

Item No. 9
12.11.2025
Court. No. 6
GB

C.O. 3590 of 2025

Smt. Nibedita Lahiri
Vs.
Smt. Payel Chakraborty

*Mr. Partha Pratim Roy,
Ms. Paulami Chakraborty,
Mr. Samrat Chakraborty*

...for the Petitioner.

1. The petitioner is the landlord and was successful in obtaining an ex parte decree for eviction. The opposite party filed an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree along with an application for condonation of delay. The application under Section 5 of the Limitation Act was rejected by the learned trial judge. A misc. appeal was preferred along with an application for condonation of delay. The learned appellate court also rejected the said misc. appeal.
2. Aggrieved, a civil revisional application was filed being C.O. 782 of 2020. The delay in filing the misc. appeal was condoned by the High Court and the Misc. Appeal No.74 of 15 was treated to be admitted. The learned appellate court was directed to dispose of the misc. appeal after giving an opportunity of hearing to both the parties. As per the direction of the High Court, the Misc. Appeal No.74 of 2015 was heard once again and was allowed. Thereby, the delay in filing the application under Order 9 Rule 13 of the Code of Civil Procedure was condoned and the learned trial judge

was directed to dispose of the application under Order 9 Rule 13 of the Code of Civil Procedure by hearing the same afresh. The execution of the ejectment case was stayed till the disposal of the application under Order 9 Rule 13 of the Code of Civil Procedure, being Misc. Case No.20 of 2007.

3. Mr. Roy, learned advocate for the petitioner is aggrieved on the following grounds:-

(a) The learned appellate court wrongly construed the law relating to condonation of delay. The opposite party was aware of the proceedings and had not been taken by surprise.

(b) Summons were duly served and she had contested the proceeding. Suddenly, she stopped appearing.

(c) The allegations against the lawyer could not be proved and they were farfetched.

(d) The direction to pay occupational charges at the rate of Rs.1100/-was inadequate, inasmuch as, the market value was not considered.

(e) The learned appellate court ought to have put a default clause as the petitioner apprehends that the regular occupational charge will not be paid.

4. I have considered the reasons assigned by the learned appellate court in Misc. Appeal No.74 of 2015 and I find that the learned court has exercised its discretion in allowing the application for condonation of delay in filing the application under Order 9, Rule 13 of the Code of Civil Procedure. The learned court had

observed that the learned advocate who was engaged, did not behave in a responsible manner and that owing to shifting of the office, the opposite party could not approach him. Hence, delay occurred in filing the application.

5. Miscommunication between the opposite party and her erstwhile learned advocate should not be a ground to deny a fair hearing to an honest litigant.
6. This is a suit for eviction where the tenant will lose her abode, without even a chance to contest. The learned court rightly allowed the application for condonation of delay and fairly directed hearing of the application for setting aside the ex parte decree.
7. The apprehension of Mr. Roy is, thus, unjustified. This court has faith that the learned trial judge will independently apply his mind while deciding the issue as to whether the ex parte decree should be set aside or not. The said application will be decided on the basis of evidence. The said application shall not be allowed as a matter of routine, only because the delay has been condoned.
8. The opposite party who has suffered an ex parte decree will have to prove her case and establish that reasons for setting aside the ex parte decree existed. Thus, this revisional application is dismissed.
9. With regard to the quantum of occupational charges, this Court does not find that the petitioner had produced any document before the learned appellate

court which would justify enhancement of the amount. Under such circumstances, this issue is not decided. The petitioner always has the liberty to approach the appropriate court for enhancement. If there is a default, the petitioner can also pray for necessary orders, but the apprehension that there will be a default, is like putting the cart before the horse.

10. All prayers can be made before the appropriate court.
11. Accordingly, the revisional application is dismissed.
12. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)