

10 **09.09.
2025**

Ct. No. 06

Ab

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION.**

CO 3305 of 2025

**Sri Timir Baran Patra
Vs.
Sonamoni Patra.**

**Mr. Subhadip Biswas,
Mr. Rahul Das,
Mr. Sandip Das.**

... for the petitioner.

1. This application under Article 227 of the Constitution is at the instance of the husband/petitioner and is directed against an order being no. 6 dated 2nd August 2025 passed by the learned Additional District Judge, 6th Court at Paschim Medinipur in J. Miscellaneous Case No. 14 of 2025 arising out of Matrimonial Suit No. 422 of 2024.
2. By the impugned order, an application under Section 5 of the Limitation Act praying for condonation of delay in filing the J. Miscellaneous Case stood allowed and the delay in filing the J. Miscellaneous Case was condoned.
3. Learned Advocate for the petitioner submits that the wife/opposite party herein had knowledge about the said proceedings. She did not contest the matrimonial suit in spite of being served with the summons of the matrimonial suit. He further submits that the opposite party prayed for condonation of delay of 100 days in filing the J. Miscellaneous Case and in view thereof, it is evident that the opposite party had knowledge about the matrimonial suit long prior to 19th June 2025.
4. The matrimonial suit was decreed ex parte by a judgment and decree dated 13th January 2025. The

learned trial Judge after considering the records recorded a finding that on 9th July 2014 notices returned “unserved”. One unserved envelope returned with acknowledgement due card with the remarks “address could not be located”. The learned trial Judge further recorded that the second summons was not sent at the purported address of the wife (Pin -721147), as shown in the plaint, which, according to the learned trial Judge, was the wrong address. Learned trial Judge further recorded that no acknowledgement due card has been received by the Court showing service of summon at the address of the wife and showing her signature on the acknowledgement due card.

5. On the basis of the aforesaid factual finding, the learned trial Judge further observed that when the summon was being shown to be at wrong address, it is not expected from the wife to know about the pendency of the case and about the ex parte order that was passed without giving opportunity of hearing to the wife. It was further held that there is nothing on record to show that the wife avoided to receive summons and wife was residing at different address and summon was sent at different address.
6. In the light of the aforesaid factual finding, the learned trial Judge allowed the application under Section 5 of the Limitation Act. When the learned trial Judge in exercise of its discretion allowed the prayer for condonation of delay, the superior forum should be very slow in interfering with such exercise of discretion unless it is shown that such discretion was not properly exercised.
7. In the case on hand, the learned trial Judge after considering the materials on record arrived at a factual finding that the summons of the suit was not served upon the wife at the correct address and it is

not a case where the wife avoided to receive the summons.

8. The learned Advocate for the petitioner could not controvert such factual finding in exercise of his argument. The impugned order does not suffer from perversity.
9. Learned trial Judge allowed the prayer for condonation of delay by assigning cogent reasons. Therefore, this Court is not inclined to interfere with such exercise of discretion in exercise of powers under Article 227 of the Constitution of India. Accordingly, CO 3305 of 2025 is dismissed.
10. There shall, however, be no order as to costs.
11. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)