

Court No. 6
(265719)

18.07.2025
(AD 24)
(S. Banerjee)

CO 2420 of 2025

Modern Fibotex India Ltd.
Vs.
Mehta Suraya Pvt. Ltd.

Mr. Arif Ali
Mr. A. Agarwalla
Ms. Shruti Pal
Ms. Priyanka Garain

... for the petitioner

Mr. S. M. Rakshit

... for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated May 17, 2025 passed by the learned Judge, 5th Bench, Small Causes Court at Calcutta in Misc. Case No. 57 of 2023 arising out of Ejectment Suit No. 311 of 2011. By the order impugned, the application under Section 5 of the Limitation Act, stood allowed subject to payment of costs.

Learned advocate appearing for the petitioner submits that the petitioner has put the blame on the learned advocate, as a ground for condonation of delay in filing the miscellaneous case. He further submits that the opposite party no. 1 in spite of being aware of the dismissal of the suit for default, did not

take any steps for restoration of the same within the stipulated timeframe. He further submits that the petitioner seriously dispute the allegation made by the opposite party against its learned advocate.

Heard the learned advocates for the opposite party on such submission.

The learned Judge after scrutiny of the records noted that the learned advocate for the plaintiff did not take any step and upon being satisfied with the cause shown for the delay in filing the misc. case, allowed the application under Section 5 of the Limitation Act.

Since the learned trial judge has exercised discretion to condone the delay, this court is not inclined to interfere with such exercise of discretion under Article 227 of the Constitution of India.

At this stage the learned advocate appearing for the petitioner submits that the petitioner may be allowed to lead evidence in support of the case made out in the written objection to the misc. case under Order 9 Rule 9 of the Civil Procedure Code. It is made clear that this court has considered only whether the reasons stated in the application under Section 5 of the Limitation Act are satisfactory and has not entered into the merits of the Misc case and the

learned trial judge shall be free to decide the misc. case without being influenced by any observation made by this court in this order while disposing of this civil revision application.

The learned advocate appearing for the opposite party submits that though the cost was tendered to the learned advocate for the petitioner before the learned trial court, but he refused to accept the same.

Learned advocate appearing for the petitioner submits that since the petitioner preferred this civil revision application, the learned advocate for the petitioner refused to accept the cost.

The learned advocate appearing for the opposite party is directed to pay the cost on or before July 23, 2025.

Accordingly, CO 2420 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)