

13.8. 2025
item No.25
n.b.
ct. no. 24

C.O. 2588 of 2025

Sarama Roy

Vs.

Shyama Sunmdar Das & Ors.

Mr. Dyutiman Banerjee,
Mr. Krishnendu De,
Mr. Vishal Mallick,
..... for the petitioner.
Ms. Kishore Mukehrjee,
..... for the opposite party.

The instant civil revision has been preferred against the order dated April 25, 2025 passed by the learned Civil Judge, Junior Division, 4th Court, Serampore, Hooghly in Misc. Case No.52 of 2018 arising out of Title Suit no.45 of 2016.

Learned counsel for the petitioner submits that the impugned order passed by the learned Trial Court is erroneous. It is the contention of the petitioner that the learned Trial Court has abruptly condoned the delay of 463 days without ascertaining any reason. Moreover, the objection raised by the present petitioner before the learned Trial Court was not considered properly. It has also submitted on behalf of the petitioner that the petitioner has approached this Court on the earlier occasion challenging the order of the Trial Court dated March 4, 2023 whereby the learned Trial Court has exhibited xerox copy of death certificate of one legal heirs of the plaintiff namely, Dipali Ganguly. This Court

while disposing of the civil revision has directed the petitioner/opposite party to raise the issue at the time of final hearing.

It is the contention of the petitioner that the learned Trial Court has not considered the objection of the petitioner, the order has already been materialized before this Court on the earlier litigation. He further pointed out that order is perverse and is require to be set aside.

Learned Counsel appearing on behalf of the opposite parties/plaintiff before the learned Trial Court below submits the order is perfectly correct and reasoned order. There is no scope to interfere.

He further submits that this Court has disposed of the application for setting aside the abatement preferred by the legal heirs of erstwhile plaintiff. Learned Trial Court below after considering the entire evidence on record has allowed, the said application (Misc. Case 52 of 2018) and thereby the original suit be revived to its original file and number after setting aside the abatement. He further submits that there is illegality and impropriety in the order.

Having heard learned counsel appearing for the parties it appears that in the earlier litigation, the present petitioner has approached this Court challenging an order passed by the learned Trial Court whereby the learned Trial Court has accepted a xerox

copy of death certificate of one of legal heirs of the plaintiff. It was the contention of the petitioner on the earlier litigation that xerox copy of death certificate cannot be accepted/exhibited in terms of provisions of Section 63/64 of Evidence Act. This Court disposed of the said civil revision on June 25, 2025, whereas when the instant order under challenge has already been passed on April 25, 2025. However, the petitioner has not disclosed before a Coordinate Bench of this Court regarding the disposal of the entire Misc. Case. Thus, the scope, which was given to the petitioner to raise the objection by passing an order dated June 25, 2025 cannot be availed as the final order has already been passed on April 25, 2025.

In considering the other merits of the matter, it appears that this Court has condoned the delay of 463 days on the ground that the petitioners are the layman. The learned Trial Court has followed the decision of Hon'ble Supreme Court in the case of ***Mithai Lal Dalsangar Singh Vs. Anna Bai Devram Kini*** reported in ***(2003) 10 SCC 691*** and allowed the application under Section 5 of the Limitation Act by condoning the delay in filing the substitution application.

It is true, that nature of determination of Section 5 of the Limitation Act is based on applicants to disclose sufficient reasons. "Sufficient reason" is based on circumstances of each and every particular case. There

may be separate set of facts to appraise a Court regarding the condonation of delay and the “sufficient reasons”. The Court in considering an application under Section 5 of the Limitation Act i.e. to determine whether sufficient cause has been assigned by the petitioner, is purely a discretion of the Court, who is hearing the application. In the impugned order, the trial court has satisfied that the petitioners were the laymen and unaware regarding of the legal system. Thus, the cause shown to the learned trial Court appears to be sufficient. The discretion as exercised by the learned Trial Court appears to be justified and illegal. He has also placed reliance upon the Hon’ble Supreme Court.

Thus, in that score, I find no infirmity in the impugned order.

A serious question was raised by the learned counsel appearing for the petitioner that at the time of filing written objection he has stated a name of legal heirs of deceased plaintiff, who was left out. It is the contention of the petitioner that this matter was not considered by the learned Trial Court at the time of passing the order. It appears to me that in the entire order, the learned Trial Court has not mentioned the objection of the petitioner regarding left out the legal heirs. However, the scope of the petitioner was always before the learned Trial Court to raise the objection of non-joinder/misc. joinder of the necessary parties in the

suit itself. The suit has only been revived and the petitioner i.e. different the learned Court below has every scope to raise such objection of non-joinder/misc. joinder of the necessary parties, which can only be decided at the time of final hearing of the suit.

Thus, at this juncture, I find no justification to entertain the petitioners.

Hence, the instant civil revisional application stands disposed of.

The petitioner/defendant is at liberty to raise the issue of non-joinder/misc. joinder of the parties by filing subsequent pleadings and such subsequent pleadings must be filed before the Trial Court on or before three weeks from the date of passing of this order.

The learned Trial Court shall dispose of the application of subsequent pleadings, according to law.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)