

30-04-2025
Item no.34
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO No.1478 of 2025
Debnath Dutta
-vs-
Samir Sain & Ors.

Mr. Debraj Bhattacharya
Ms. Amrita Mukherjee ...for the petitioner

This application under Article 227 of the Constitution of India is directed against an order dated February 27, 2025 passed by the learned Civil Judge (Senior Division) at Arambagh, Hooghly in Misc. Appeal No.15 of 2019.

The petitioner herein filed a miscellaneous case under Order IX Order 13 of the Code of Civil Procedure, 1908 for setting aside the ex parte decree passed on December 18, 1989 in Title Suit No.59 of 1988. The said miscellaneous case was filed after twenty-five years of passing of the ex parte decree. The petitioner also filed an application under section 5 of the Limitation Act, 1963 for condonation of delay of twenty-five years in filing the miscellaneous case.

The learned Civil Judge (Junior Division), 1st Court at Arambagh by his order dated August 21, 2019, after taking into consideration the explanation given by the petitioner for such delay, returned the factual finding that none of the reasons stated in the petition for condonation of delay is sufficient enough to explain the delay of twenty-five years. Accordingly, the section 5 application along with the miscellaneous case under Order IX Rule 13 CPC was rejected by the learned trial judge.

Being aggrieved by such order, the petitioner filed a miscellaneous appeal being Misc. Appeal No.15 of 2019. The learned judge of the first appellate court by his judgement and order dated February 27, 2025, after considering the materials on record, opined that the petitioner has failed to explain the delay for the entire period in filing the miscellaneous case. In view thereof, the learned judge of the first appellate court dismissed the miscellaneous appeal.

Being aggrieved by the said judgement and order, the petitioner has approached this court by way of this instant revisional application.

The learned trial judge as well as the first appellate court recorded a specific finding of fact that the explanation for the delay is not sufficient. Learned advocate for the petitioner, however, could not demonstrate before this court that such factual finding suffers from any perversity warranting interference under Article 227 of the Constitution.

In such view of the matter, this court is not inclined to interfere with the impugned order passed by the learned Civil Judge (Senior Division) at Arambagh in Misc. Appeal No.15 of 2019.

CO No.1478 of 2025 stands thus dismissed.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

Certified copy of this order, if applied for, shall be made available to the parties.

[Hiranmay Bhattacharyya, J]

