

Court No. 6
(265719)

06.05.2025
(AD 18)
(S. Banerjee)

CO 1452 of 2025

Sri Jagannath Prasad Ghosh & Anr.
Vs.
Smt. Sushma Sharma & ors.

Mr. Abhishek Banerjee
Ms. Parna Roy Choudhury

...for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order being no. 58 dated February 27, 2025 passed by the learned Judge, 3rd Bench, Presidency Small Cause Court, Calcutta in Misc. Case No. 34 of 2024. By the order impugned the application filed by the petitioners praying for passing necessary orders for non-compliance of the order directing payment of cost, stood rejected.

The petitioners herein filed suit for eviction which was decreed ex parte on December 11, 2023. The opposite parties herein filed an application under Order 9 Rule 13 of the Civil Procedure Code for setting aside the ex parte decree which was registered as Misc. Case No. 34 of 2024. The said misc. case was filed beyond the prescribed period of limitation for

which the opposite parties filed an application under Section 5 of the Limitation Act for condonation of delay in filing the misc. case.

In the meantime, the ex parte decree was put into execution giving rise to Ejectment Execution Case No. 35 of 2024. The opposite parties herein filed an application for stay of all further proceedings of the ejectment execution case.

The learned trial judge by an order being no. 52 dated June 25, 2024 allowed the application under Section 5 of the Limitation Act thereby condoning the delay in filing the misc. case with cost of Rs. 5,000/- to be paid to the petitioners herein by the opposite parties. The learned trial judge by the latter portion of the said order passed an order of stay of the execution case on condition of payment of occupation charges by the opposite parties amounting to Rs. 3,000/- per month from the date of the decree. Alleging that the cost was not paid within the time limit as indicated in the order dated June 25, 2024, the petitioners took out an application praying for passing necessary orders.

The learned advocate appearing for the petitioners submits that the learned trial judge by an order dated June 25, 2024 fixed August 28, 2024 for hearing of the misc. case and for filing the relevant

documents to show payment of cost for allowing the application under Section 5 of the Limitation Act. She submits that the cost was not deposited prior to August 28, 2024 and the same was deposited only on February 25, 2025.

After going through the order impugned this court finds that it was the contention of the opposite parties before the learned trial judge that the opposite parties made an attempt to pay the cost to the petitioners but the same was refused by the petitioner and for such reason the amount of cost was deposited at the Treasury of the Presidency Small Causes Court, Calcutta on February 25, 2025.

The learned trial judge after taking note of the fact that the cost was deposited, dismissed the application filed by the petitioners herein. The learned trial judge has exercised the discretion in favour of the opposite parties herein by assigning cogent reasons and for such reason, this court is not inclined to interfere with such exercise of discretion of the learned trial judge.

At this stage learned advocate appearing for the petitioners prays for a direction upon the learned trial judge to dispose of the misc. case expeditiously.

Form the order-sheets appended to this civil revision application this court finds that July 28, 2025 is fixed for hearing of the misc. case.

In view thereof, the learned Judge, 3rd Bench, Presidency Small Causes Court, Calcutta is requested to dispose of the Misc. Case No. 34 of 2024, as expeditiously as possible without granting any unnecessary adjournment to either of the parties, if the same is otherwise ready for hearing.

With the above observations and directions, CO 1452 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)