

March 12, 2025
Sl. No.27
Court No.6
s.biswas

CO 101 of 2025

Nehal Akhter

vs.

Md. Ali Razi and others

Mr. Debdipto Banerjee

Mr. Udayan Pramanik

Mr. Soumen Banerjee

... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against the order being Order No.8 dated 21st November, 2024 passed by the learned Civil Judge (Junior Division), Additional Court, Sealdah in Misc. Case No.67 of 2024. By the order impugned, the misc. case under Order 9 Rule 9 of the Code of Civil Procedure stood allowed.

The opposite parties herein filed a suit for eviction under Section 6 of the West Bengal Premises Tenancy Act inter alia on the ground of default and reasonable requirement. The said suit was at the stage of further evidence of the plaintiff witness. At this stage the ejectment suit stood dismissed for default by an order dated July 30, 2024. The opposite parties herein filed an application under Order 9 Rule 9 of the Code of Civil Procedure which was registered as Misc. Case No.67 of 2024 praying for setting aside the order dismissing the suit for default and for restoration of the suit to its original file and number. By the order impugned the misc.

case was allowed and the order dated 30th July, 2024 was set aside and the ejectment suit was restored to its original file and number.

Mr. Banerjee, learned advocate appearing on behalf of the petitioner, vehemently submits that the opposite parties herein could not satisfy the tests laid down under Order 9 Rule 9 of the Code of Civil Procedure for setting aside the order dismissing the suit for default. He submits that the ground taken in the misc. case under Order 9 Rule 9 of the Code of Civil Procedure was that there has been a misposting in the diary of the learned advocate for the opposite parties herein, but such allegation could not be substantiated by the opposite parties herein.

It is not in dispute that the suit was for eviction of a premises tenant inter alia on the ground of death and reasonable requirement, which was filed sometimes in the year 2005. The suit proceeded to the stage of evidence.

The reasons for which steps were not taken on the relevant date when the suit was dismissed for default was that there was a misposting in the diary of the learned advocate appearing for the opposite parties. The learned trial judge took note of the fact that no scrap of paper has been filed by the opposite parties herein who were the petitioners in the misc. case by exercising its discretion on the ground that

the suit was 20 years old suit and it is better to dispose of the suit in a contested manner. It is also well settled that a litigant should not suffer for the laches of the learned advocate. Such exercise of discretion by the learned trial judge does not call for any interference by this court in exercise of jurisdiction under Article 227 of the Constitution of India.

With the above observation and direction, CO 101 of 2025 stands disposed of.

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

(Hiranmay Bhattacharyya, J.)