

Court No. 6
(265719)

25.02.2025
(AD 19)
(S. Banerjee)

CO 651 of 2025

Joy Shankar Shaw
Vs.
Sudama Sharma

Mr. Shiva Prasad Ghose

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated February 15, 2025 passed by the learned Civil Judge (Jr. Division), 2nd Court, Barrackpore in Misc. Case No. 11 of 2022. By the order impugned the application under Section 5 of the Limitation Act, filed in connection with an application under Order 9 Rule 13 of the Code of Civil Procedure, was allowed.

Mr. Ghose, learned advocate for the petitioner, submits the opposite party herein entered appearance in the suit and was contesting the same but subsequently did not contest. He submits that the learned trial Judge allowed the application under Section 5 of the Limitation Act in spite of the fact that the delay in filing the miscellaneous case was not satisfactorily explained by the opposite party.

After going through the order impugned this Court finds that the learned trial Judge after taking

into consideration the evidence led by the parties, exercised its discretion in allowing the application under Section 5 of the Limitation Act. While exercising the jurisdiction under Article 227 of the Constitution of India, this Court is to consider only as to whether such discretion was properly exercised or not. This Court does not find that the discretion was not exercised by the learned trial Judge properly. However, after taking note of the submission made by Mr. Ghose, learned advocate for the petitioner, this Court is of the view that the ends of justice would be subserved if the learned trial Judge is directed to dispose of the miscellaneous case expeditiously.

In view thereof, CO 651 of 2025 is disposed of by requesting the learned Civil Judge (Jr. Division), 2nd Court, Barrackpore to dispose of the Misc. Case No. 11 of 2022 as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

It is, however, made clear that the learned trial Judge shall dispose of the said miscellaneous case without being influenced by the observations made either in the impugned order or by this Court in this order.

(Hiranmay Bhattacharyya, J.)