

Court No. 6
(265719)

14.08.2025
(AD 14)
(S. Banerjee)

CO 2855 of 2025

Ashim Kumar Mondal
Vs.
Khudiram Halder & Anr.

Mr. Dyutiman Banerjee
Mr. Vishal Mallick

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the preemptor and is directed against order no. 112 dated April 30, 2025 passed by the learned Civil Judge (Jr. Division), Kakdwip in Misc. Case NO. 69 of 2018 arising out of Miscellaneous Preemption Case No. 17 of 2007. By the order impugned the application under Section 5 of the Limitation Act was allowed and the application under Order 9 Rule 13 of the Civil Procedure Code being Misc. Case No. 69 of 2018 also stood allowed thereby setting aside the ex parte decree dated September 19, 2018.

Mr. Banerjee, learned advocate appearing for the petitioner submits that the opposite parties herein failed to give any satisfactory explanation for the inordinate delay of 88 days in filing the said application. He further submits that the opposite

parties herein failed and neglected to take steps in the preemption case and to defend the same for which the same was decreed ex parte. He submits that the opposite party could not make out any sufficient cause which prevented him from defending the preemption case. He further submits that the learned trial judge in spite of recording a finding that the petitioner was fit, allowed the application for setting aside the ex parte decree.

The petitioner filed an application under Section 8 and 9 of the West Bengal Land Reforms Act, 1955. The opposite party herein entered appearance in the said suit but thereafter failed to take steps in the said preemption case for which the same was decreed ex parte on September 19, 2018. Thereafter, the opposite parties filed a misc. case under Order 9 Rule 13 of the Civil Procedure Code praying for setting aside the ex parte decree. Since the application was not filed within the prescribed time limit, an application under Section 5 of the Limitation Act was also filed praying for condonation of delay in filing the said misc. case.

After going through the averments made in the application under Section 5 of the Limitation Act and the application filed under Order 9 Rule 13 of the Civil Procedure Code, this court finds that the reasons stated as the ground for non-appearance as

well as belated filing of the misc. case, are same and identical. It is the specific case of the opposite party that since he was suffering from arthritis during the period from July 13, 2017 to December 12, 2018, the petitioner could not take steps in the preemption case and for which the same was decreed ex parte and due to such illness the petitioner also could not file the application under Order 9 Rule 13 within the stipulated time limit. It further appears from the records that the opposite party also submitted a medical certificate which was marked as Exhibit 1. The learned trial judge after considering the medical certificate and the entire case record of the misc. case observed that there is nothing which would indicate that the petitioner was fit or that the medical certificate was obtained fraudulently.

Thus, the learned trial judge did not discard the medical certificate on the ground that the same was obtained fraudulently as argued by Mr. Banerjee, learned advocate appearing for the petitioner.

The learned trial judge recorded a specific finding of fact that it does not appear that the petitioner of the misc. case was grossly negligent in defending the preemption case or the conduct of the said petitioner is mala fide one.

In the light of the aforesaid observation, the learned trial judge exercised its discretion in favour of the petitioner herein by condoning the delay of 88 days in filing the misc. case and also allowed the application under Order 9 Rule 13 of the Civil Procedure Code thereby setting aside the ex parte decree.

It is also well-settled that when the learned trial judge in exercise of its discretion allowed an application under Section 5 of the Limitation Act, the High Court under Article 227 of the Constitution of India shall be slow in interfering with such exercise of discretion by the learned trial judge.

It also appears that the learned trial judge also imposed cost upon the opposite parties as a condition for condoning the delay as well as for setting aside the ex parte decree. Thus, this court finds that the petitioner herein has been sufficiently compensated.

For all the reasons as aforesaid, this court is not inclined to interfere with the order impugned.

Accordingly, CO 2855 of 2025 stands dismissed. There shall, however, be no order as to costs.

(Hiranmay Bhattacharyya, J.)