

04.11.2025
Item No.50
Ct. No. 30
Aloke

CO 582 of 2025

**Bansi Badan Mondal
Vs
Madhusudan Mondal & Anr.**

Mr. Debjit Mukherjee
Mr. Kaustav Bhattacharya
Ms. Priyanka Jana
... for the petitioner

Mr. Shambhu Nath Ray
Ms. Munmun Das
Ms. Afreen Parvez
... for the opposite parties

1. The revisional application has been preferred challenging the order dated 05.02.2025 passed by the learned Civil Judge (Senior Division), 2nd Court, Howrah, in Misc. Case No. 32 of 2023 arising out of Title Suit No. 48 of 2004.
2. Vide the order under challenge, the learned trial Court observed as follows :

“On perusal of the materials on record, it appears to this Court that by Order dated 04.01.2018 this Court had observed plaintiff had filed an application for adjournment on the said date with the contention that he has preferred a revisional application before the Hon’ble High Court at Calcutta against the Order dated 28.04.2016 without mentioning the details of the revisional application and he failed to submit any document in that respect. Ld. Advocate for defendant no. 1 had at that time raised vehement objection and referred the decision of the Hon’ble

Court passed in C.O. 3250 of 2017 for expeditious disposal of the suit. It further appears that this Court had rejected the prayer of the plaintiff in strict compliance with the said Order of the Hon'ble Court. However, in C.O. 3250 of 2017 the direction upon this Court was for disposal of the suit within six months from the date of depositing cost by the plaintiff. The plaintiff had submitted the cost by Order dated 17.11.2017. Hence, the time period of six months had not elapsed by 04.01.2018 when the suit was dismissed. On the other hand, this is a suit for partition where according to law, the right to sue survives upon any of the co-sharers. Admittedly, plaintiff and defendant no. 1 are co-sharers in the suit property. Hence, in absence of the plaintiff the defendant could have proceeded with the suit had the same been not dismissed. It is also a fact that the said suit was dismissed not on merit but on procedural grounds. Moreover, the cause of action of the instant suit is still surviving. Hence, the parties should not suffer due to reasons beyond their control."

3. The trial Court was pleased to allow the delay in preferring the Misc. Case for restoration of the suit.

4. Considering that the suit before the trial Court is a suit for partition and the right to sue survives upon the other co-sharers and also the submission that the opposite party/plaintiff is cancer patient, this Court is of the view that though the trial

Court has allowed the Misc. Case by restoring the suit to its original file, the reasons given for the same are clearly not in accordance with law. The part of the order wherein the trial Court has noted that the suit could not be dismissed within six months as the High Court had directed disposal of the suit within six months is an erroneous observation and is thus set aside.

5. The second reason given for allowing the Misc Case on the ground that the right to sue survives upon other co-sharers being lawful and valid and in accordance with law requires no interference.

6. The order under challenge dated 05.02.2025 stands modified accordingly and the parties are to appear before the trial Court and the trial Court shall make all endeavour to dispose of the suit expeditiously preferably within 6 months, without granting unnecessary adjournment to either sides.

7. Civil Revision is accordingly disposed of.

8. Connected application, if any, stands disposed of.

9. Interim order, if any, stands vacated.

10. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Dutt (Paul), J.)