under Section 5 of the Limitation Act is allowed, it is expected that the main miscellaneous case shall also be decided at the earliest, preferably within eight weeks from the date of disposal of the application under Section 5 of the Limitation Act.

18. However, nothing in the above observations shall be construed to be any direction on the learned trial Judge to allow the Section 5 application.

19. It will be completely open to the learned trial Judge to consider the application for condonation of delay on its own merits without being influenced in any manner whatsoever.

20. It is further made clear that in the event the concerned court is lying vacant, the parties will be at liberty to move the learned District Judge, North 24 Parganas, for assignment of the matter before a different Bench to ensure compliance of the time-lines as formulated above.

21. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)