

Sl. 9
02.05.2025
Court No.6
BP

C.O. 1482 of 2025

Smt. Gita Roy
-versus-
Rabi Sankar Dey

Mr. Supratik Shyamal
..for the petitioner

Mr. Dyutiman Banerjee
Mr. Arnab Sinha
Mr. Subhajit Barman
Mr. Amartya Basu
Mr. Vishal Mallick
..for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated January 31, 2025 passed by the learned Additional District & Sessions Judge, 12th Court at Alipore in Miscellaneous Appeal No. 235 of 2024.

By the order impugned the learned judge of the 1st Appellate Court set aside the ex parte judgement and decree dated December 15, 2014 passed in Title Suit No. 12954 of 2012.

The petitioner herein filed a suit for eviction of a licensee. The opposite party herein entered appearance in the said suit but did not file any written statement and also did not take any steps thereafter for which the suit was decreed ex parte on December 15, 2014. The ex parte decree was put into execution and the

possession was delivered in favour of the petitioner herein on 27th January, 2017. In the meantime the opposite party filed an application under Order 9 Rule 13 of the Code of Civil Procedure which was registered as Misc. Case No. 97 of 2017. The said misc. case was dismissed by an order dated April 19, 2024.

Being aggrieved by such order the petitioner preferred the Miscellaneous Appeal being no. 235 of 2024 and the learned judge of the 1st Appellate Court, by the order impugned, allowed the miscellaneous appeal thereby setting aside the ex parte decree.

After going through the order passed by the learned Judge in the misc case this Court finds that the primary reason for rejecting the said misc. case was that possession of the decretal property was delivered in favour of the petitioner by executing the said decree.

The learned trial judge while passing the said order overlook the provision for restitution as provided under Section 144 of the Code of Civil Procedure. Section 144 of the Code of Civil procedure states that where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place

the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

Upon bearing Section 144 of the Code of Civil Procedure this Court finds that there is provision for restitution after the decree is varied or reversed in any appeal, revision or other proceeding.

This Court, therefore, holds that the learned trial judge was not right in dismissing the miscellaneous case on the ground that the decree has been satisfied.

The learned Judge of the 1st Appellate Court took into consideration that it is the specific case of the opposite parties in the application under Order 9 Rule 13 of the Code of Civil Procedure that due to wrong advice and negligence of the learned advocate the ejectment suit was decreed ex parte. Record reveals that the opposite party herein also lodged a complaint against such learned advocate before the local Bar Association. The learned Judge of the 1st Appellate Court rightly took note of the said facts and allowed the miscellaneous appeal thereby setting aside the ex parte

decree. It is well settled that the litigant should not suffer for any delay or laches on the part of his learned advocate.

This Court finds that the litigant took steps against such advocate and for such reason this Court is not inclined to interfere with the order passed by the learned judge of the 1st Appellate Court.

The learned Civil Judge (Junior Division), 3rd Court at Alipore is requested to dispose of the Ejectment Suit no. 12954 of 2012 as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

With the above observations and directions, C.O. 1482 of 2025 is disposed of.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)