

19.06.2025
Item No.4
Court No.25
Sg

C.O. 836 of 2022

**Smt. Mira Devi Gupta @ Mira Gupta & Anr.
Vs.
Smt. Alaka Gupta @ Jaiswal & Ors.**

Mr. Sudipta Kumar Bos
Mr. Falguni Bandopadhyay
Ms. Lipika Nath
Mr. Anirban Basak

....for the petitioner.

1. Present petition has been filed challenging the order dated 5th August, 2019 whereby learned Trial Judge, Xth Bench, City Civil Court, Calcutta dismissed the application dated 15th February, 2019 in backlog facts are :

The plaintiff/petitioner had filed a suit that declaration and injunction while the case at the outset of evidence an amended application was moved which was allowed by the learned Trial Court. Learned counsel for the petitioner states at Bar that however, pursuant to the allowance of the amendment, amended plaint was filed. Learned Counsel submits that when the matter was taken up on 15th February, 2019 since there was no representation on behalf of the plaintiff. The plaintiff's evidence was closed and the matter was adjourned to 9th April, 2019 for defence witness.

2. Learned counsel submits that on the same day an application was moved before the learned Trial Court stating therein that the matter was fixed on 15th February, 2019 for filing as additional written statement by the defendant and these circumstances supplementary affidavit-in-chief was not filed. Plaintiff stated that there was no deliberate laches and sought for an opportunity to adduce further evidence in the present case.

3. Learned counsel submits that on 9th April, 2019 the application was duly received on behalf of the defendant as has been revealed by an endorsement made on the application itself. Learned counsel submits that on 9th April, 2019 plaintiff filed supplementary affidavit of plaintiff no.2, Shani Kumar Gupta. Learned counsel submits however, on 9th April, 2019 there was no representation on behalf of the defendant, and the matter was adjourned on 21st May, 2019. Learned counsel states at Bar that as per instruction matter was not taken up on 21st May, 2019 and the same was taken on 5th August, 2019.

4. Learned counsel submits that on 5th August, 2019 that the learned Trial Court taking into account the fact that on 15th February, 2019, the plaintiff had not taken any step nor he appeared. The evidence was closed. It was noticed that

application was moved only after the evidence was taken. The learned Trial Court was also took into account the application was neither verified nor supported by affidavit and not even signed by the plaintiff.

5. Aggrieved of this present petition was filed it was taken up for hearing on 29th June, 2022 the Coordinate Bench of this Court while issuing the notice granted an interim stay. The plaintiff/petitioner duly served the opposite party and filed affidavit of service along with postal receipts and the tracking report which shows that opposite party has duly been served.

6. Learned counsel for the petitioner states that when the matter was mentioned on 16th June, 2025 the opposite parties were duly sent the notices. Learned counsel states at Bar that the opposite parties have duly been served and undertaken the place on record and the postal receipt and tracking report. The opposite parties have chosen not to appear to contest the present petition.

7. The Court considers that since the opposite parties have chosen not to appear the present petition which involves a short question may be disposed off as the trial in Title Suit No. 259 of 2008 is not progressing at all.

8. Perusal of the record indicates that on 15th February, 2019 when the evidence was closed the plaintiff moved an application on the same day seeking an opportunity to leave the evidence. The ground taken was to be an intentional mistake on the part of the clerk. The application was duly served upon the opposite party on 9th April, 2019 the Order sheets also reveals that the defendant also not taken any steps that leading the defendant's evidence. Learned Trial Court dismissed the application on 5th August, 2019 predominantly on the ground that the petition was not supported by affidavit was neither verified nor signed.

9. This Court considers that the learned Trial Court while dealing with such application has to take a liberal view and may not be so hyper technical an endeavour of the Court is to adjudicate the matter on merit after affording a sufficient and reasonable opportunity of being heard. This would not certainly mean that parties may be allowed to take frivolous adjournments or may be allowed to delay the proceedings. However, at the same time, the Courts are required to take pragmatic approach and must ensure that the trial in the suits progress in accordance with law.

10. The Court considers in this case. The learned Judge has taken a hyper technical view which in the interest of justice is required to be set aside. Hence the order dated 5th August, 2019 is set aside. Learned counsel for the petitioner has stated at Bar that the petitioner/plaintiff would examine only one witness plaintiff no.2 of which supplementary affidavit was already been filed. The matter has stated to be fixed before the learned Trial Court on 16th July, 2025. The plaintiff was produced the witness before the learned Trial Court on 16th July, 2025. Learned Trial Court shall examine the witness and make effort for expeditious disposal.

11. Hence petition stands disposed off.

12. Urgent Xerox certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(Dinesh Kumar Sharma, J.)